

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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
TO EPA COMMENT LETTER DATED NOVEMBER 6, 2015**

The Town of Wilmington respectfully responds to the environmental comment letter submitted to the Surface Transportation Board (“STB”) by the United States Environmental Protection Agency (“EPA”) on November 6, 2015 (“EPA Comment Letter”). In further support of this Reply, Wilmington submits a technical memorandum prepared by its engineering consultant, GeoInsight, Inc.

While the EPA appropriately calls for an environmental impact study rather than an environmental assessment by STB, it no longer counsels this Board to defer review of New England Transrail, LLC (NET)’s development proposal. EPA’s position on that procedural question is short-sighted. It overlooks: (i) major uncertainties and contradictions that still surround the complex Olin Chemical Superfund Site, including the integrity and prospects of the subsurface containment structure that was installed before EPA took over the Site, (ii) the public charge and administrative advantage for STB of allowing the Superfund process to run its course, including technical review and public comment, before STB independently evaluates NET development plans, and (iii) the extraordinary local burden of the Site’s troubled history.

In June 2012, this Board explicitly deferred environmental review until the remedial investigation and feasibility study (RI/FS) is completed and a record of decision (ROD) has been issued. That ruling was judicious then and remains appropriate.¹ There is no new mandate for immediate action. EPA's position on the timing of STB proceedings does not compel STB to proceed. Nor does NET need or deserve immediate action. NET suspended, and then dramatically modified, its development concept during these STB proceedings. It now is eager for an opening in the Superfund process to press its still-undeveloped plan for a commodity transload facility. However, it proposes to locate a facility on land and above groundwater that were heavily contaminated for decades and have long been the subject of complex regulatory proceedings. NET therefore should not be heard to complain that this Board is proceeding too slowly. There is no need to rush into the STB's evaluation, and there is good reason to maintain a cautious sequencing of regulatory reviews.

EPA was duty bound to issue a comfort/status letter to NET under the Bona Fide Prospective Purchaser provisions of CERCLA. As Wilmington noted in its September 8, 2015 Reply to NET's August 2015 "Status Report and Request for Clarification" ("September Reply"), EPA's comfort letter was not an endorsement of NET's proposal. EPA relied on the very general concept of development that NET has circulated -- and a largely illegible drawing -- not any firm project plans. The agency has acknowledged that NET's design is merely conceptual and that EPA's tentative conclusions "could also change" if the design were to change.

While it may not be clear from EPA's comment letter, the RI/FS is substantially incomplete. The attached memorandum from GeoInsight explains the many remaining informational gaps. To begin with, the remedial investigation of groundwater (both on and off

¹ The 2012 ruling also is consistent with the Board's position on that matter in its July 10, 2007 decision.

the Olin property) is on-going and incomplete, and the feasibility study has not yet been initiated. Remedial options thus have not been proposed, evaluated, or selected. EPA informally has acknowledged that it is very unusual for a potential developer to request a status letter at this stage of a RI/FS. EPA's status letter therefore should not be seen as a reliable indication that a particular development is consistent with the Site outcome.

Like the Superfund investigation, NET's development project is a moving target. Given the petitioner's long history of dissembling and project change before this Board (*see* September Reply, at 3), future changes and surprises are likely. As it has done so far, the STB is entitled to insist on reasonable certainty in the status of the file under review. It should not be induced to chase moving targets.

In this regard, Wilmington reiterates that NET has not definitively stated whether it would transport hazardous materials, either raw or processed. NET's August 2015 Status Report is silent on the subject, while its 2010 and 2011 status reports stated that it intended to transport various hazardous materials. Any accidental spill of such material could severely impact groundwater. Until the magnitude, extent and risk associated with current groundwater conditions are understood, such a release also would complicate CERCLA groundwater analysis (which is currently underway) by making it difficult to differentiate who is responsible for what contamination. This scenario is but one example of the risks that the STB – and Wilmington -- would incur if the Board considered an NET development proposal in the middle of the on-going Superfund process.

There are other unresolved complications and contradictions. 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' 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 NDMA contamination of off-site private drinking water wells.

Similarly, EPA's comfort letter and comment letter fail to address meaningfully the status and future of the 4-acre Containment Area over which NET plans construction and of the associated, state-mandated subsurface containment structure. That structure was installed to prevent lateral migration of a diffuse layer of contaminants. EPA presumes that the slurry wall structure, which extends down to bedrock, would remain intact in the face of NET's proposed construction and railroad operations. However, that is a tenuous presumption since 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 GeoInsight explains, "[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 GeoInsight also notes, the risk assessment for the Containment Area in Olin's RI 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 FS 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 lack of clarity on these several crucial matters should be concerning for the STB. It is of great and legitimate concern to Wilmington residents. Of course, because the 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 borne the burden of environmental risks 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.

There can be no permanent resolution of the community's concerns without 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 its residents and 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 well before there has been a full vetting of the mandatory Superfund criteria and possible remedial options.

In its rush to support accelerated STB review, Olin Chemical has misrepresented the status of its own land adjacent to the proposed development. In a December 28, 2015 letter reply to EPA (copied directly to the "Service Transportation Board"), Olin takes issue with certain

EPA statements but asserts that deferral of review is not warranted. In closing, Olin states that “the entire 51 Eames Street property is suitable for redevelopment.” In fact, in 2006 Olin entered into and recorded a formal Environmental and Open Space Restriction on approximately 20 acres of the 53-acre parcel. That land, which NET also would acquire from Olin, is prohibited from development and disturbance, such that it would not be available for either project-related or remedial activities. For this reason -- and because of the existing fallout from the contamination in Wilmington -- there is no margin for error in the choice and implementation of remedial options for this Superfund Site, which EPA acknowledges is two years away from a ROD. Olin’s misstatement about the status of the restricted area may have been merely careless and not intentionally misleading. Either way, it underscores the uncertainties and gaps in information provided to STB by those who favor immediate review.

When this Board evaluates NET’s proposal, its mandate is to consider not only Superfund-related matters but also broader environmental considerations. It is the Town’s position that such review necessitates a full vetting through EPA of the Site’s existing conditions and available remedial options. That will entail not only detailed scientific analysis and debate, but also public comment. Having the technical Superfund conclusions in hand will allow STB to undertake the reliable analysis that it has the charge and public trust to conduct. That responsibility and goal should weigh more heavily than the applicant’s desire to expedite the process.

For these reasons, Wilmington again respectfully requests this Board to continue to defer its environmental review until the RI/FS process is fully complete, public review and comment is conducted, and a ROD is issued by EPA.

Please do not hesitate to contact us concerning this Reply.

Respectfully submitted,

TOWN OF WILMINGTON,

By its attorneys,

/s/ Daniel R. Deutsch

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Dated: January 14, 2016

CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that on January 14, 2016, a true copy of the foregoing **Town of Wilmington’s Reply to EPA Comment Letter Dated November 6, 2015, and the associated GeoInsight Technical Memorandum**, was served by first class mail, postage prepaid, to the following representatives of Petitioner New England Transrail, LLC, the United States Environmental Protection Agency, The Massachusetts Department of Environmental Protection and Olin Corporation, listed below, and that service upon all other interested parties shall be made in February, 2016, and certified at that time, as provided in the Decision of the Surface Transportation Board dated January 11, 2016:

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PROJECT MEMORANDUM

DATE: January 13, 2016 GeoInsight Project 5611-000

TO: Jeff Hull, Town Manager

FROM: Michael J. Webster, P.G., L.S.P., Joel J. Trifilo, GeoInsight, Inc.

Cc: Shelly Newhouse, Director of Public Health
Michael Woods, DPW Director
Valerie Gingrich, Director of Planning and Conservation
Al Spaulding, Inspector of Buildings/Zoning Enforcement Officer
Elizabeth Sabounjian, Chair - Board of Health
Daniel R. Deutsch, Esq., Town Counsel

RE: Technical Information for Town of Wilmington Reply to USEPA Comment Letter to Surface Transportation Board Dated November 6, 2015

At the request of the Town of Wilmington (the Town), GeoInsight, Inc. (GeoInsight) prepared this Memorandum to provide technical information associated with letters prepared by the United States Environmental Protection Agency (USEPA) and Olin Corporation (Olin) regarding the New England Transrail (NET) development proposal for the 51 Eames Street portion of the Olin Chemical Superfund Site (Site). The USEPA and Olin letters were submitted to the STB on November 6 and December 28, 2015, respectively. GeoInsight observations and comments regarding technical components of the USEPA and Olin letters are provided below.

USEPA Filing to the STB dated November 6, 2015, titled Environmental Comment Regarding New England Transrail, LLC, FD-34797:

- USEPA generically refers to the Remedial Investigation/Feasibility Study (RI/FS) throughout their letter. In several instances, USEPA indicates that the RI/FS process is largely complete. This is not an accurate statement. It is important to note that FS activities have not yet been initiated for the Site and that RI activities have only been completed for Operable Units 1 and 2 (OU1 and OU2). The RI for OU3, which addresses on- and off-Site groundwater and saturated soil conditions is still ongoing and has not been completed.

- Under the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA), the FS is a comprehensive process that includes identifying remedial action objectives and evaluating the full range of possible methods available to attain the site-specific clean-up objectives. This important process has not been initiated at the Site. Consequently, it is uncertain how NET's development of the 51 Eames Street property would materially impact the FS evaluation (and associated evaluation of FS criteria, such as cost), and the ability to subsequently conduct remedial activities at the Site.
- In their letter, USEPA interchangeably references the "site" (i.e., the complete Olin Chemical Superfund Site) and the Property (51 Eames Street) in their correspondence. The RI has not yet been completed for the "site", only portions of OU1 and OU2 (that include the Property). The RI for OU3 has yet to be completed and consists of on- and off-Property groundwater areas and soil located within the saturated zone. Data obtained to date indicate groundwater and saturated zone soil conditions off-Site are connected to and related to on-Site conditions.
- The Baseline Human Health Risk Assessment (BHHRA) included a limited evaluation of conditions associated with the Containment Area. The limited evaluation included an evaluation of risk associated with a specific sub-set of possible receptors at the Site, exposure of trespassers and outdoor workers to surficial soil. The BHHRA did not include a more robust evaluation of risk associated with the Containment Area, including exposures to soil below 1 foot by construction, utility, and outdoor workers, as had been completed for other areas of the 51 Eames Street property.
- The USEPA letter did not describe or discuss the process that will be employed to complete the FS if NET conducts redevelopment activities at the Site. Once the 51 Eames Street site is redeveloped, it will be difficult to complete a truly objective evaluation of possible remedial approaches. Infrastructure that does not currently exist at the Site, but that is installed during redevelopment, will certainly impact how the FS evaluations are completed. Although USEPA suggests that the NET redevelopment of the 51 Eames Street property will be "at risk," from a practical perspective, it will be difficult for USEPA to require substantial modifications/changes once the new infrastructure is in place. Consequently, compromises in remedial approach/methods may be made to accommodate the redevelopment.
- The USEPA letter did not describe or discuss how redevelopment of the 51 Eames Street property will be conducted without further compromising the already impacted quality of surface water in the South Ditch. The South Ditch is one of a series of natural drainage features that were modified in the early 1950s to improve drainage. Surface water associated with much of the north part of the 51 Eames Street property ultimately ends up within the South Ditch. Surface water quality in the South Ditch has been adversely impacted by discharge of Site contaminants. USEPA has not yet evaluated how these adverse impacts will be addressed and/or mitigated.

- The USEPA letter did not describe or discuss the ongoing activities associated with evaluating and characterizing impacts to private water supply wells located near the Site. Although attributable to the Site, the ultimate source area and migration pathways associated with the n-nitrosodimethylamine (NDMA) that has impacted these private water supply wells has not been determined. The highest concentrations of NDMA are present in private wells located along Cook Avenue, approximately 750 feet from the Containment Area. Evaluation of these conditions is ongoing.
- The USEPA letter did not discuss the current status of the regulatory authority and oversight associated with the Containment Area and associated slurry wall. In historical discussions, USEPA has indicated to the Town and GeoInsight that the Containment Area is not a remedial component under CERCLA, and ultimate oversight, monitoring, and maintenance of the Containment Area has yet to be determined. From 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. As such, it is a critical property feature, and currently, appears to be in limbo with regard to how the structure will be ultimately regulated. Existing questions regarding the integrity of the slurry wall/containment cell further underscore concerns over having the Containment Cell fully addressed with regard to its long-term use, stability, and effectiveness, before the 51 Eames Street property is redeveloped.

Olin Response to November 6, 2015, USEPA Letter to Surface Transportation Board dated December 28, 2015, RE New England Transrail, LLC, FD-34797

- It is unclear how construction of NET's proposed development will impact the Containment Area. NET's largely illegible preliminary site plan indicates that structures are proposed over the Containment Area. In the RI Report, including the BHHRA, Olin indicated that **"There is no foreseeable construction and occupancy of buildings in the containment area"**. The risk assessment conducted for the Containment Area did not contemplate construction and redevelopment.
- Testing of the integrity of the Containment Area slurry wall, required by USEPA, is ongoing and has not been completed. In addition, plans for the permanent capping of the Containment Area have not been developed. Consequently, the current and long-term effectiveness of the Containment Area/slurry wall are not known. Without more detailed redevelopment plans, it is not possible to evaluate how redevelopment and use of the 51 Eames Street property might impact the integrity and effectiveness of the Containment Area/slurry wall.
- Contamination associated with the Site was identified in surface water within the South Ditch. The results of the Baseline Ecological Risk Assessment (BERA) indicated that there is a potential for adverse effects from Site contamination to ecological receptors in the South Ditch. It is unclear how stormwater management associated with NET's proposed development will impact or exacerbate conditions in the South Ditch. The South Ditch is located within and receives surface water flow from the portion of the 51 Eames Street property that will likely experience significant activity under NET's current

redevelopment plan, including the drainage features located along the western railway spur. Redevelopment of the property before the FS is conducted could complicate the evaluation of remedial objectives and measures associated with the South Ditch.

- The Containment Area was not included in characterization activities completed during the RI. As such, there are limited data regarding soil conditions within the approximately 4-acre portion of the 51 Eames Street property that is occupied by the Containment Area. Historical information indicated that site sediment, soil, and treated materials were consolidated within the Containment Area. Potential exposure to and risks associated with these soils/materials were not evaluated during the RI.
- Olin indicates that the Plant B area is currently suitable for redevelopment. However, the BHHRA indicated that risks to future indoor workers from vapor intrusion into future buildings were not quantified. Additionally, soil data from beneath the footprint of Plant B in (EA3) were not collected during the RI, and as such, risk of exposure to these soils were not evaluated by the BHHRA. Historically, separate phase petroleum was present near and beneath Plant B, and it is likely that residual petroleum-impacted soils remain beneath the building.