

*Resources for Responsible Site Management, Inc. (RRSM)
Trustee for the Industri-plex Superfund Site Custodial Trust*

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By Electronic Mail & Hard Copy

May 11, 2006

Phillis Johnson-Ball
Surface Transportation Board (STB)
1925 K Street NW
Washington, DC 20423
Attention: Finance Docket No. 34797

RE: STB Finance Docket No. 34797, New England Transrail, LLC ("NET") d/b/a
Wilmington & Woburn Terminal Railway—Construction, Acquisition &
Operation Exemption—in Wilmington & Woburn, MA

Dear Ms. Johnson-Ball:

This letter responds to your request for comments on the environmental impacts and issues under consideration by the Surface Transportation Board review of the above-referenced project request for an exemption by New England Transrail, LLC ("NET") under the National Environmental Policy Act (NEPA).

I am sure you know that on April 12, 2006 the site proposed for the NET "transloading" facility (the "NET Project") was added to the US Environmental Protection Agency (EPA) National Priorities List of the ±1,200 most hazardous waste sites in the country. However, you may not know that the newly designated "Olin Chemical Federal Superfund Site" is now the third federal superfund site within a distance of ~2 miles in South Wilmington and North Woburn. The community's achievements and setbacks at the other two federal superfund sites afford critical lessons learned that must be applied to the remediation and redevelopment of the Olin Superfund Site.

While your agency may be focused on whether the transportation benefits outweigh the environmental impacts of the NET Project, any decision by the STB will, in fact, help determine how the Olin Superfund Site will be remediated and redeveloped. For example, as stated in your letter of April 7, 2006, the NET Project entails, among other things, installation of a permanent cap over the DAPL Containment Area to be used for the storage of bulk materials with rail access. This effectively makes the NET “transloading” facility an integral part of the remedy for this federal superfund site.

For a host of reasons set forth below, we respectfully submit that the STB has neither been established nor appropriately qualified to make such a determination. Accordingly, in support of the City of Woburn, as beneficiary of the Custodial Trust (explained below), as a minimum, STB must deny the petitioner’s request for an exemption under NEPA. Ultimately, STB should disallow the NET Project entirely based on the significant, far-reaching, adverse environmental and economic impacts it will have on the community’s of Woburn and Wilmington, Massachusetts.

As previously noted, the NET Project site—now the Olin Superfund Site under jurisdiction of the EPA—is the third federal superfund site to be included in the northern reaches of the Aberjona River Watershed and the North Woburn-South Wilmington area. Less than ±2 miles south of the Olin Superfund Site is the notorious Wells G&H Superfund Site—where contamination in municipal water supply Well G and Well H was blamed for a childhood leukemia cluster in area served by the wells. The highly publicized, \$400 million class action lawsuit against several companies blamed for the contamination polarized the community and caused local property values to plummet. After the publication of Jonathan Harr’s best selling book, *A Civil Action*, which documents the litigation, and Hollywood’s subsequent release of a major motion picture, community trust in government and industry evaporated and Woburn’s stigma became a national phenomenon.

Finally, there is the Industri-plex Federal Superfund Site, situated less than one-half mile south of the Olin Superfund Site, along the same Boston & Maine Railroad that NET proposes to use. (Figure 1) Ranked fifth most contaminated waste site on the NPL, the Industri-plex Site hosted industrial operations dating back to the dawn of the American industrial revolution. More than a century of heavy industrial activity left a legacy of contamination, including heavy metals in

the soils, sediments and groundwater, and piles of odor-producing animal hides. Today, however, this former industrial wasteland has been reborn and is now home to Fortune 100 giants Raytheon Corporation, Marriott Hotels and Target Stores, which occupy a 900,000 square foot high-end office park and hotel campus and a 200,000 square foot retail center. A state-of-the-art Regional Transportation Center not only provides train, bus, van pool and other transit services to thousands of regional commuters, it also functions as the remedy (the cover) for one of the most contaminated areas of the Industri-plex Site. This redevelopment has created more than 4,000 new jobs and generated millions of dollars in new taxes. Local property values have rebounded and Woburn citizens enjoy new-found hope and pride.



Figure 1: Area of North Woburn-South Wilmington
(Boundaries of Industri-plex Superfund Site and Olin Superfund Site)

The success of the remediation and redevelopment of Industri-plex critically hinged on several key success factors—factors that are completely absent from the proposed NET Project. Some of the “missing ingredients” that were instrumental to the successful revitalization of the Industri-plex Superfund Site, include, but are not limited to:

- (i) community support and active collaboration whereby local government and community groups assumed a leadership role in the redevelopment plan and process;
- (ii) comprehensive integration of the redevelopment into the EPA-selected remedy for the Site and under the oversight of the EPA;

- (iii) a redevelopment plan predicated on the implementation of site specific transportation and infrastructure improvements (totaling almost \$50 million in state-funded infrastructure at the Industri-plex Site) that have created value for both the public and private sectors and helped to relieve (not further aggravate) already overburdened roadways in the North Woburn-South Wilmington area;
- (iv) a working partnership between all three levels of government and the private sector; and
- (v) perhaps most important, a climate of trust and transparent, open communications amongst all the stakeholders.

Sadly, as I am sure you would agree, the NET Project proposal fundamentally lacks any one of these key success factors.

- (i) Clearly the NET Project enjoys no support whatsoever from the local community and or local, state or federal government.
- (ii) EPA has not yet begun the superfund clean-up and enforcement process related to the Olin Superfund Site, including the selection of any remedy for the Site. Therefore, NET's proposals for integrating future use of the Olin Site into the remedy (such as the asphalt cap over the DAPL Area) seem premature at best. Since EPA has not, to the best of my knowledge, undertaken the remedial investigations or feasibility studies, which would form the basis for future EPA decisions about the preferred remedy for the Olin Site, NET's remedy seems highly speculative.
- (iii) The Anderson Regional Transportation Center (RTC) at Industri-plex (Figure 1), along with the new highway interchange and new public roads at the Site, have reduced the traffic burden on local and regional roadways, especially in this area of Woburn and Wilmington, thereby contributing to the communities' quality of life. Furthermore, by removing thousands of commuters who would otherwise drive to and from Boston, the RTC actually helps to bring the State of Massachusetts into compliance with the Clean Air Act. The NET Project, on the other hand, would introduce 400 new trucks—loaded with a variety of waste—each day onto this newly revitalized area, damaging the community's hard-won gains in overcoming the stigma of waste and contamination. According to STB, the normal NET operations would involve only one train trip per day for an estimated 300 days per year (as compared to 800 truck trips per day all year). It would appear that

the NET Project is not so much about leveraging the existence of rail at the Site, but rather exploiting the availability of rail to avoid being held accountable for a significant net increase in air pollution, noise pollution and risking further pollution to an already contaminated site. The fact that most of these trucks will be traveling directly through overburdened residential roads or through quality commercial areas is only part of the issue. The fact is that there is no consideration being given for the significant infrastructure improvements (if indeed such improvements were technically feasible) that would begin to accommodate this increased volume of trucks. Hence the transportation benefits from the NET Project are, in fact, transportation losses and liabilities and the only stakeholder that derives any value from the NET Project appears to be the proponent itself.

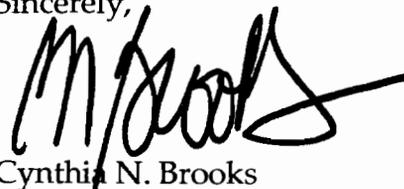
- (iv) There is no need to belabor the glaring absence of any partnership between the public and private sectors and/or all three levels of government that is needed for the NET Project to succeed. In fact, the most compelling partnership around this project appears to be the community of individuals, groups, organizations and government officials who are united in their commitment to prevent this project from proceeding.
- (v) The people of this community understand, at a profoundly personal level, why trust amongst the parties is so crucial when making decisions about a federal superfund site. I am confident that you understand something about the clear absence of trust in the NET Project, based not only on the letters and comments received by your office since this project was introduced, but also as evidenced by statements made by the STB itself. In its May 3, 2005 Decision to Dismiss Without Prejudice, the Surface Transportation Board noted in its decision that (STB Finance Docket No. 34391), "NET did not provide SEA [the Section on Environmental Analysis at STB] with important details about the project until after SEA had completed its environmental review and had issued its Post-EA. In short, in its petition and the supplemental information provided to SEA during the course of the environmental review, NET presented a version of the project that is fundamentally different from the modifications that it submitted to MADEP as part of the Construction RAM...NET was not forthcoming, and so SEA was unable to consider whether the modifications would affect SEA's analysis and conclusions and the proposed mitigation measures in the Post-EA...The

applicant here has not fulfilled its duty to keep the Board informed of significant changes in the project, and the project appears to be constantly in flux. Therefore, we have no confidence that a supplement [to the Post-EA] would result in the review NEPA requires." Such statements indicate a clear breakdown in communication and raise serious doubts about how this project could responsibly proceed.

For your information, Resources for Responsible Site Management, Inc. (RRSM) is the named federal district court Trustee for the Industri-plex Superfund Site Custodial Trust (the "Custodial Trust"). RRSM has served as Custodial Trust since 1989, when the Custodial Trust was created to facilitate the redevelopment of the Industri-plex Site on behalf of the three beneficiaries of the Custodial Trust—the City of Woburn, the Industri-plex Site Remedial Trust (representing the settling parties to the Industri-plex Consent Decree) and the EPA and Massachusetts DEP.

In summary, the Custodial Trust urges the STB to consider the lessons that have been learned to date about the productive remediation and redevelopment of federal superfund sites just around the corner from the NET Project Site. Such experience mandates that the STB deny the petition and allow the communities impacted by this Site the opportunity to meaningfully participate in the decisions about the Olin Superfund Site. The Custodial Trust hereby submits these comments in support of the City of Woburn's objections to the NET Project, and in recognition for the adverse impact a development such as the NET Project would have on the interests of all three beneficiaries of the Custodial Trust.

Sincerely,



Cynthia N. Brooks
President, RRSM
Trustee for the Custodial Trust
Industri-plex Superfund Site
Woburn, Massachusetts

To:
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cc: John Ciriello – Woburn City Council, Alderman Ward 6
Darlene Mercer-Bruen – Woburn City Council, Alderman, Ward 5
The Honorable Thomas McLaughlin, Mayor, City of Woburn
Linda Raymond – Aberjona Study Coalition
Marc Weinreich – RRSM