

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
September 8, 2015
Part of
Public Record

Finance Docket No. 34797

**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**

**REPLY OF TOWN OF WILMINGTON, MASSACHUSETTS TO PETITIONER’S
AUGUST 18, 2015 “STATUS REPORT AND REQUEST FOR CLARIFICATION”**

In the guise of clarification, petitioner New England Transrail, LLC (NET) asks the Surface Transportation Board to reverse the course established by its June 19, 2012 Decision. That Decision declared: “The Board will continue to defer its environmental review until the RI/FS study [¹] has been completed and a ROD [²] has been issued that explains which cleanup alternatives have been approved for the Olin Site.” NET seeks to leverage a May 15, 2015 comfort/status letter from the United States Environmental Protection Agency (EPA) – an obligatory advisory – to short-circuit the judicious and thorough project review to which this Board has committed.

The 2012 Decision was sound and remains sound. NET would build on a 30-acre Superfund Site that has been undergoing physical investigation and interim remedial measures for nearly 20 years. Due to the Site’s varied industrial uses and dozens of contaminants, its environmental profile is extremely complex. The EPA process has not run its course. While remedial investigation of on-site and off-site surface water and sediment issues (OU1 and OU2)

¹ Remedial Investigation/Feasibility Study

² Record of Decision

has progressed, EPA still has not received or vetted a remedial investigation concerning groundwater on and off the Olin Chemical property (OU3). Nor have any cleanup alternatives for the Site been scoped, proposed, publicly vetted, or selected by EPA. The standard CERCLA activities therefore have not been completed. A record of decision is not imminent.

Although this Board is not bound by EPA decision-making, it should have the benefit of a completed remedial investigation and feasibility study that includes the critical groundwater operating unit and a full ROD with cleanup plans for this major Superfund site. The Board needs to have that substantive background before it can responsibly and independently evaluate the environmental merits of NET's proposed development.

A major rail-based transload operation could unnecessarily rule out or inhibit cleanup alternatives that otherwise may be advantageous. Those concerns include the impact that seismic loading from constant rail movement would have on the existing subsurface slurry walls and containment cell for dense aqueous phase liquid (DAPL). Groundwater contamination both on and off the Olin Site is considerable; Wilmington was forced to close five of its nine municipal drinking water wells due to the Olin contamination, the known carcinogen Nitrosodimethylamine (NDMA) consistently has been detected in several nearby residential wells, and those wells undergo regular testing.³ The questionable integrity of the 15-year old containment cell is crucial in evaluating groundwater contamination and risks on and off the site (and therefore feasible cleanup options), yet the remedial investigation of groundwater has not been concluded or documented. The OU3 investigation must be completed and cleanup alternatives established first⁴, and the use of the property then should accommodate those alternatives -- not the other

³ Due to the well closures, Wilmington indefinitely has had to purchase and import supplemental municipal drinking water from a regional supplier.

⁴ Any statements concerning OU3 and associated risks, even the statements contained in EPA's status/comfort letter, are necessarily speculative at this point.

way around. Circumstances during the past three years have not changed to an extent that would undercut that approach or this Board's condition.

Nor does EPA's status letter amount to an endorsement of NET's proposal. It is unusual for a developer to request such a letter before a RI/FS is completed and a remediation plan is in place. However, EPA was required to provide the letter. In so doing, it necessarily relied on the parameters of the development project NET is considering. The "project" NET tendered to obtain the letter is vague at best. In fact, the plan attached to EPA's status letter is illegible (*see* Attachment 1 to NET's Attachment A). Even a readable copy shows that it is a rudimentary, back-of-the-envelope design. Yet, EPA's letter is expressly conditioned on NET's "conceptual design," and that agency's tentative conclusions "could also change" if the design were to change.

This lack of transparency is significant. As the Board is aware, NET has a history of insufficiently describing, mischaracterizing, and then modifying the nature and scope of its project in STB proceedings. The Board acknowledged those failures at least twice by requiring NET to re-file and thereafter to carefully supplement its filings. These machinations predated NET's 2011 announcement that it would dispense with the centerpiece solid waste aspect of the project. In fact, the non-solid waste transload facility that NET now proposes so far departs from its original proposal that, once the STB is in a position to evaluate a project and conduct an environmental review, it might consider whether to require NET to file a new petition. NET's statement that "the scope of the NET project has not materially changed" is simply untrue. The existing administrative record is hard to navigate because there have been so many changes in circumstance and direction since this docket was opened in 2005.

There is a further concern with NET's premature request to proceed. It is not entirely clear whether NET now proposes to transport hazardous materials (even in the form of hazardous raw materials). The petitioner's August 22, 2011 status report indicated it would not do so but its current status report states that the only changes from the original solid waste project are that it would not handle solid waste and that it would try to accommodate site cleanup. It is silent on the question of transporting hazardous materials. Given the past lack of transparency in the petitioner's filings, we are left to speculate. However, an accidental release of hazardous material from approved NET operations would likely impact ground water. Until the magnitude, extent, and risk associated with current ground water conditions is understood, such a release certainly would complicate CERCLA analysis by making it difficult to differentiate who is responsible for what contamination.

In sum, NET's "request for clarification" underscores that its project and the CERCLA process both are still moving targets and that, at present, it is impossible for this Board to responsibly evaluate the environmental implications of redevelopment.

The Town of Wilmington therefore respectfully requests the Surface Transportation Board to deny NET's request to lift the deferral of environmental review, and to continue to defer such review pending the issuance of a final RI/FS and ROD under CERCLA.

Respectfully submitted,

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Dated: September 8, 2015

CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that on September 8, 2015, I served the foregoing Reply of Town of Wilmington, Massachusetts to Petitioner's August 18, 2015 "Status Report and Request for Clarification" by causing a copy thereof to be delivered via first class mail, postage prepaid, to:

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