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BEFORE THE
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Finance Docket No. 34797 – Sub Docket 1

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Petition
For an Exemption from 49 U.S.C. § 10901 To Acquire, Construct and Operate As A Rail
Carrier On Tracks and Land in Wilmington and Woburn, Massachusetts**

**COMMENTS OF WILMINGTON, MASSACHUSETTS ON UPDATED PETITION FOR
EXEMPTION OF NEW ENGLAND TRANSRAIL, LLC,
PURSUANT TO DECISION DATED SEPTEMBER 19, 2016**

Pursuant to the Surface Transportation Board’s (“STB”) Decision dated September 19, 2016, the Town of Wilmington respectfully submits these Comments on the Updated Petition for Exemption filed by New England Transrail, LLC (“NET”) on June 24, 2016 (“Updated Petition”).

On September 9, 2016, Wilmington submitted Preliminary Environmental Comments on the Updated Petition to the STB’s Office of Environmental Analysis (“OEA”) (“Environmental Comments”). Wilmington also participated in the OEA’s October 25, 2016 public scoping session in advance of the preparation of a Draft Environmental Impact Statement (“DEIS”) and reduced its verbal comments to writing (“Scoping Comments”). Finally, Wilmington intends to provide additional, written comments -- including expert traffic and geotechnical reports -- on the draft scoping document by November 29, 2016.

To aid the Board in this proceeding and streamline the present Comments, Wilmington attaches here reference copies of its Environmental Comments and its Scoping Comments, incorporates them by reference, and respectfully requests the Board to review them.

INTRODUCTION

From the ten years of proceedings involving NET's aborted plan for a rail-based solid waste facility and from NET's Updated Petition, the Board is aware that Wilmington is the community in which the proposed NET commodity transloading facility would be located; the facility would be lie atop the active Olin Chemical Superfund Site, a National Priorities List Site; the U.S. Environmental Protection Agency ("EPA") has not yet completed evaluation of on-site and off-site groundwater (Operating Unit 3) impacts or begun to evaluate any remedial options whatsoever; the Olin Site contamination is long-standing, extensive, and complex, involving gross contamination of groundwater and soils with nearly 200 constituents, including known carcinogens; the Site lies on a regional hydraulic divide, includes several groundwater plumes, is connected to the Maple Meadow aquifer, and is linked to contamination of groundwater both on and off the property; due to the Olin contamination, Wilmington was forced to close five of its nine public drinking water wells – located far from the Olin Site – and has had to purchase and import substitute drinking water for several years; a 20-acre portion of the Olin Site is subject to a recorded conservation restriction, as mitigation for Olin's contamination and filling of wetlands there; a major feature of the Site's provisional remediation is a large subsurface, slurry-walled structure to contain the dense aqueous phase layer of groundwater contaminants ("DAPL containment cell"), whose integrity remains very much in doubt; the Site has a high groundwater table; the Site is significantly removed from the major regional thoroughfare (Interstate Route 93); and the Site is bordered by residential as well as commercial and industrial uses, wetlands, and wildlife habitat buffers.

As the Board also is aware, NET proposes to pave 23 acres of the remaining 32 acres at the Site and to cover the rest of the Site with buildings, warehouses, and rail infrastructure; proposes to transload a wide variety of hard, pourable solid, liquid, and hazardous liquid commodities from rail cars onto trucks; would store some of those materials (including flammable liquids) in on-site warehouses and tanks prior to transloading; would rely on 800 truck trips per day by transporters not within its control; has provided no concept or design for stormwater treatment facilities to manage the enormous volume of runoff to be generated by its proposed 1,000,000-plus square feet of new impervious surfaces; despite this Board's May 12, 2016 directive to submit a "complete" petition, NET submitted an Updated Petition that lacked meaningful description of its proposed activities, processes to handle commodities on site, anticipated truck routes, and other essential information which OEA then had to request; and has filed minimal plans and revised plans that still are not signed by engineers and contain no revision description or dates.

Even these basic uncontested facts raise serious doubts about the wisdom of locating the proposed facility atop this troubled and unresolved Superfund Site. They also call into question the transparency and completeness of NET's Updated Petition and related filings for a project with so many potential pitfalls.

Wilmington and its residents have experienced huge environmental impacts, dislocations, and expense because of the industrial activities at this Site by Olin Chemical and its predecessors. The Site's residential neighbors have been especially harmed by those impacts and the uncertainty surrounding eventual clean-up of the contaminated soils and groundwater on and off the Site, which has impacted the use of their private drinking water wells. Their concerns are

well-founded. Those concerns are amplified by NET's proposed project and poorly supported Updated Petition.

For the structural reasons explained in Sections 1 and 2 of these Comments, the best course of action would be to suspend all further review of an NET project until EPA concludes its Remedial Investigation and Feasibility Study. Too much about the Site and the project is in flux. However, if the Board is inclined to proceed with this process, it is essential to rigorously review and condition the project. Only then might STB render a defensible decision. Among other concerns, any decision must address issues of environmental justice mandated by the National Environmental Policy Act.

Wilmington highlights some comments detailed in its Environmental Comments and Scoping Comments. However, we respectfully request the Board to review those filings in full. They contain relevant information and perspectives that cannot be supplied by NET, its retained consultants, EPA, or any other sources.

1. **New Environmental Impact Category.**

In a weak effort to reassure the Board of its intentions on environmental matters, NET states that it will fulfill the requirements for bona fide prospective purchaser (BFPP) status outlined in EPA's May 2015 "comfort/status" letter. This is a red herring. Not only does NET fail to explain how it would perform each required action, but – as this Board is aware - BFPP status only affords regulatory protection to a prospective purchaser. It does not ensure the environmental soundness of a facility. Indeed, in its November 6, 2015 follow-on letter to STB, EPA explained that "[t]he Comfort/Status Letter was issued for informational purposes to explain the environmental conditions at the Site, as known by EPA as of the date of the letter, and to suggest reasonable steps that NET should take at the Site . . . The Comfort/Status Letter

does not make any representations that the Property is appropriate for any particular development or reuse.” (EPA letter, at p. 5)

The lack of clarity – regarding both the existing site-related contamination and many crucial aspects of NET’s Updated Petition -- should be concerning for this Board. It is of great concern to Wilmington residents. Because STB has exclusive jurisdiction to evaluate most aspects of a rail-based development proposal, only the Board may address Wilmington’s interests in this process.

Wilmington has proposed that OEA add to its scoping document, and include in the DEIS, an additional category of review. Specifically, that category would address the impact of the proposed development on the on-going CERCLA investigation and remediation at the Site. The Site investigation and remediation are – and will be – essential features of the “environment” at that property for years to come. It is the environment, in all respects, that must form the basis for OEA’s review of impacts and ultimately a decision by this Board.

2. Phased Construction and Review.

NET plans to build out the facility in two phases. The second phase is to build the largest structure, an acres-large second transload docking warehouse, in which commodities would be off-loaded and stored for more than thirty (30) days pending transloading by truck. That warehouse would be constructed only after EPA makes further determinations about the management, capping or other future of the vulnerable DAPL containment cell on which the warehouse would sit. That delay does not resolve all concerns with the containment cell – it could be destabilized further in the interim by vibrations from massive nearby truck and rail loading – but it does mean that the OEA’s review must address all environmental impacts both as of the date of construction of the first phase of a facility and as of the much later (but still

uncertain) date of construction of the second phase. NET has not explained meaningfully how it would operate, and on what scale, in the years before the larger warehouse would be constructed. Until it does that, there is no way to evaluate the first-phase impacts. Evaluation of the second phase impacts may not be possible at this juncture, given the uncertainty surrounding the containment cell. Environmental conditions on and off the Site are likely to change considerably between first-phase and any second-phase construction activities several years later. It therefore is appropriate to evaluate all environmental impacts for the second phase as of conditions existing at the time that phase is undertaken. Alternatively, review of the proposed project should be suspended until EPA concludes its Remedial Investigation and Feasibility Study, as this Board was originally inclined to do.

3. Stormwater Impacts.

As noted, the project would render impervious 32 acres and generate huge volumes of water contaminated by contact with commodities, trucks, and rail facilities. Yet, the Updated Petition and subsequent NET filings do not explain or depict stormwater management structures or processes to handle that runoff. This is no small deficiency, given the very large scale, a plan that builds out the entire site leaving no land for surface-level structures to contain or process storm water, the high groundwater table, the mandate that NET not excavate into the groundwater table or exacerbate existing contamination on site, and the existing adverse groundwater impacts both on and off the site. As explained in Wilmington's Environmental Comments, it would be a huge challenge to address the quantity and quality impacts of groundwater for such a project without the unique complications of this Site and project plan. Doing so responsibly in these circumstances might be impossible.

4. Transportation and Public Safety Impacts.

There is reason to be very concerned with adverse impacts on surrounding roadways and risks to public safety. NET would construct over 6,000 feet of new rail tracks, dramatically increase rail traffic over existing conditions, add 800 new truck trips per day, transload and store flammable liquids, and rely on independent trucking companies beyond its control. Residential and commercial neighbors alike would be impacted and jeopardized. NET's traffic study presumes a single route to Interstate 93, whereas experience dictates that independent truckers would use various routes as conditions and convenience dictate. It also discounts the proximity of residences, some of which lie within 1,000 feet of the Site. Moreover, as NET admits, many of the affected intersections already are failing with levels of service of "F". NET-related traffic would exacerbate those delays, fumes, safety risks, and municipal burdens. In addition, hauling of liquid natural gas (LNG) and liquid propane by rail is a dangerous proposition that deserves special review by the Board.

5. Water Resource Review.

Deposits of fill to wetlands and other waters of the United States that are not directly due to the CERCLA clean-up activities – hence those occasioned by facility construction - would require an Army Corps of Engineers Permit. That in turn would require issuance of a Water Quality Certificate from the Massachusetts Department of Environmental Protection. The DEIS therefore should include an alternatives analysis for the avoidance, minimization, and mitigation of such impacts, as required for the Army Corps 404 and MassDEP 401 permits.

6. Geology and Soils.

Vibrations from NET operations – including the massive active and static loads caused by 800 truck trips per day, nighttime rail deliveries, constant movement of millions of tons of

commodities, and related NET activities – could open new fissures in bedrock on and off the Site and change underground pathways for contaminants that are already in the groundwater, much less any new contaminants attributable to the facility. The extent of environmental problems caused by the existing contamination, the difficulty of characterizing even those groundwater issues, and EPA’s unfinished investigation of the groundwater contamination, make any such further complications intolerable.

7. Rail Maintenance and Repair Yard.

In addition to a commodity transloading facility, NET proposes to operate on site a facility to maintain and repair railcars and equipment. Yet, it has not said that it would service only cars and equipment used in its own operations, and has not demonstrated that such an operation is integral to rail transportation for purposes of the transloading project. The proposed additional operation thus may not come within the Board’s exclusive jurisdiction and be exempted from local or state pre-permitting. A rail repair yard also is not identified on NET’s site plans and would compound the environmental impacts of a transloading facility.

CONCLUSION

NET has the burden to supply STB – and the interested parties – with a “complete” petition that includes data concerning the proposed facility and operations, and existing conditions, detailed enough to permit appropriate comment and to warrant the time and expense of a high-level environmental impact review. This proceeding already has lasted too long and drained too many public resources to tolerate a petition and related filings that fall short of that. Likewise, the Superfund Site on which NET wants to build and operate a facility has sustained too much damage and been too incompletely addressed to forego a diligent review for redevelopment.

EPA and STB have indulged NET by affording it an opportunity to petition for exemption, despite its poor track record reporting relevant information and the inconclusive status of the Superfund RI/FS process. NET's failure to follow through responsibly is an affront to this administrative process. As this review continues, Wilmington asks STB to insist that all relevant information is forthcoming and ensure that every relevant issue is carefully considered.

However, for the reasons noted above, the most prudent course may be to suspend all further review of the proposed project until EPA's RI/FS is complete.

Respectfully submitted,

TOWN OF WILMINGTON,

By its attorneys,

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Dated: November 4, 2016

REVISED CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that a true copy of the foregoing **Comments of Wilmington, Massachusetts on Updated Petition for Exemption of New England Transrail, LLC, Pursuant to Decision Dated September 19, 2016** was served by first class mail, postage prepaid, to the following on November 4, 2016, except as to John Heffner, Esq. and Patrick Larkin, Esq., Strasberger & Price, LLP, which was served by first class mail postage pre-paid on November 7, 2016:

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September 9, 2016

VIA FIRST CLASS MAIL and
ELECTRONIC MAIL

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RE: STB Finance Docket # FD 34797 – Sub Docket 1
New England Transrail, LLC
Comments of Wilmington, Massachusetts on Updated Petition

Dear Ms. Gosselin:

In response to Ms. Rutson's August 11, 2016 letter to Wilmington Town Manager Jeffrey Hull, I enclose the original of the following document for consideration by the Office of Environmental Analysis:

Comments of Wilmington, Massachusetts on Updated Petition for Exemption
of New England Transrail, LLC

I understand that this filing with your Office will be reflected on the environmental docket for this proceeding but not directly on the docket of the Board.

Please contact me with any questions or concerns you or Ms. Rutson may have about this filing, or if there is additional information you would like us to provide at this stage of the proceedings.

Very truly yours,

Daniel R. Deusch



Ms. Danielle Gosselin
Surface Transportation Board
September 9, 2016
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DRD:smd

Enclosure

cc: Jeffrey M. Hull, Town Manager

Distribution List

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COMMENTS OF WILMINGTON, MASSACHUSETTS ON UPDATED PETITION FOR
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- VI. NET FAILS TO PROVIDE DATA NEEDED TO EVALUATE ITS PROJECT'S IMPACT ON TRAFFIC, ACCESS, AND PUBLIC SAFETY. HOWEVER, THERE IS REASON TO BE VERY CONCERNED.
- VII. THE DUBIOUS LOCATION AND POOR DESIGN OF THE PROPOSED FACILITY THREATEN HARM TO WETLANDS AND OTHER SENSITIVE RECEPTORS. HERE AGAIN, THE UPDATED PETITION IS DEFICIENT.
- VIII. NUISANCE, AIR QUALITY, AND NOISE IMPACTS FROM THE PROPOSED LARGE TRANSLOADING OPERATION ARE CERTAIN TO OCCUR, BUT NET'S DATA DOES NOT PERMIT THOSE TO BE SCOPED.
- IX. NET'S RELIANCE ON EPA'S "COMFORT/STATUS" LETTER IS MISPLACED.
- X. PREVIOUS USES OF THE PROJECT SITE HAVE SEVERELY IMPACTED THE ENVIRONMENT AND PUBLIC HEALTH. THEY CANNOT WITHSTAND FURTHER SEVERE IMPACTS FROM A DEVELOPMENT THAT IS SO INADEQUATELY DISCLOSED AND EXAMINED.
- XI. THE BOARD SHOULD EITHER DENY NET'S UPDATED PETITION AS NON-COMPLIANT WITH ITS MAY 12, 2016 DECISION AND DISMISS THIS PROCEEDING, OR REQUIRE NET TO FILE A NEW PETITION WITH FAR MORE DETAILED INFORMATION AT THE RISK OF DISMISSAL.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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**COMMENTS OF WILMINGTON, MASSACHUSETTS ON UPDATED PETITION FOR
EXEMPTION OF NEW ENGLAND TRANSRAIL, LLC**

The Town of Wilmington respectfully submits these Comments on the Updated Petition for Exemption filed with the Surface Transportation Board (“STB”) by New England Transrail, LLC (“NET”) on June 24, 2016 (“Updated Petition”).¹

**I. NET’S UPDATED PETITION AND PLAN ARE SO DEFICIENT AS TO EVADE
APPROPRIATE REVIEW AND THE PROPOSED BUILD-OUT IS
UNREALISTIC.**

Commenting on the Updated Petition is no routine or easy task, because the petition and accompanying site plan are grossly simplistic and lack meaningful detail in almost every respect. NET’s project warrants especially (perhaps uniquely) rigorous scrutiny. It would be situated on an active Superfund Site and has been proposed before that Site is fully characterized and remedial options have been explored. Despite the obvious need for a responsible and detailed presentation, the petitioner again has shortchanged the administrative process.

Among other defects, NET’s “Site Plan”:

- is not signed or sealed by an engineer or surveyor;

¹ These Comments are filed within the period established by the August 11, 2016 letter to Wilmington from STB’s Office of Environmental Analysis.

- shows no proposed finish contours; and
- comprises a single sheet, with no supplements depicting detailed existing conditions and environmental receptors, proposed drainage controls and structures, or engineering details.

Under cover of its superficial plan and project description, NET mischaracterizes the project as “limited in scope.” In fact, NET proposes a large facility (up to “60 rail cars” and 600 truck trips per day) with a variety of transportation and transloading operations, on a site NET itself once described as “constrained.” Indeed, the site contains sensitive wetland receptors, is burdened by unresolved contamination issues, houses an important subsurface containment structure whose integrity is in doubt, is affected by on-going discharges to surface water that have yet to be mitigated, is hydrologically connected to the contaminated Maple Meadow Brook aquifer resulting in closure of municipal drinking water wells, is tied to on-going adverse impacts to private water supply wells that are not yet fully understood, and abuts land under common ownership that is protected against disturbance and development by an environmental and open space restriction.

NET’s filing reflects a lack of commitment to fair disclosure and to the letter and spirit of this Board’s May 12, 2016 directive to submit a complete application. That Decision noted the “troubled history” of the project site, the old age of the case before it (NET originally filed more than 10 years ago), and the change in NET’s proposed use of the site from solid waste handling to commodity transloading. STB therefore instructed NET to “fully describe its current proposal for the acquisition, construction and operation of track, terminal facilities, or any other activities that it anticipates will take place on the site.” The Decision called for a “complete and updated petition . . .” The Updated Petition’s lack of detail inhibits thorough review by EPA -- whose

comfort/status letter was based on a preliminary conceptual sketch that also lacked any meaningful detail -- and hobbles useful other comment and evaluation by STB.

The rudimentary petition and site plan do not locate or describe several necessary or proposed components of a facility -- and the project design would not accommodate them:

- Storm water management system: NET intends to pave 23 acres of the 32-acre site (and to cover the balance with buildings and structures) in order to “minimize” infiltration into already contaminated soil and groundwater. Yet, NET does not explain how it would treat and manage the enormous burden of storm water and contaminated runoff from more than one million square feet of impervious surfaces, trucking and transloading operations, and railroad equipment maintenance activities. In point of fact, the site cannot physically accommodate all of the paving and structures NET proposes, much less adequate storm water treatment and controls (such as detention/retention basins, wet basin treatment, forebays, and other appropriate BMP’s). Many types of subsurface storm water structures are not feasible at this site because of the severe constraints on excavation and disturbance of existing contaminated soils and the shallow ground water table. While dedicated land thus is needed for storm water controls, NET has not allotted that in its site plan. According to NET’s own data, the total area in square feet of just the proposed access roads and buildings (1,440,000 -- not including 16,000 linear feet of track, or railroad mechanical infrastructure, storage tanks, water tanks, and the other features that NET lists separately) exceeds the square footage of the entire 32-acre site (1,393,920).

- Pads and berms for the proposed “above ground” tanks: These tanks ostensibly would store liquid commodities after delivery and before transloading. Those liquids would include flammable “natural gas liquids” and other hazardous materials (albeit not hazardous waste). The location and manner of construction of such tanks and related protective structures

is essential for this site, which cannot bear further releases of hazardous or other materials. Yet, NET does not clearly describe the location and design of such devices. If the storage tanks would comprise the three lozenge-shaped tanks on the NET plan – and STB should not be forced to “read between the lines” of NET’s filing – that location is problematic. It directly abuts wetlands within the conservation-restricted 20 acres under common ownership.

- “Train rail car/equipment maintenance areas”: NET proposes this additional operation as incidental to rail transloading but does not explain how it would be wedged into the site and integrated with rail operations. This is significant for two reasons. First, not all “equipment” maintenance may be integral to the proposed rail operations, for purposes of STB jurisdiction.² Second, depending on its location and scale, that additional activity would exacerbate the impacts of the proposed project on local traffic, access, noise, air pollution, and surface and ground water quality. Here again, NET’s dissembling prevents meaningful assessment of the environmental issues arising from its petition.

- Space to allow NET to move buildings or infrastructure, either temporarily or permanently, if that became necessary due to interference with or access for the continuing Superfund site assessment, follow-up investigation, and remedial actions: EPA’s May 2015 and November 2015 filings with STB stressed that, if the project were permitted, NET would have to preserve access to areas of the Superfund Site as necessary for those purposes. Industrial redevelopment of the entire site with no margin for adjustment would make that impossible, yet that is what NET’s plan reflects. Even postponing development of the land over the DAPL containment area (NET’s “Phase II proposed warehouse for railroad cross-docking operations”) does not address the need to accommodate future investigative and remedial actions elsewhere

² It appears that NET would service for a fee not only vehicles and equipment used in its transloading operations at the site but also others not used in those operations.

on the site. Delays in making Superfund accommodations or a lack of available space would compromise the clean-up process and the site itself.

It would be improper for NET to maximally build out the site and then cite a self-imposed hardship when addressing alternatives analysis for storm water treatment or responding to requests by EPA to accommodate Superfund site activities. As the regulatory gatekeeper, STB should not countenance a proposal that invites such logistical problems and after-the-fact manipulation. That is especially important where environmental impact review would occur in the unusual context of an incomplete Superfund proceeding.

II. NET FAILS TO EVEN OUTLINE STORMWATER TREATMENT CONTROLS, WHICH WOULD BE UNUSUALLY COMPLICATED AND MIGHT BE INFEASIBLE AT THIS SITE.

Even if NET's plan had allocated sufficient space for storm water treatment, it remains unclear how that would be constructed. Engineering adequate storm water controls for an operation of this scale and complexity is very difficult to begin with. Doing so in the circumstances of this site could be impossible. As with any industrial development, both quantity and quality of storm water must be addressed.

A. Quality Controls.

Stormwater runoff from impervious surfaces associated with NET's proposal, if not managed properly, will result in water quality impairments of waters of the United States of America (40 CFR 230). The proposed use, combined with the lack of identified stormwater management controls, will increase the discharge of pollutants to wetlands, harm wildlife, and threaten public health and safety.

The proposed use is considered a Land Use with Higher Potential Pollutant Loads (LUHPPLs) under Standard 5 of the Massachusetts Stormwater Policy. As defined by that

Policy and associated regulations, LUHPPLs include industrial sector uses such as: storage of hazardous materials, storage of liquid petroleum products, transportation facilities, fleet storage, high intensity parking lots, vehicle service and equipment cleaning, railroad yards, and railroad equipment maintenance. Whether or not the Policy strictly applies to a petition before STB, the mix of contaminants in the stormwater load for this proposed project would be much larger than usual and require much more than standard controls.

Specifically, stormwater runoff would be in direct and regular contact with oil, grease, hazardous substances, and other pollutants. Any stormwater management system structural Best Management Practices (BMPs) associated with this site must be designed to very specific and stringent specifications to provide adequate water quality and limit the risk of contaminated discharge. This is not achieved simply by adding "oil/water separator treatment manholes," as NET's petition implies. Oil/water separators are pretreatment devices designed as "offline" systems. Properly designed separators typically are designed to bypass higher magnitude storm events to limit the re-suspension of pollutants trapped in the device. Thus, any significant storm event seemingly would discharge stormwater runoff from 32 acres of impervious surfaces without any treatment or energy dissipation. Oil/water separators are not considered terminal treatment practices suitable for stormwater discharges from a LUHPPL. If it proceeds with the environmental impact review process, STB should require NET to provide a detailed stormwater management plan with acceptable measures for pretreating, treating, and safely discharging stormwater runoff from the proposed development. The plan also should include the locations and design details of all outfall structures to assess whether such areas are suitable for receiving that discharge.

As stated in EPA's November 6, 2015 letter to STB, "EPA has data confirming the presence of contamination in the groundwater beneath and to the west of the property." The petition states that groundwater depth is approximately six (6) to nine (9) feet below existing grade. Properly designed oil/water separators have an inside dimension of at least four (4) feet below the inlet invert elevation. Using standard inlet pipe cover requirements, this would place excavation depth well within the depth of groundwater. At a bare minimum, the proponent should provide detailed grading and drainage plans identifying all drain inlets, invert elevations, oil/water separator locations, and outlet pipes. NET also should provide a section detail of the proposed oil/water separator for review.

Again, however, oil/water separators alone are wholly inadequate stormwater quality control measures for a project of this type and scale at a site of this nature.

B. Quantity Controls.

As noted, the proposed plan calls for 32 acres of impervious area, of which 23 acres would be paved. The volume and velocity of runoff from impervious surfaces to this degree, if not managed properly, can cause significant adverse impacts to adjacent land owners, sensitive wetlands, and water bodies. STB should require NET to provide a complete hydrological analysis (as is typical for any new development) for both the pre-development and post-development conditions to ensure that the project will not alter existing drainage patterns, increase peak discharge rates, or cause offsite flooding to any adjacent land owner (or the immediately adjacent conservation-restricted area).

The entire site appears to slope down gradient from Eames Street to the wetland ecosystem located south of the proposed development area. Typical stormwater inlets that collect runoff from paved surfaces (catch basin grates) have a limited capacity. A catchment area associated with a drain inlet typically is limited to approximately one-quarter ($\frac{1}{4}$) of an acre

to minimize stormwater ponding in a standard engineering practice design storm event. NET's documents do not identify the location or size of stormwater inlets from pavement surfaces. This omission is critical, as undersized or improperly sited storm drain inlets can cause uncontrolled discharges to on-site areas determined to be unsuitable for accepting any runoff to avoid spread of existing contamination.

III. THE UPDATED PETITION DOES NOT ADEQUATELY OR CREDIBLY DESCRIBE PROPOSED EXCAVATION, GRADING, AND SITE DEVELOPMENT.

NET claims it would excavate to a maximum depth of four (4) feet below finished grade, but with grading and compaction of soils, it would be difficult not to invade the relatively shallow water table. Groundwater at this site lies approximately 6 to 9 feet below the current grade. Maintaining sufficient vertical separation across a 32-acre site would be difficult. As noted above, it also may be impossible in the construction of storm water controls. In passing, NET refers to the "average elevation" at two (2) generalized areas of the site. It provides no detailed data or contour plans, despite the importance of the groundwater issue and the wealth of elevation data generated during the Superfund site investigation.

The proposed extensive excavation, grading and site development activities for this project will alter the local ground water flow regime. That is problematic for this site in particular, which lies on a regional hydraulic divide, includes multiple groundwater plumes, and contains contaminated ground water (EPA Operating Unit "OU3") that has not yet been assessed or remediated.

Further, NET does not mention any plan to manage the soils that it would excavate. The Updated Petition merely says it will re-use soils on site to the extent possible. There is no discussion of stockpiling soils on site or removing contaminated soils that may be encountered.

Nor does NET address removal of existing structures, disused chemical tanks, and pipelines at this Olin Chemical site. Even if a responsible plan might address those concerns, NET's further omissions are troubling.

IV. NET'S OPEN-ENDED LIST OF COMMODITIES AND PROPOSED HANDLING OF HAZARDOUS LIQUIDS ARE TROUBLING, IN LIGHT OF THIS SITE'S EXISTING UNREMIEDIATED GROUNDWATER POLLUTION, GROUNDWATER PROTECTION DISTRICT, AND ADJACENT CONSERVATION-RESTRICTED AREA.

The list of materials that the proposed facility would transload is open-ended and subject to change. That calculated vagueness raises several concerns.

While the Updated Petition states that NET would not handle "hazardous waste,"¹ hazardous materials are another matter. NET's previous STB filings equivocated but the current petition states that NET would accept hazardous materials, including specifically "natural gas liquids." NET offers no plan to address the risks inherent in handling such materials. It merely proposes to temporarily store all bulk liquids in holding tanks within a bermed area. Because any risk of spillage through derailment or other accident is unacceptable at this site, NET has the burden to address this matter in meaningful detail. As noted above, if hazardous liquids are to be stored in the three barely distinguishable, lozenge-shaped tanks on the plan, those tanks' location adjacent to the 20-acre conservation-restricted land is problematic.

The Updated Petition also states that NET would not unload bulk liquids within the Groundwater Protection District. However, it does not identify where on the site such unloading would occur.³ This is no trivial matter at a Superfund site whose groundwater is known to be contaminated but has not been fully characterized. The unusual regulatory context complicates decisions about where and how to handle volatile liquids.

³ NET also should be required to identify any potential storage or handling of liquids that could be reactive with an asphaltic surface.

NET's proposed transloading of natural gas liquids and other hazardous materials also puts at risk the public health and safety of residents near the site and along the roads to be traveled by trucks (and rail cars) that would transport it through this populous suburb. The separation of the project site from major truck routes and highways compounds that risk.

V. NET'S DEVELOPMENT PLAN JEOPARDIZES THE SUBSURFACE DAPL CONTAINMENT STRUCTURE, WHOSE INTEGRITY IS ESSENTIAL BUT HAS EVADED RELIABLE ASSESSMENT DURING THE SUPERFUND PROCESS.

NET's project threatens the integrity of the 4-acre subsurface DAPL containment area.⁴ At best, the development plan is premature and incomplete. EPA has been non-committal regarding protection of that state-mandated and aging subsurface slurry wall designed to contain the diffuse aqueous layer of contaminants ("DAPL"). In relation to NET, EPA has declared only that "any future use of the containment area must be compatible with any permanent cap or other remedy . . ." Eventual determinations about the slurry wall and the design of a permanent cap above it may prohibit or require modification of NET's proposed huge structure (on the order of 300 feet long and 200 feet wide) and cross-docking operations area there. One likely scenario is

⁴ As Wilmington explained in previous comments: The containment structure was installed to prevent lateral migration of a diffuse layer of contaminants. NET presumes that the slurry wall structure, which extends down to bedrock, would remain intact in the face of the proposed construction and railroad operations. However, that is a tenuous proposition; recent groundwater data in an area adjacent to the slurry wall is suggestive of leaks in the structure and no information has been provided about site loading and vibrations associated with the proposed railroad operations. Moreover, it is unclear what agency, state or federal, would regulate this important but aging feature of the contaminated site going forward.

As Wilmington's geotechnical consultant has explained to STB in this proceeding, "[f]rom a contamination perspective, the Containment Area is the most significant existing source and represents the greatest potential exposures associated with the 51 Eames Street property." Yet, as Geolnsight also notes, the risk assessment for the Containment Area in Olin's Remedial Investigation Report did not contemplate construction over that area, and plans for the permanent capping of the Containment Area have not been developed.

In addition, recent technical reports show that surface water quality at and near the Olin property continues to be adversely impacted by Site-related contaminants and will need to be included in the remedial evaluation conducted under the feasibility study. The feasibility study evaluation has not been initiated, however. As such, EPA has not identified how this condition will be addressed and remedied. Redevelopment of the property is likely to contribute storm water to the already contaminated surface water features, which will complicate the feasibility study evaluation and any subsequent remedial actions.

the eventual removal of the DAPL from the containment area, which will require a significant on-site presence and infrastructure for several years. Yet, the Updated Petition does not identify any alternative plan or design, nor explain whether and how the proposed facility could function without the "Phase II proposed warehouse for railroad cross-docking operations."

The aging containment structure was not designed to withstand the weight and movement of several dozen loaded rail cars and hundreds of trucks above it each day. Whether it could sustain that load, or is intact even now, is very much unknown. Within the past few months, a hydrostatic study of the slurry wall has failed, forcing investigators to evaluate the integrity of the structure in some other way.

These features of NET's proposal alone render it unacceptable.

VI. NET FAILS TO PROVIDE DATA NEEDED TO EVALUATE ITS PROJECT'S IMPACT ON TRAFFIC, ACCESS, AND PUBLIC SAFETY. HOWEVER, THERE IS REASON TO BE VERY CONCERNED.

The likely traffic and access impacts of the proposed facility are very concerning. NET provides so little information that meaningful assessment is impossible. Even rudimentary data is missing. To permit a reliable evaluation, NET would need to identify its proposed operating days and hours; staff count and transportation needs; reliable peak hour truck traffic volumes for a new facility; origin and destination information adequate to evaluate traffic distribution patterns; existing traffic counts and projected background data for area roads; traffic load data for comparable facilities; anticipated changes to levels of service on surrounding roadways (many of which already have severely stressed or failing intersections and above-average crash rates, according to a recent traffic impact analysis); on-site truck, non-truck and pedestrian pathways and turning radii; the number and timing of existing and required new rail runs; locations of facility-related rail switches; and other detailed information.

In any event, the impacts of an NET facility on surrounding roads and bridges would be considerable. The site does not lie directly on a major thoroughfare. Hundreds of trucks each day therefore would have to negotiate side streets on their way to and from highways. NET has not even alluded to the practical and financial burdens presented by such traffic, nor offered to mitigate the impact in any way.

Public safety impacts also will be considerable, given the exceedingly large number of trips made each day by facility-related tractor trailers. Contrary to NET's statements, the site's abutters include residential neighborhoods. Even the placement of NET buildings and rail cars close to Eames Street presents safety concerns due to compromised sight lines. Moreover, the considerable separation of the facility from main truck routes and highways compounds the risks to public health and safety due to a constant flow of heavy traffic to, from, and around the site. Those risks also would spike as a result of new, heavy freight runs on railroad tracks that are now employed very lightly.

VII. THE DUBIOUS LOCATION AND POOR DESIGN OF THE PROPOSED FACILITY THREATEN HARM TO WETLANDS AND OTHER SENSITIVE RECEPTORS. HERE AGAIN, THE UPDATED PETITION IS DEFICIENT.

Significant harm to the natural environment also is probable, due to the scale of the proposed project and its proximity to wetlands and other ecological receptors. Wetlands are protected under federal law, as well as state and local law. The waters of the United States on and adjacent to the site are more extensive than shown on the GIS layer and on NET's plan. The scale and level of detail on those plans are grossly inadequate. All jurisdictional wetlands and other receptors need to be identified by type and their borders flagged on engineer-surveyed plans, which also must clearly depict elevation data, water flow directions, and ultimate proposed discharge locations.

Notably, NET is proposing to run rail tracks (and possibly locate holding tanks) adjacent to the conservation-restricted parcel to the south; to erect and operate a warehouse for railroad cross-docking completely over the footprint of the West Ditch⁵; and to locate buildings and tracks over streams and other jurisdictional waters. The Updated Petition does not allude to these environmental issues, much less propose replication of disturbed wetlands or other mitigation. Even wetland areas that NET's plan shows as "excavated" would be protected if they meet applicable resource definitions. The precise location of wetland and water body boundaries is needed in order to even begin to evaluate whether wetland alterations can be avoided and, if not, the extent of the proposed alterations and the resulting replication that would be necessary to meet regulatory requirements. That and other data, including facility design and construction process information, also is needed to evaluate whether and how a facility -- if it is feasible to begin with -- is designed to minimize off-site impacts. For example, parcels along nearby Jewel Drive have stormwater management systems linked to streams that would be impacted by an NET project.

Among other mechanisms, wetlands will be significantly impacted by increased stormwater loading. That is true unless designs can be developed to mitigate pulsed loading, which would be very hard to accomplish at this site. One area impacted will be the South Ditch. There are on-going discharges of site contaminants to that area that are not well understood. It is difficult to imagine how the site could be developed without using existing drainage of South Ditch as part of stormwater control. Yet, any additional discharge of stormwater to South Ditch will exacerbate conditions and complicate eventual remedial options there.

Finally, as noted earlier, the proposed facility is too expansive for this site. NET's proposed design does not leave space to accommodate adequate stormwater controls and

⁵ Rudimentary measurement indicates that impacts to the West Ditch would exceed one-half (1/2) acre.

temporary or permanent adjustments necessary for the Superfund process. Similarly, the design does not leave space to implement any wetland replication that may be required to mitigate the proposed large-scale disturbance and elimination of resource areas.

VIII. NUISANCE, AIR QUALITY, AND NOISE IMPACTS FROM THE PROPOSED LARGE TRANSLOADING OPERATION ARE CERTAIN TO OCCUR, BUT NET'S DATA DOES NOT PERMIT THOSE TO BE SCOPED.

The Updated Petition does not disclose the proportions of commodities it would handle, the types of trucks contemplated, its proposed days and hours of operation, the number and timing of rail runs (e.g., day or night), the design of the proposed cross-docking warehouse, the scale of the proposed railroad equipment maintenance operations, or other information essential to identify the types and magnitude of nuisance, noise, and air quality impacts likely to result from a facility.

Those impacts nonetheless are likely to be considerable and, cumulatively, could prove intolerable. Contrary to NET's statements, the site is abutted by and near residential neighborhoods and other uses vulnerable to such impacts. Moreover, as noted, facility-related trucks would traverse other areas of homes and light businesses. Because the few existing railroad tracks at the site are not in use, there are no railroad-related background impacts to compare to those anticipated from the proposed daily movement, unloading, loading, coupling, and decoupling of 60 rail cars and locomotives. Additional noise and litter will result from 600 daily truck trips, rail equipment maintenance activities, dumping and loading a wide range of commodities, and operation of the cross-docking warehouse. Diesel fumes from innumerable trucks and locomotives also would have a substantial adverse impact on local air quality and nearby residents.

If STB proceeds with the environmental impact analysis, it should require much more detailed information from NET in this regard.

IX. NET'S RELIANCE ON EPA'S "COMFORT/STATUS" LETTER IS MISPLACED.

In a weak effort to reassure the Board of its intentions on environmental matters, NET states that it will fulfill the requirements for bona fide prospective purchaser (BFPP) status outlined in EPA's May 2015 "comfort/status" letter. This is a red herring. Not only does NET fail to explain how it would perform each required action, but BFPP status only affords regulatory protection to a prospective purchaser. It does not ensure the environmental soundness of a facility. Indeed, in its November 6, 2015 follow-on letter to STB, EPA explained that "[t]he Comfort/Status Letter was issued for informational purposes to explain the environmental conditions at the Site, as known by EPA as of the date of the letter, and to suggest reasonable steps that NET should take at the Site . . . The Comfort/Status Letter does not make any representations that the Property is appropriate for any particular development or reuse." (EPA letter, at p. 5)⁶

X. PREVIOUS USES OF THE PROJECT SITE HAVE SEVERELY IMPACTED THE ENVIRONMENT AND PUBLIC HEALTH. THEY CANNOT WITHSTAND FURTHER SEVERE IMPACTS FROM A DEVELOPMENT THAT IS SO INADEQUATELY DISCLOSED AND EXAMINED.

NET proposes to build on a site that is especially vulnerable to any risk of further groundwater or other contamination.⁷ NET thus assumed the burden to demonstrate whether and

⁶ Redevelopment that is not designed and executed to eliminate the risk of significant further pollution of soils, surface water, or groundwater would be inappropriate, not only because of the compounding effects of new impacts on previous impacts (some of which still have not been characterized) but also because the inevitable commingling and transformation of waste streams and contaminants would complicate the allocation of responsibility as between existing potentially responsible parties and the new developer.

⁷ As the Board is aware, Olin Chemical Company and its predecessors operated the site for many decades, during which industrial spoils were dumped into open swales. MassDEP investigated the site until EPA assumed

how the proposed facility can be constructed and operated to prevent such impacts.

Wilmington's residents -- and especially residential neighbors of the site -- have borne the environmental risks, hazards, and mistakes at the project site. Olin Chemical's contamination of soils, surface water, and groundwater both on and off the Site resulted in the closure of the majority of Wilmington's public drinking water wells, requiring the purchase of alternative municipal water supplies and the provision of bottled water for people in nearby homes. Those conditions persist. Among the most harmful contaminants at the Site is n-nitrosodimethylamine (NDMA). The presence of that human carcinogen was not known until the Commonwealth of Massachusetts's site investigation was well underway. It was the discovery of NDMA that forced Wilmington to close five of its nine public drinking water wells. NDMA has been detected in groundwater not only on the Olin property but also under land to the west and southwest of the property. Even though EPA issued a comfort letter to NET, it still has not yet identified the specific area on the site where NDMA originated or the transport characteristics of NDMA that has caused contamination of off-site private drinking water wells.

The lack of clarity -- regarding both the existing site-related contamination and the many crucial aspects of NET's Updated Petition addressed above -- should be concerning for the STB. It is of great concern to Wilmington residents. Because STB has exclusive jurisdiction to evaluate most aspects of a rail-based development proposal, only the Board may address Wilmington's interests in this process.

The project's impact on the surrounding community must be examined with special care, insofar as NEPA mandates environmental justice review. The neighborhoods along Woburn

jurisdiction and assigned it to the National Priorities List. More than 240 chemical constituents were identified, and laborious sampling, testing and analysis initially failed to disclose the most toxic of those chemicals. The decades-long site investigation and remediation process remains incomplete.

Street, Eames Street, and Cook Avenue have been impacted disproportionately by past contamination of this site and by other environmental harms.

There can be no permanent resolution of the community's concerns without, among other assurances, a safe public water supply. The prospect of major redevelopment at this complex and unresolved Superfund Site within close proximity to residential neighborhoods is therefore deeply unsettling to residents and their elected officials, including its Board of Health which is charged with protecting public water resources and the health of residents. Equally concerning is the prospect that the environmental bona fides of the project might be reviewed by this Board not only before there has been a full vetting of the mandatory Superfund criteria and possible remedial options, but also on the basis of information as deficient and incomplete as that provided in the Updated Petition.

XI. THE BOARD SHOULD EITHER DENY NET'S UPDATED PETITION AS NON-COMPLIANT WITH ITS MAY 12, 2016 DECISION AND DISMISS THIS PROCEEDING, OR REQUIRE NET TO FILE A NEW PETITION WITH FAR MORE DETAILED INFORMATION AT THE RISK OF DISMISSAL.

STB's May 12, 2016 Decision emphasized that granting NET permission to file an Updated Petition was no assurance that a project would be deemed exempt or environmentally appropriate. The burden lay squarely on NET to supply STB – and the interested parties – with a “complete” petition that included data concerning the proposed facility and operations, and existing conditions, detailed enough to permit appropriate comment and to warrant the time and expense of a high-level environmental impact review. This proceeding already has lasted too long and drained too many public resources to tolerate a petition that falls short of that. Likewise, the Superfund Site on which NET wants to build and operate a facility has sustained

too much damage and been too incompletely addressed to forego a diligent review for redevelopment.

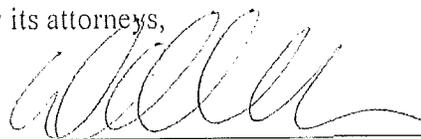
EPA and STB have indulged NET by affording it the opportunity to petition for exemption, despite its poor track record reporting relevant information and the inconclusive status of the Superfund RI/FS process. NET's failure to follow through responsibly is an affront to this administrative process.

Wilmington respectfully requests the Board to (i) deny NET's Updated Petition as non-compliant and dismiss this proceeding, or (ii) require NET to file promptly a new petition with far more detailed, specified information at the risk of dismissal.

Respectfully submitted,

TOWN OF WILMINGTON,

By its attorneys,



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Dated: September 9, 2016

CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that on this date, a true copy of the foregoing Comments of Wilmington, Massachusetts on Updated Petition for Exemption of New England Transrail, LLC, was served by first class mail, postage prepaid, to the following:

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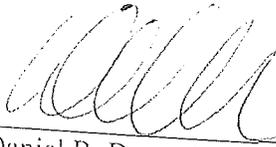
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Dated: September 9, 2016

NET SCOPING SESSION – OPENING STATEMENT

Since about 2005, Wilmington has taken great interest in this proceeding and in the proposals of New England Transrail for building on the Olin Superfund Site. Everyone who has followed proceedings before the Surface Transportation Board (or STB) knows that.

This may be a crucial turning point in the fate of the Site and our community. NET has advanced a new concept for a facility (rail-to-truck commodity transloading), and STB has decided to consider permitting for the project and therefore to review its environmental implications. The “troubled history of the property” (those are STB’s own words), the unfinished Superfund investigation and cleanup there, and the aggressive use that NET proposes combine to reinforce the Town’s concerns.

We believe that there are so many environmental problems, issues, uncertainties, and constraints that it would be premature to evaluate this project fully. Under the circumstances, it would be extremely difficult - if not impossible - to do justice to the process. But if an environmental impact review is performed, the review needs to be especially rigorous.

Wilmington submitted preliminary comments on environmental issues for this proceeding on September 9th. We will submit further detailed and technical comments on the proposed scoping document by November 29th. My purpose here is to highlight the unique nature of the local environmental concerns and some, but not all, of the subjects that STB needs to include in the scope of a Draft Environmental Impact Statement.

I. Background and Site History

There has been very real hardship for Wilmington and its residents ever since contamination was discovered at this property. Wilmington lost all use of five of its original nine public drinking water wells in 2003 because of contamination from the Olin Superfund Site, and the Town has had to purchase and import much of its water from the Massachusetts Water Resources Authority. DEP ultimately handed over control of its Site investigation to EPA, which declared the Olin property a national priority list site. It took many years to identify the scores of carcinogens and other contaminants present in the soil and groundwater there, including NDMA. That environmental disaster on Eames Street has placed significant health and economic stress on the 22,000 citizens of Wilmington.

As a result, the Town’s drinking water resources are uniquely vulnerable to further impacts and the Town is determined to protect its remaining supply. Wilmington is especially sensitive to a development **of this type on this parcel** in the wake of all that has occurred there. The Office of Environmental Analysis must develop a thorough scope for an EIS to ensure that the proposed development does not undermine what progress has been made, and any further

progress that can be made, both at the Site and with the affected groundwater and other resources.

II. Ongoing Remediation Efforts at the Site

The site and the area that surrounds it have been subjected to huge adverse environmental impacts and environmental injustice. Remediation efforts are underway but have not been completed. In fact, EPA has not completed its investigation of groundwater impacts of the Olin contamination or even begun to evaluate options to clean up the Site and groundwater. At this point, any new development that proposes to store, move, and distribute hazardous materials at that Site is simply irresponsible and should not be permitted until the Superfund investigation and remediation selection processes are completed. That was the position of EPA and of STB until recently.

Our concern is really the unpredictable outcome: How will the remediation efforts be affected by this new development? Will an NET transloading facility -- with 32 acres of paved surfaces and structures, 800 truck trips per day, and hazardous material transloading -- complicate or limit the efforts to clean up the site? What guarantees can there be that NET construction and operation of this rail and truck facility will not hamstring responsible remediation of the existing contamination?

We respectfully ask OEA to include an additional Impact Category to specifically address the impact of the proposed development on the on-going Superfund processes at the Site. After all, the Olin Site investigation and remediation are -- and will be - essential features of the "environment" at that property.

III. Phasing of Construction and Operation

Also, and for all categories of impacts, OEA should require review of impacts at various different dates. NET proposes to build out a new facility in two phases. It would pave over and build warehouses on top of the unstable DAPL containment area, which may have to be reconstructed, pumped out, capped, or otherwise remediated. The fate of the containment cell is uncertain. NET therefore has had to propose to build on top of it only after the area is addressed by Olin and EPA. That delay may not eliminate impacts on the containment cell, but it does mean that an essential aspect of the project (a huge transmodal docking warehouse) would not be constructed for several years after the first phase. How many years -- 3 or 5 or 10 years - is unclear.

Therefore, it is appropriate for OEA to evaluate environmental impacts of construction and use, including traffic and all other impact categories, not only as of the time the first phase is built and operated, but also -- and separately -- as of the time the second phase would be built and operated. The gap in time may be very significant, and background environmental conditions may be very different.

The scale of NET operations, including its use of rail and trucks, also would be much greater after the second phase is constructed.

IV. Notable Local Impacts

The scoping document is mostly generic. To ensure that the scope of review is adequate to address the actual risks and impacts to this particular site and our community, the scope must be fleshed out to include more specific considerations. As that document notes, the National Environmental Policy Act (NEPA) requires STB to evaluate direct, indirect, and cumulative impacts.

Time is limited this evening. So I will only mention a handful of specific considerations. Wilmington's written scoping comments will address these considerations and others in more detail.

1. Traffic and Access

The project would use both railroad and trucks, on a large scale, in this suburban setting, six or seven days each week. Transportation impacts should be broken down for rail and for trucks, and the hours of operation should be clarified.

Also, the traffic study area should be expanded to take into account the busiest intersections and interchanges in the area, both in Wilmington and in Woburn, and need to include the interchange with Interstate Route 93.

Many of the intersections that would receive NET truck traffic are already failing, with a "level of service" rating of "F". Those include the Eames Street/Woburn Street intersection close to the Site. The substandard operation of those intersections does not mean they cannot deteriorate further. In fact, OEA needs to give detailed consideration to the additional costs and challenges imposed if this development exacerbates traffic at those locations.

NET says the 400 trucks coming and going from the site each day would follow predictable routes away from residential areas. Experience, including the trucking operations associated with existing industrial sites in town, suggests that practices would not be so consistent. Truckers' schedules, business imperatives, bad weather, and road closures often affect routes. And unlike many other industrial facilities that generate truck traffic, NET would not own or control the movement of these trucks.

Finally, mitigation measures should be identified that are both realistic and enforceable by NET.

2. Public Safety

Regarding public safety, the EIS scope should include whether emergency response would be adequate for this facility, which would have 800 truck arrivals and departures each day, through a single access point, with many of them carrying flammable liquids and other hazardous materials. The risk of spills or fires involving those materials, or of derailment of railroad cars carrying those materials, is heightened because of the existing site conditions. Closures of Eames Street during NET railroad deliveries could make it especially hard to ensure adequate emergency access.

3. Land Use

OEA should evaluate the land use impacts not only of construction and operation generally, but also the practices that would be used for NET's proposed stockpiling of liquids and solids on site before transloading, and the proposed railroad maintenance facilities. NET has not spelled those out yet. Groundwater resources are vulnerable to any spills. NET has said it would not transfer hazardous materials within the Groundwater Protection District that covers parts of the Site. But storage of such materials, and of road salt, also should not occur within those protected areas. In addition, some of those activities would occur adjacent to the 20-acre portion of the Olin site that is protected by a recorded conservation restriction.

Bear in mind that the Olin Site lies on a regional hydraulic divide, includes several groundwater plumes, is connected to the Maple Meadow aquifer, and is linked to contamination of both public and private wells. Special attention therefore must be given to the additional stress and risks the project may impose on those resources.

Likewise, attention must be paid to how NET would manage the huge burden of stormwater flowing from the 32 acres of new paving and structures. The proposed oil separators are not up to that task, and there is no plan or explanation so far how the site design would incorporate stormwater structures above ground or below ground without invading contaminated soils or the groundwater.

4. Biological Resources

NET would remove at least 166 very large hardwood trees in three areas. That should be evaluated closely in relation to wildlife habitat edge within an already significantly disturbed and connected ecosystem.

5. Water Resources

Any deposit of fill materials to wetlands and other waters of the United States that is not directly due to CERCLA clean-up activities would require an Army Corps of Engineers Permit. That in turn would require the issuance of a MassDEP Water Quality Certificate. The EIS therefore should include an alternatives analysis for the avoidance, minimization and mitigation of such impacts, as required for the Army Corps 404 and MassDEP 401 permits.

6. Geology and Soils

The evaluation of geology and soils should include the handling of soils during construction of a facility, as well as a careful analysis of impacts to the DAPL containment cell from construction and the constant movement of massive loads of trucks, materials, and rail cars above it during NET operations. Moreover, vibrations from construction and operations of an NET facility could open new fissures or change the underground pathways for contaminants that are already in groundwater, much less any new contaminants.

7. Noise and Nuisance

The site operations are proposed to be located approximately 1,000 feet from residences on Cook Avenue and within 1,500 feet of residences on both Main Street and Eames Street. Noise analysis for both the construction period and all shifts of operations for Phase I and II should be conducted with mitigation identification and demonstrating conformance with the applicable noise standards.

8. Environmental Justice

Federal law recognizes that” no group of people . . . should bear a disproportionate share of the negative environmental consequences resulting from . . . industrial development. . .” The neighborhoods near this Olin Site have borne a disproportionate burden already, in terms of groundwater impacts, other contamination, and impacts from site investigation. Among other things, some of their private drinking water wells have become unsafe or unusable. OEA should be sure to scrutinize the impacts of the proposed development on groundwater resources, noise, air quality, and traffic for our most vulnerable residents.

CONCLUSION

The stakes for this proposed development, at this location, and at this time in the history of the site and Wilmington, are too high to ignore.

The environment at issue here is an unusual one. It is one Wilmington and its residents have lived and struggled with for decades. The fact that it is undergoing change from the Superfund clean-up process, including changes that we don't even know about yet, underscores the need for OEA to take special care in preparing a Draft Environmental Impact Statement.

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