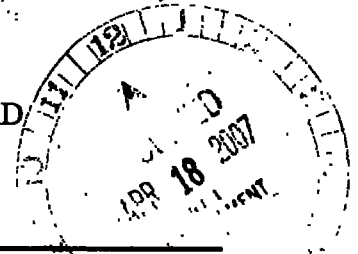


4/17/2007

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 34797



REPRESENTATIVE JAMES R. MICELI TESTIMONY STATEMENT

AS A REPRESENTATIVE FOR THE TOWNS OF WILMINGTON AND TEWKSBURY FOR THE PAST 30 YEARS, I KNOW THE COMMUNITY ISSUES AND HAVE A CLOSE RELATIONSHIP WITH MY CONSTITUENT BASE.

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AT THIS TIME, I WANT TO THANK YOU FOR HAVING THIS HEARING AND FOR MY OPPORTUNITY TO TESTIFY REGARDING MY POSITION ON THE SURFACE TRANSPORTATION BOARD'S JURISDICTION. ALTHOUGH THE SURFACE TRANSPORTATION BOARD DOES A FINE JOB IN MANY INSTANCES, I FEEL STRONGLY THAT YOU DO NOT HAVE JURISDICTION OVER THE PROPOSED NEW ENGLAND TRANSRAIL SITE IN WILMINGTON, MASS, BECAUSE A TRANSFER STATION GOES BEYOND THE SCOPE OF RAIL LINES. IT IS A SEPARATE ENTITY THAT THE STATE AND LOCAL GOVERNMENT HAVE JURISDICTION OVER AND WHO ALSO HAVE THE MEANS FOR OVERSIGHT ACCORDING TO STRONG ENVIRONMENTAL AND COMMUNITY REGULATIONS.

IS THIS OPERATION REALLY SUBJECT TO EXEMPTION? NO! WE CONTEST THAT NEW ENGLAND TRANSRAIL HAS NOT ADEQUATELY PROVEN THEIR STATUS AS A RAIL CARRIER, BUT ASSUMING, FOR ARGUMENT SAKE, THEY ARE A RAIL CARRIER, AND THEIR PROPOSED OPERATIONS WILL PROCESS SOLID WASTE. THESE ACTIVITIES ARE NOT EXEMPT FROM REVIEW BY STATE SOLID WASTE REGULATIONS AND STATE JURISDICTION FOR SIGHTING AND HANDLING OF SOLID WASTE.

IS NEW ENGLAND TRANSRAIL REALLY A RAIL CARRIER AS DEFINED UNDER THE STB'S REGULATORY REQUIREMENTS? NO! THEY ARE PROPOSING TO REACTIVATE A RAIL SPUR THAT WILL SERVICE THEM AND ONLY THEM.

IS THIS REALLY A RAIL OPERATION, WITH PUBLIC OR OTHER PRIVATE RAILROAD ACCESS? NO AND NEW ENGLAND TRANSRAIL HAS OFFERED NOTHING TO INDICATE OTHERWISE.

DOES THIS CONTRIBUTE TO THE RAILROAD INFRASTRUCTURE? NO! THIS PROJECT ONLY FINANCIALLY BENEFITS NEW ENGLAND TRANSRAIL AND UNDERMINES ENVIRONMENTAL LAWS.

WILL NEW ENGLAND TRANSRAIL REALLY EVER CONNECT WITH THE MBTA LINE? NEW ENGLAND TRANSRAIL HAS OFFERED NO EVIDENCE AND

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OR NO AGREEMENTS WITH OWNERS OF THE TRACK THAT THEY WILL ACTUALLY CONNECT WITH THE MBTA LINE.

OR IS NEW ENGLAND TRANSRAIL'S PROPOSAL SIMPLY A SMOKE SCREEN TO WHAT THEY ACTUALLY ARE, WHICH IS A PRIVATE FREIGHT YARD OPERATING PRIVATE SPURS DESIGNED TO SORT AND BALE VARIOUS TYPES OF SOLID WASTE, WITHOUT REGULATORY OVERSIGHT, GIVING THEM AN UNFAIR MARKET ADVANTAGE FOR THEIR OWN PRIVATE PROFIT?

THE PRINCIPALS OF NEW ENGLAND TRANSRAIL WHO ARE/WERE PRINCIPAL OF AMERICAN MARINE RAIL, HAVE HAD MANY CONTROVERSIAL ATTEMPTS IN NJ AND NEW YORK FOR PROPOSED TRUCK TO RAIL AND BARGE TO RAIL SOLID WASTE FACILITIES. THIS CLEARLY IS AN ATTEMPT TO SIDESTEP ENVIRONMENTAL REGULATIONS, REVIEW, AND PUBLIC SCRUTINY THAT HAS BEEN A HEADACHE TO THEM IN THE PAST AT THE FRESH KILLS LANDFILL, SOUTH BRONX AND BAYONNE NJ. NEVER MIND THE NOW DEFUNCT COMPOST AMERICA OF ENGLEWOOD, NJ THAT SUFFERED FROM SERIOUS FINANCIAL PROBLEMS

I WANT TO OFFER THAT IN ADDENDUM A ARE MASSACHUSETTS DEP REGULATIONS FOR SOLID WASTE SITES.

I WON'T BURDEN THE BOARD WITH READING ALL THE SPECIFICS BUT I WANT TO EMPHASIZE THAT THE STATE AND LOCAL COMMUNITY GOVERNMENT HAVE THE APPROPRIATE LAWS AND REGULATIONS IN PLACE TO HANDLE OVERSIGHT OF SUCH A FACILITY THAT NEW ENGLAND TRANSRAIL PROPOSES.

IN THE NEW ENGLAND TRANSRAIL PROPOSAL/APPLICATION, THE COMPANY IS NOT PRECLUDED FROM OPERATING A SITE THAT INCLUDES THE PROCESSING OF SOLID WASTE MATERIAL.

UNDER NORMAL CIRCUMSTANCES THE DEPARTMENT OF ENVIRONMENTAL PROTECTION WOULD HAVE JURISDICTION AND COULD RESTRICT OR PROHIBIT THE DISPOSAL OF SOLID WASTE ACCORDING TO STATE LAW EXCERPTS OF WHICH IS FOLLOWING:

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310 CMR 19.017: Waste Disposal Ban Regulation

19.017: Waste Bans

(1) Purpose. The Department may restrict or prohibit the disposal, or transfer for disposal, of certain

components of the solid waste stream when it determines that:

(a) disposal of the material presents a potential adverse impact to public health, safety or the environment; or

(b) a restriction or prohibition will result in the extension of the useful life or capacity of a facility or class of facilities.

(2) General and Specific Restrictions. Where the Department makes a determination to restrict or prohibit the disposal, or transfer for disposal, of a particular material it may:

(a) require as a condition of issuance of a permit that a facility prohibit or limit the disposal, or transfer for disposal, of particular types of material.

(b) require as a condition of continued operation under an existing plan approval or permit that a facility or a class of facilities prohibit or limit the disposal, or transfer for disposal, of particular types of material; or

(c) determine that a specific facility or class of facilities are not approved for the disposal of particular types of material and may not contract for the disposal of particular types of material. For the purpose of 310 CMR 19.017 disposal or contract for disposal shall include, but not be limited to....: REFERENCE ADDENDUM A FOR DEPTAIL REGULATIONS

FURTHERMORE, THIS SITE IN WILMINGTON, MASSACHUSETTS HAS MANY CONTAMINANTS AND HAS BEEN ON THE ENVIRONMENTAL PROTECTION AGENCY (EPA) LIST FOR YEARS. I DON'T BELIEVE BRINGING THIS TYPE OR ANY OPERATION ON THIS SITE WITH THE CURRENT SITUATION OF CONTAMINATION IS HEALTHY FOR THE COMMUNITY RESIDENTS, COMMUNITY WORKERS ON THE SITE, OR THE ENVIROMENT.

THE REMEDIATION OF THIS SITE IS VERY IMPORTANT TO THE COMMONWEALTH AND TO PLACE ANY OPERATIONS THAT MAY FURTHER JEOPARDIZE THE COMMUNITY OR FURTHER IMPACT THE ENVIRONMENT MORE THAN IT ALREADY IS, IS NEGLIBILE. ANOTHER COMPANY ALREADY TRIED TO LOCATE TO THIS SITE BUT CHANGED ITS MIND BASED ON THE HISTORY OF CONTAMINATES AND THEY DIDN'T WANT TO RISK PEOPLE WORKING IN THIS AREA.

AT THIS TIME, I WANT TO INTRODUCE FURTHER ADDENDUMS BASED ON THE MANY MEETINGS AND CONVERSATIONS I HAVE HAD WITH THESE PARTIES.

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I HAVE SPOKEN TO THE RECENTLY ELECTED GOVERNOR'S OFFICE AND THE PAST GOVERNOR'S OFFICE OF THE COMMONWEALTH OF MASSACHUSETTS. WE DISCUSSED THIS SITE AND ITS' PAST AND POTENTIAL FUTURE IMPACTS TO THE COMMONWEALTH'S ENVIRONMENT AND ESPECIALLY THE WILMINGTON COMMUNITY.

I WOULD LIKE TO INTRODUCE AND READ THE FOLLOWING STATEMENTS RECORDED IN ADDENDUM B THAT DOCUMENT OR CAPTURE THE CONTEXT OF OUR MEETINGS AND DISCUSSIONS REGARDING THE OLIN SITE.

INTRODUCTION OF ADDENDUM B

Frank Micciche, Director of State and Federal Relations in Washington, DC spoke with Nancy Beitter, Attorney with the Surface Transportation Board and told her that the Governor (His Excellency, Mitt Romney) is strongly behind the DEP's position.

I have been in contact with Governor, Deval Patrick's DC office, Caroline Powers, Deputy Director of State and Federal Relations in Washington, DC who has recently investigated this issue. I want to reinforce that Governor, Deval Patrick is firmly behind the DEP's position in Representing the Commonwealth's concerns regarding this site's jurisdiction.

NEXT, I NOW WANT TO READ AND INTRODUCE ADDENDUM C INFORMATION FROM MY CONSTITUENTS WHOM ALONG WITH MY HELP HAVE BEEN INVOLVED IN ENVIRONMENTAL MEETINGS AND HAVE TAKEN ACTION TO BRING THIS SITE TO THE ATTENTION OF THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) AND THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY (EPA)

Suzanne Sullivan

INTRODUCTION OF ADDENDUM C (read Suzanne's info in Addendum C folder)

FINALLY, I WANT TO READ AND REENFORCE THE EPA'S POSITION REGARDING THIS SITE'S VOLATILITY BASED ON THE FACT THAT THERE HAVE BEEN LINKS TO POTENTIAL CANCERS BASED ON TE CONTAMINANTS AND THE FACT THAT THIS HAS BEEN ON THE SUPERFUND NPL LIST AND THAT IT NEEDS CONTINUED REMEDIATION.

INTRODUCTION OF ADDENDUM D (read EPA faxed letter dated April 6, 2007 (Addendum D folder)

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IN CLOSING, I WANT TO THANK THE BOARD AGAIN FOR HEARING MY TESTIMONY AS I OPPOSE THIS APPLICATION, I LOOK FORWARD TO A DECISION THAT WILL HELP MY COMMUNITY TO LIVE IN A SAFER AND NON-CONTAMINENT ENVIRONMENT.

ADDENDUM A

DEP REGULATION 310 CMR 19.017

310 CMR 19.017: Waste Disposal Ban Regulation

19.017: Waste Bans

(1) Purpose. The Department may restrict or prohibit the disposal, or transfer for disposal, of certain

components of the solid waste stream when it determines that:

(a) disposal of the material presents a potential adverse impact to public health, safety or the environment; or

(b) a restriction or prohibition will result in the extension of the useful life or capacity of a facility or class of facilities.

(2) General and Specific Restrictions. Where the Department makes a determination to restrict or prohibit the disposal, or transfer for disposal, of a particular material it may:

(a) require as a condition of issuance of a permit that a facility prohibit or limit the disposal, or transfer for disposal, of particular types of material.

(b) require as a condition of continued operation under an existing plan approval or permit that a facility or a class of facilities prohibit or limit the disposal, or transfer for disposal, of particular types of material; or

(c) determine that a specific facility or class of facilities are not approved for the disposal of particular types of material and may not contract for the disposal of particular types of material. For the purpose of 310 CMR 19.017 disposal or contract for disposal shall include, but not be limited to:

1. entering into an agreement to dispose of materials restricted from disposal in violation of 310 CMR 19.000; or

2. depositing restricted materials for collection, contracting for the collection of such materials or collecting such materials in a manner which results in the disposal of materials in violation of 310 CMR 19.000; or

3. intentionally contaminating or co-mingling with solid waste pre-sorted material restricted from disposal which would result in the need to dispose of said material in violation of 310 CMR 19.000.

(3) Waste Specific Restrictions.

(a) Effective on the dates specified in Table 310 CMR 19.017(3) restrictions on the disposal or transfer for disposal of the materials listed therein shall apply as specified. No person shall dispose, transfer for disposal, or contract for disposal of the restricted material except in accordance with the restriction established in the table. No landfill, transfer facility or combustion facility shall accept the restricted material except to handle, recycle or compost the material in

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accordance with a plan submitted pursuant to 310 CMR 19.017(5) and approved by the Department.

(b) On the effective date of the restrictions on Cathode Ray Tubes (CRTs), specified in Table 310 CMR 19.017(3), all persons shall segregate CRTs from the solid waste stream.

Table 310 CMR 19.017(3)

Restricted Material	Effective Date of Restriction for Landfills or Combustion Facilities	Effective Date of Restriction for Transfer Facilities	Restriction
Lead Batteries	December 31, 1990	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Leaves	December 31, 1991	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Tires	December 31, 1991	April 1, 2000	Ban on disposal or transfer for disposal of whole tires only at landfills. Tires must be shredded prior to disposal in landfills.
White Goods	December 31, 1991	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Other Yard Waste	December 31, 1992	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Aluminum Containers	December 31, 1992	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Metal or Glass	December 31, 1992	April 1, 2000	Containers Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Single Polymer Plastics	December 31, 1994	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Recyclable Paper	December 31, 1994	April 1, 2000	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Cathode Ray Tubes	April 1, 2000	April 1, 2000	Ban on disposal, incineration, or transfer for disposal, at a solid waste disposal facility
Asphalt Pavement, Brick and Concrete	July 1, 2006	July 1, 2006	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Metal	July 1, 2006	July 1, 2006	Ban on disposal or incineration or transfer for disposal at a solid waste disposal facility
Wood	July 1, 2006	July 1, 2006	Ban on disposal or transfer for disposal at landfills

(4) Criteria for Determinations of Waste Restrictions on Other Materials. In determining whether to restrict or prohibit the disposal of other materials the Department may consider:

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- (a) the nature and degree of potential adverse impacts;
- (b) the quantities of restricted materials generated;
- (c) the availability of non-disposal management options for the restricted materials;
- (d) the economic impact on the facility, class of facilities or generators subject to the restriction;
- (e) such other factors as the Department deems relevant to such a determination.

(5) Waste Ban Plan Submissions.

(a) The permittee or operator shall submit a plan, or modify an existing approved plan to include newly banned materials, which describes the actions to be taken to comply with the restrictions imposed at 310 CMR 19.017(3). The plan shall be submitted to the appropriate regional office of the Department.

(b) The waste ban plan shall address the following:

1. Ongoing waste stream monitoring of all incoming loads, including:

- a. monitoring procedures;
- b. unacceptable quantities and *de minimus* acceptable quantities; and
- c. record keeping.

2. Comprehensive load inspections, including:

- a. loads not subject to comprehensive load inspections;
- b. load selection;
- c. inspection procedures;
- d. unacceptable quantities and *de minimus* acceptable quantities; and
- e. record keeping.

3. Facility response to failed loads, including:

- a. communication; and
- b. failed load disposition.

4. Other compliance plan elements, including:

- a. training;
- b. signage; and
- c. annual waste ban report.

(c) In determining the adequacy of a plan the Department may consider, without limitation: the anticipated quantities and sources of restricted materials; the contractual terms which affect the delivery of said materials; the expected maximum and minimum percentages of diversion of said materials prior to delivery to the facility and capture of said materials at the facility; the design, operational, educational, informational, financial and marketing mechanisms to be employed to achieve compliance with the restriction; and the weighing and record keeping systems by which the Department can verify compliance with the restriction.

(d) Facilities shall submit such plans at least 90 days prior to the effective date of the ban. The schedule shall not limit the Department from requiring submission of a plan as part of an application for a new or existing facility permit or modification of a permit or plan approval.

(6) Exceptions. The Department may allow a facility or person to temporarily dispose or temporarily contract for the disposal of restricted materials, with prior notification and approval of the Department, under the following circumstances:

(a) the material is contaminated or is otherwise not acceptable for recycling or composting provided that the person who contaminated or rendered the material unfit for recycling or composting is notified and takes any action necessary to prevent a recurrence of the conditions which contaminated or rendered the material unfit; or

(b) the recycling or composting operation or end user to which the restricted material is normally sent declines to accept the material or is prohibited from accepting the material as a result of an administrative or judicial order, provided that an alternative recycling or composting operation or storage facility which will accept the material cannot be found within a reasonable time.

(7) Compliance with a Restriction or Prohibition. Failure to comply with approved plans submitted pursuant to 310 CMR 19.017(5) or applicable permit conditions shall constitute a violation of 310 CMR 19.000. The Department may allow *de minimis* quantities of restricted materials, as determined by the Department, to be disposed by the facility. The Department may, in lieu of an enforcement action described in 310 CMR 19.081, require a modified plan to be submitted when restricted materials are being disposed of in excess of approved amounts.

DEP REGULATIONS SPECIFIC TO MUNICIPAL WASTE COMBUSTORS RELEASE TO THE AIR REGULATIONS:

- Before a facility that burns more than 1 ton of solid waste per hour may be built in any Massachusetts town or city, the proponent must obtain a site assignment from the local board of health. The site assignment is an official determination that such an operation is a suitable use of the specific property for which it has been proposed. A site assignment is also required for any landfill that accepts residual ash from a municipal waste combustor. The board of health considers a number of factors, including a "site suitability determination" prepared by the Massachusetts Department of Environmental Protection (MassDEP), before issuing a site assignment.
- State law requires review under the Massachusetts Environmental Policy Act (MEPA) before MassDEP may issue any permits for construction of a major facility, such as a municipal waste combustor. MEPA review is an effort by state government to investigate alternatives, minimize environmental damage and secure enforceable commitments to mitigate environmental impacts. It does not pass judgment on whether the required state permits should be issued: The MEPA process encourages public comment from everyone who might be affected by or benefit from the project.

- MassDEP reviews applications for state environmental permits only after the local health board issues a site assignment and the MEPA Unit completes its own review. The agency issues separate permits for construction and operation of a combustion facility, issues approvals for its pollution-control technologies (see State & Federal Emission Standards), and issues permits for its wastewater discharges in conjunction with local and/or federal authorities as appropriate. MassDEP also regulates the construction, operation and closure of landfills that accept ash residuals from combustion facilities.
- The federal government, through the U.S. Environmental Protection Agency (EPA), sets minimum standards that Massachusetts and other states must use to regulate facilities' air emissions and surface water discharges. EPA also reviews state air regulations to ensure they are at least as stringent as federal rules.

Local Governance require site assignment by the local community

Site Assignment means a determination by a board of health or by the Department as specified in M.G.L. c. 111, § 150A which:

- (a) designates an area of land for one or more solid waste uses subject to conditions with respect to the extent, character and nature of the facility that may be imposed by the assigning agency after a public hearing in accordance with M.G.L. c.111, § 150A; or
- (b) establishes that an area of land was utilized as a site for the disposal onto land of solid waste or as a site for a refuse disposal incinerator prior to July 25, 1955. The area of land site assigned under 310 CMR 16.02: Site Assignment shall be limited to the lateral limits of the waste deposition area ("the footprint"), or the area occupied by the incinerator, as they existed on July 25, 1955, except as otherwise approved by the Department in approved plans. Said assignment shall apply only to uninterrupted solid waste disposal activities within the footprint or plan-approved area and shall have no legal force or effect at any time after the cessation of disposal activities except as otherwise provided at 310 CMR 16.21.

CHAPTER 111. PUBLIC HEALTH

NOISOME TRADES

Chapter 111: Section 150A. Solid waste disposal facilities; maintenance and operation; applications for site assignment

Section 150A. As used in this section and in section one hundred and fifty A1/2 the following words shall, unless the context otherwise requires, have the following meanings:—

"Department", the department of environmental protection.

"Facility", a sanitary landfill, a refuse transfer station, a refuse incinerator rated by the department at more than one ton of refuse per hour, a resource recovery facility, a refuse composting plant, a dumping ground for refuse or any other works for treating, storing, or disposing of refuse.

"Refuse", all solid or liquid waste materials, including garbage and rubbish, and sludge, but not including sewage, and those materials defined as hazardous wastes in section two of chapter twenty-one C and those materials defined as source, special nuclear or by-product material under the provisions of the Atomic Energy Act of 1954.

"Maintain", to establish, keep or sustain the presence of a facility on a site, whether or not such facility is in operation and whether or not such facility has been closed.

No place in any city or town shall be maintained or operated by any person, including any political subdivision of the commonwealth, as a site for a facility, or as an expansion of an existing facility, unless, after a public hearing, such place has been assigned by the board of health of such city or town in accordance with the provisions of this section, or, in the case of a facility owned or operated by an agency of the commonwealth, such place has been assigned by the

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department after a public hearing and unless public notice of such assignment has been given by the board of health or the department, whichever is applicable.

The determination by the board of health, or the department in the case of a state agency, of whether to assign a place as a site for a facility, or for the expansion of an existing facility, shall be based upon the site suitability criteria established by the department in cooperation with the department of public health pursuant to section one hundred and fifty A 1/2, and any site assignment shall be subject to such limitations with respect to the extent, character and nature of the facility or expansion thereof as may be necessary to ensure that the facility or expansion thereof will not present a threat to the public health, safety or the environment.

Any person desiring to maintain or operate a site for a new facility or the expansion of an existing facility shall submit an application for a site assignment to the local board of health and simultaneously provide copies to the department and the department of public health. A copy of the application for site assignment shall be filed with the board of health of any municipality within one-half mile of the proposed site. Any municipality within such one-half mile shall be afforded all the procedural rights of an abutter for the purpose of administrative review by the department or public hearing by the board of health where the proposed site is located. The department shall, upon request by the board of health, provide advice, guidance and technical assistance to said board during its review of a site assignment application. The department and a board of health may enter into such other cooperative agreements in addition to those herein specified for the purpose of achieving an effective and expeditious review of the application. The board of health may charge a reasonable application fee to cover the costs of conducting a hearing and reviewing technical data submitted to the board. The application fee may also include a portion of the reasonable costs of other technical assistance. The application fee shall be established in accordance with rules and regulations promulgated by the department.

Within sixty days of receipt of said application, the department shall issue a report stating whether the proposed site meets the criteria established under section one hundred and fifty A1/2 for the protection of the public health and safety and the environment. Any and all such reports shall be made available to the public in a timely fashion prior to any public hearing concerning the site application.

Within sixty days of receipt of said application, the department of public health shall review said application and comment thereon as to any potential impact of a site on the public health and safety. The department of public health may, in addition to its comment, make or cause to be made a public report, in writing, as it relates to an expansion of an existing facility or the assignment of a place as a site for a facility and provide said report with its written comments to the board of health. The department of public health shall coordinate and cooperate with a board of health on any matter relating to said public health report.

Within thirty days of the receipt of the department's report, the board of health shall hold a public hearing satisfying the requirements of chapter thirty A. Within forty-five days of the initial date of such hearing, the board of health shall render its decision on whether to assign a site for a facility, in writing, accompanied by a statement of reasons therefor and publish notice of said decision including determinations of each issue of fact or law necessary to the decision.

No assignment shall be granted by the local board of health unless the department report affirms that the siting criteria of said section one hundred and fifty A1/2 have been met by the proposed site. The board of health shall consider the concerns, if any, relative to the public health and safety cited by the department of public health. A local board of health shall assign a place requested by an applicant as a site for a new facility or the expansion of an existing facility unless it makes a finding, based on the siting criteria established by said section one hundred and fifty A 1/2, that the siting thereof would constitute a danger to the public health or safety or the environment.

Any person aggrieved by a decision of a board of health in assigning or refusing to assign a place as a site for a new facility, or expanding or refusing to expand an existing facility, except a resource recovery facility in operation or under construction prior to July first, nineteen hundred and eighty-seven, may, within thirty days of the publication of notice of such decision, appeal under the provisions of section fourteen of chapter thirty A. For the limited purposes of such an appeal, a local board of health shall be deemed to be a state agency under the provisions of said chapter thirty A and its proceedings and decision shall be deemed to be a final decision in an adjudicatory proceeding.

No facility shall be established, constructed, expanded, maintained, operated, or devoted to any past closure as defined by regulation, unless detailed operating plans, specifications, a public health report, if any, and necessary environmental reports have been submitted to the department and the department has granted a permit for the facility, and notice of such permit is recorded in the registry of deeds, or if the land affected thereby is registered land in the

registry section of the land court for the district wherein the land lies. Within one hundred and twenty days after the department is satisfied that said operating plans, specifications, and reports are complete, the department shall make a decision granting or refusing to grant such permit. Said permit may limit or prohibit the disposal of particular types of solid waste at a facility in order to extend the useful life of the facility or reduce its environmental impact.

Every decision by the department granting or refusing to grant such permit shall be in writing and shall contain findings with regard to criteria established by the department. Any person aggrieved by the action of the department in granting or refusing to grant such permit, may appeal said decision pursuant to the provisions of section fourteen of chapter thirty A. For the limited purposes of such an appeal said department action shall be deemed to be a final decision in an adjudicatory proceeding.

Every person maintaining or operating a facility, including every political subdivision of the commonwealth, shall maintain and operate the same in such manner as will protect the public health and safety and the environment. Upon determination that the operation or maintenance of a facility results in a threat to the public health and safety or the environment, such site assignment decision by a board of health may be rescinded or suspended or may be modified through the imposition or amendment of conditions, at any time after due notice and public hearing satisfying the requirements of section eleven of chapter thirty A by the board of health of the city or town where such facility is located or by the department. Any person aggrieved by the decision of the board of health or the department in rescinding, suspending or modifying a site assignment may appeal said decision within thirty days of the publication of notice thereof pursuant to the provisions of section fourteen of chapter thirty A. For the limited purposes of such an appeal a local board of health shall be deemed a state agency under the provisions of said chapter thirty A and said decision shall be deemed to be a final decision in an adjudicatory proceeding and the decision of the department shall be deemed to be a final decision in an adjudicatory proceeding. The department may rescind, suspend or modify the permit upon a determination that the operation or maintenance of the facility results in a threat to the public health and safety or to the environment. Any person aggrieved by such decision of the department may, within thirty days of the publication of notice thereof, appeal said decision pursuant to the provisions of chapter thirty A.

If a facility is a landfill owned or operated by any person other than a town or agency of the commonwealth, such person shall pay to the town where the facility is located an amount in accordance with the provisions of section twenty-four A of chapter sixteen for each ton of solid waste which is disposed of in such landfill. On or before the twentieth day of each month every such person shall file a return subscribed under the penalties of perjury with the board of health of the town in which such facility is located, on such form as the commissioner of environmental protection shall require for determination of the fee imposed by this paragraph. Said fee shall be due and payable on or before the due date of the return. Notwithstanding the foregoing, however, no fee shall be required or collected from an owner of a privately owned facility used by the owner thereof for the sole disposal of refuse generated from his own premises, and no such return need be filed.

No person shall dispose or contract for the disposal of solid waste at any place which has not been approved by the department pursuant to the provisions of this section or other applicable law.

The department shall allow any unlined landfill, owned or operated by a municipality or a solid waste district, to continue accepting refuse in compliance with existing approvals after January first, nineteen hundred and ninety-four; provided, that said municipality or district files a statement of intent with the department on or before August fifteenth, nineteen hundred and ninety-three, as to its intent to continue in operation after January first, nineteen hundred and ninety-four; provided further, that any landfill for which a statement of intent has been submitted shall operate in accordance with applicable federal and state statutes, regulations, existing approvals, and provisions included herein. For purposes of this paragraph, the term "existing approval" shall include any permit, site assignment, plan approval, condition of operation, or any other applicable order or rule governing the operations of a landfill issued or granted by a municipality, the department, or any other agency of the commonwealth, or for which an application was pending as of May first, nineteen hundred and ninety-three, when granted in accordance with applicable regulations; provided, that no such application shall be denied arbitrarily and capriciously. Any municipality or district which does not file such a statement of intent shall cease accepting refuse no later than January first, nineteen hundred and ninety-four, and shall commence closure of the landfill under its control subject to the approval of the department in accordance with regulations promulgated by the department. On or before October first, nineteen hundred and ninety-three, the department shall compile and publish a list of all landfills for which a statement of intent has been filed and classify separately, as supported by scientific data, those landfills which pose a significant threat to the public health, safety, or the environment, those landfills which pose a potential threat, and those landfills for which current scientific data demonstrate little or no present discernible threat or for which current data is inconclusive. In classifying landfills, the department shall utilize all available scientific data, including, without limitation, any scientific data submitted by the municipality or the district and any additional scientific data generated by the department relative to an assessment of

the actual or potential migration of leachate or other contaminants off the site of the landfill. The department shall publish the list and accept public comment on said list. The department shall, if requested by November first, nineteen hundred and ninety-three, by the chief executive officer of a municipality or a district with a landfill on the list, participate in a public meeting in the municipality or district to be scheduled at mutual convenience within sixty days of such request. By February first, nineteen hundred and ninety-four, the department shall issue a final revised list taking into account any additional information generated or received through the comment and meeting process. The department shall work in conjunction with a municipality or a district to establish a schedule for the municipality or district to commence and complete closure of the landfill, considering the risks posed by the landfill and the fiscal capacity of the municipality or district to be incorporated in a consent order. If an agreement is not reached, the department may order any landfill which is classified as a significant threat to public health, safety or the environment to cease operations and commence closure, or take such other action as the department deems necessary; provided, that the municipality or district may request an adjudicatory hearing on such order pursuant to chapter thirty A. A municipality or district operating a landfill classified by the department as a potential threat shall no later than July first, nineteen hundred and ninety-four, install a groundwater monitoring system approved by the department, and shall report the results of such monitoring to the department no more than quarterly thereafter. A municipality or district operating a landfill for which the department has determined little or no present discernible threat exists or for which current data is inconclusive shall no later than January first, nineteen hundred and ninety-five, install a groundwater monitoring system approved by the department, and shall report the results of such monitoring to the department no more than quarterly thereafter. It shall be a violation of this section to falsify or falsely report any monitoring results. If the results of such groundwater monitoring or other site specific assessment indicate that a landfill does pose a threat to public health, safety or environment, the department shall work in conjunction with a municipality or a district to establish a schedule for the municipality or district to commence and complete closure of the landfill, considering the risks posed by the landfill and the fiscal capacity of the municipality or district to be incorporated in a consent order. If an agreement is not reached, the department may order the municipality or district to cease operations and commence closure, or to take such other action as the department deems necessary; provided, that the municipality or district may request an adjudicatory hearing on such order pursuant to chapter thirty A. Nothing in this paragraph shall preclude the department from acting to address violations of this section, chapter twenty-one E or the regulations promulgated thereunder.

No site on which a facility was operated shall be conveyed or leased by the owner thereof, or be devoted to any use other than the operation of a facility, until notice that such facility was operated on the site is recorded in the registry of deeds, or if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies. No site on which a facility was operated shall be used for any other purpose without the prior written approval of the department.

The department shall adopt and may from time to time amend rules and regulations, and the commissioner may issue orders, to enforce the provisions of this section. Any person, including any political subdivision of the commonwealth who violates this section, or any order issued pursuant thereto, or any rule or regulation promulgated hereunder (1) shall be subject to a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than two years in a house of correction, or both, for each such violation; or (2) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation. Each day each such violation occurs or continues shall be deemed a separate offense. These penalties shall be in addition to any other penalties that may be prescribed by law.

The superior court shall have jurisdiction in equity to enforce the provisions of this section upon petition of the department or any aggrieved person.

Ash produced from the combustion of coal, including but not limited to fly ash and bottom ash, shall not be construed as refuse, rubbish, garbage, or waste material under this section when used as a raw material for concrete block manufacture, aggregate, fill, base for road construction, or other commercial or industrial purpose, or stored for such use. A location where such use or storage takes place may be constructed, established, maintained, and operated without being construed as a facility or site for a facility under this section, and no assignment or approval from the board of health or the department shall be required for such construction, establishment, maintenance, or operation; provided, however, the department shall have jurisdiction to determine, after notice and hearing, that the establishment or operation of such a location has created a nuisance condition by reason of odor, dust, fires, smoke, the breeding or harboring of rodents, flies or vermin, or other causes, and to prevent or order abatement thereof; and provided, further, that no final disposal of ash produced by the combustion of coal may be accomplished by burial of such ash in the ground, other than as base for road construction or fill, unless the place where such disposal takes place has been assigned for such disposal by the board of health and plans for such disposal have been approved by the department pursuant to this section. The department may waive the requirements of the preceding paragraphs of this section and the application of any regulations, or portions thereof, promulgated under the preceding paragraphs of this section as they may apply to the disposal by burial of ash produced by the burning of coal, and shall review and may approve the

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plans, site and method of storage upon a determination that no nuisance is created and damage to the environment is minimal. Use of ash produced from the combustion of coal as intermediate cover material over rubbish at sanitary landfill facilities may be permitted by assignment of the board of health with approval of the department under this section.

THESE ARE NOT ALL INCLUSIVE REQUIREMENTS THERE ARE MANY
DEPARTMENT OF ENVIRONMENTAL PROCESSES AND REPORTING
MECHANICMS TO HANDLE OVERSIGHT OF THESE FACILITIES.

ADDENDUM B

Frank Micciche, Director of State and Federal Relations in Washington, DC spoke with Nancy Beitter, Attorney with the Surface Transportation Board and told her that the Governor (His Excellency, Mitt Romney) is strongly behind the DEP's position.

I have been in contact with Governor, Deval Patrick's DC office, Caroline Powers, Deputy Director of State and Federal Relations in Washington, DC and I want to reinforce that Governor, Deval Patrick is firmly behind the DEP's position in Representing the Commonwealth's concerns regarding this site's jurisdiction.

ADDENDUM C

To allow any company to re-visit and to re-develop this contaminated property site would be devastating to the Town of Wilmington and its residents. Knowing full well what the immediate surrounding area has suffered in the past, I am convinced that this company will only raise more environmental havoc and add insult to injury to our present dismal condition.

We in the neighborhoods, who have to live and thrive in this section of town implore you not to allow this company to operate this kind of business which will adversely affect even more our quality of life. We have suffered enough.

The time has come for ALL of us to seriously look into our conscience and respect the efforts of those who oppose this project and who also know the desperate perils associated with this industry, to respect the earth and all of its inhabitants who have vested interests: that of basic health and a reasonable expectation of a good quality of life in a sustainable environment.

Vera Scolastico
10 Morse Avenue
Wilmington, MA

ADDENDUM C

Suzanne Sullivan, Wilmington , MA April 12, 2007

It is well documented that New England Transrail's past filings were incomplete and had changed from the original filing. This was not incidental. New England Transrail's deliberate attempt to hide the solid waste handling component of this operation undermines their credibility.

Jurisdictional Issues

There are several jurisdictional issues with in the New England Transrail petition for exemption:

Does the Surface Transportation Board have jurisdiction over the site and operations of solid waste transfer facilities? The answer is NO!

New England Transrail's clearly proposing the site and operation of a solid waste transfer station.

The most recent site plan submitted in the filing by New England Transrail claims trains will enter via the north and exit via the south. If this is true, then why is there a runaround track dead ended at the southern most region of the site? It is my understanding a runaround track is: *"A pair of switches arranged on parallel tracks in yard ladder that lets the engine get by the train it just pulled in."*

Why is this runaround positioned in the opposite direction New England Transrail claims the trains will be traveling?

Why is there a runaround in the middle of the undeveloped portion of the site?

Why does the track just dead end?

Why is the connection to the MBTA line not shown on the site plan?

Will there really ever be a connection to the MBTA line?

These are just more examples of the vagueness of New England Transrail and their smoke and mirror approach.

What constitutes a rail carrier? Are they actually a rail carrier? Are they operating a rail road or a rail spur? Have they met the definition of a rail road and are they entitled to the exemption?

Because most of the above questions have been identified by various comments from several parties with in the filing by New England Transrail for exemption,

these issues must be addressed first and foremost by the Surface Transportation Board. These concerns are not only shared by those in Wilmington, and by our neighbors in Woburn, who will also be effected by these unregulated solid waste activities and operations, but for our country as a whole. This case is being watched by a wide spectrum of the political and private sector. This exemption has evolved into a precedent setting case and could have the effect of back tracking environmental protection laws designed to safeguard public health and the environment. State, local, and federal environmental protection laws have been legislatively enacted to regulate the handling of waste from cradle to grave for good reason. RCRA clearly states that waste can not be removed from one segment of the population and in turn, burdening another segment of the population. An un-regulated solid waste transfer station would do just that unfairly burden the segment of the population it is sited in. This has already occurred in exempted facilities in New Jersey and New York.

The National Solid Waste Management Association, the Solid Waste Association of North America, and its Massachusetts Chapter, the Integrated Waste Service Association, The Construction Materials Recycling Association, the New Bedford Waste Services, LLC, and the Massachusetts Municipal Association, (the "Coalition Parties") have filed a petition for Expedited Consideration. I urge the Surface Transportation Board. to consider this petition. If the Surface Transportation Board does not deliberate on this issue as requested, then I respectfully request that the SEA conduct the most rigorous environmental review allowed within their jurisdiction.

Environmental Issues

I understand the jurisdiction and benefit Surface Transportation Board granted exemptions holds for actual rail carrier services. I understand and know how essential it is for fair and adequate railroad construction and operations. Unfortunately, accusations of "NIMBY"ism" (NOT IN MY BACK YARD) have been waged against some of the voices which have opposed New England Transrail exemption status and the proposed project. This inaccurate charge has spawned the call for the exemption, citing this proposal as the clear purpose and legislative intent of exemption status. This accusation is nothing more than smoke and mirrors and couldn't be further from the truth. Opposition to this filing isn't about railroads or rail service. This is about New England Transrail using the Surface Transportation Board as a catalyst to usurp state legislative authority by overstepping legislative intent given to the Surface Transportation Board to further rail service. It is no wonder Mr. Klempner is attempting to side step the regulatory process considering his history of failed attempts for similar operations like this one in New York and New Jersey. Considering how New England Transrail has handled the filings regarding this project one must conclude it is not the regulatory process that is Mr. Klempner's enemy but he himself. It is fairly obvious that NEW ENGLAND TRANSRAIL feels they have a much better chance at the federal level, where they have more "connection" in higher places than at

the State level where they less to no connection. This ill-conceived attempt to side step state jurisdiction will improperly site a solid waste processing plant, which no one has clear authority over, on a severely contaminated, uncharacterized, hazardous waste site. A hazardous waste site that has not achieve no significant health risk, has recently been inducted into the Environmental Protection Agency Superfund program, and is responsible for impacting many privately own properties and has indefinitely shut down the Town of Wilmington's water supply wells in the Maple Meadow Brook Aquifer. Mr. Klemptner appears to prefer attempting to set up shop in historic environmentally degraded and impacted areas like the Olin site and then accusing the impacted population of being NIMBY's. (Not In My Back Yard).

Both Wilmington and Woburn are far from NIMBY's. And anyone who lives in this area knows well how much Wilmington and Woburn have sacrificed for public benefit which has resulted in more than a half century of environmental abuse. We not only have sacrificed more than our fair share to serve the public benefit in the past, we continually do so in the present.

For instance, Wilmington, before the economic down turn employed slightly more people with in its borders than residents. Not bad for a town of 22,000. In addition, we have approximately 7 miles of rail lines comprising of three separate service lines, the Lowell line, the Haverhill line and the Wildcat line (Boston Maine) along with 2 public train stations. It is quite impressive for a small community approximately 3 miles across and 4 miles wide. Wilmington, which is a predominately blue collar town, along with Woburn, also bears the brunt of traffic burdens due to our proximity to major highways. We have "F" rated intersections at virtually every main road juncture. This will only be compounded by the additional truck traffic associated with this proposal. Please note no real truck route has been established yet for this project. According to SCORE CARD we have some of the worst air quality in the country attributed to industrial, automotive, and incinerator emissions. We harbor more than our fair share. How ironic our lack of affluence, our contributions to industrial land uses and the benefits these uses give to the public at large, coupled with yesteryears environmental abuses, has left us vulnerable and an easier mark for New England Transrail and their so called greater good , David vs Goliath intentions. For New England Transrail to hire one of the most powerful, highest paid, affluent, politically connected law firms in the country, possibly the world, to aid them in the attempt to designate us NIMBY's is almost laughable if it wasn't so detestable.

Both Wilmington and Woburn, according to the Department of Public Health website, not only has higher than expected cancer rates, among adults in the area, we are also subjects of cancer studies of our children with in the census tracks served by public water supplies from this industrialized area. Woburn's "Civil Action" and childhood cancer study is well known. A link was established between the superfund sites in this area and the now inactive Woburn water

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supply. Wilmington's childhood cancer study is on going and has been since 1999. Although no conclusions have been made yet, what we do know, is we have lost the production of our water supply from the unrestrained, un-characterized contamination emanating from the Olin site. There are 5 landfills with in a mile radius of the Olin site: three consolidated landfills from the Industrial Plex superfund sites, the Olin landfill, the Woburn Landfill, and the Maple Meadow landfill. This area is already saturated with contamination well beyond what it can absorb with the addition of the multiple Tier Classified hazardous waste sites.

If ever there was an inappropriate site for a solid waste processing facility the Olin site is surely it. The current situation has been caused by unlawfulness and the lack of regulation, certainly not NYMBY'ism. Once again, it is not about a rail road, it is about the environmental inequities that have occurred in my community, proposed to be compounded by another un-regulated solid waste activity under the guise of a rail carrier operation. These inequities should not occur in any ones backyard. No un-regulated solid waste activity should be sanctioned by any government on any of its people regardless of race, color or economic status.

If someone could honestly demonstrate how such a mandate to exempt the operation of unregulated trash and solid waste transfer station, on an un-characterized superfund site, a stones throw of residential districts, with in a water supply recharge area, serves the public benefit, then I will concede my position. This proposal serves no greater public good. The proponent of this project's intent is to administer private profit, claiming public benefits. Whatever public benefits that will be realized by this operation will be overshadowed by the precedent it stakes out for deregulating the siting of solid waste processing facilities by a federal government entity with out the regulatory jurisdiction to enforce compliance with environmental regulations. In Wilmington's and Woburn's case it will allow the continued environmental abuse of an area that has already suffered from decades of un-regulated and un-restrained chemical and solid waste disposal. To continue this trend would not only undermine efforts of discovery and remediation, it would also weaken the legislative intent for states to site solid waste activities in appropriate locations. This is clearly a step backwards, not only for us, but for the nation. The coalition to stop this abuse of the exemption purpose is growing as more people all over the country are better understanding that it isn't about railroads, it's about the deregulation of a state's authority to protect public health and the environment for private profit. No matter how New England Transrail high powered lawyers slice, dice or bale it, the real intent here is not to service the rail industry, but to de-regulate state and local solid waste handling regulations for a chosen few. This was not the regulatory intent of the exemption status and leaves our nation's people at risk.

ADDENDUM D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

VIA E-FILING

April 6, 2007

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-001

Re: New England Transrail Petition for Exemption
STB Finance Docket No. 34797

Dear Secretary Williams:

Region I of the Environmental Protection Agency ("EPA") does not intend to participate in the April 19 oral argument concerning jurisdictional issues in this matter. This letter, however, will update the Board and interested parties on the status of EPA's investigation of the Olin Chemical Superfund Site. NET has proposed developing the part of the Olin Site that fronts 51 Eames Street, in Wilmington, Massachusetts.

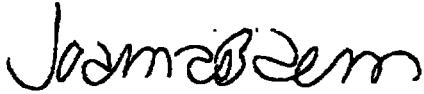
EPA is still in negotiations with the potentially responsible parties for the performance of a remedial investigation and feasibility study ("RI/FS") at the Olin site.¹ Thus, the RI/FS has not commenced, and EPA's knowledge of the Site has not changed materially since our letter of May 11, 2006 to the Board's Section of Environmental Analysis. We therefore reiterate the main points of that letter – specifically, that the Board may want to consider deferring its environmental review until the relevant parts of the RI/FS are complete, and that, whenever the Board's environmental review does go forward, EPA strongly recommends that the review take the form of an environmental impact statement, rather than an environmental assessment.

If the Board and its staff have questions concerning the Superfund process, please direct them to the Site Remedial Project Manager, Jim DiLorenzo, at (617) 918-1247, and to the case attorney, Wes Kelman, at (617) 918-1540. In addition, we would appreciate it if the Board and all interested parties would direct correspondence related to this matter to Jim DiLorenzo at 1 Congress Street, Suite 1100 (HBO), Boston, MA 02114-2023 or

¹ For additional information on the Superfund cleanup process during and after the RI/FS, please see our letter to the Board of January 26, 2006.

via email at dilorenzo.jim@epa.gov.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joanna Jerison', written in a cursive style.

Joanna Jerison
Chief, Superfund Legal Office, EPA Region I

cc: Service list (by first-class mail)