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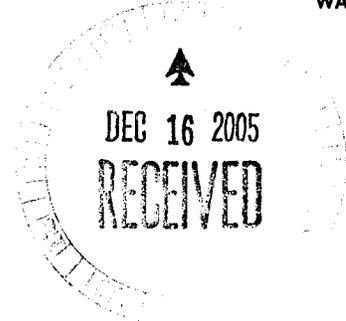
December 16, 2005

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

ENTERED
Office of the Secretary

State of
Public Record



Re: Finance Docket No. 34797, Petitioner's Response to Motions for Extension of Time Filed by Massachusetts Department of Environmental Protection and National Solid Wastes Management Association

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and ten (10) copies of the petitioner's response to two separate motions for extensions of time. Would you please time-stamp and return one of the copies to our messenger.

Thank you in advance for your assistance.

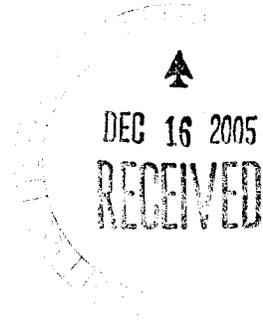
Very truly yours,

A handwritten signature in cursive script that reads "J. Patrick Berry".

J. Patrick Berry

Attorney for New England Transrail, LLC

cc: Rep. James R. Miceli
Daniel R. Deutsch, Esq.
Stephen M. Richmond, Esq.
Susan P. Ruch, Esq.



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

**Petitioner's Response to Motions for Extension of Time
Filed by Massachusetts Department of Environmental Protection
and National Solid Wastes Management Association**

J. Patrick Berry
Jeffrey M. Bauer
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Attorneys for New England
Transrail, LLC

Date: December 16, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34797

**Petitioner's Response to Motions for Extension of Time
Filed by Massachusetts Department of Environmental Protection
and National Solid Wastes Management Association**

DEC 16 2005
RECEIVED

By motion dated December 14, the National Solid Wastes Management Association ("NSWMA") requests the Board to extend the deadline by thirty (30) days for filing replies to the Petition for an Exemption filed by New England Transrail, LLC ("NET") on December 5. By separate motion dated December 15, the Massachusetts Department of Environmental Protection ("MADEP") requests the Board to provide the same thirty (30) day extension. For the reasons set forth below, NET has no objection to an appropriate extension of time, but respectfully requests that the extension of time be limited to ten (10) days rather than thirty (30) days. With a ten (10) day extension, all comments would be due no later than January 6, 2006.

Both NSWMA and MADEP argue that having to submit their replies by December 27, the normal due date, will require them to work during the holidays. NSWMA even suggests that NET may have intentionally filed its petition on December 5 to create this result.¹

However, NET has already informed both NSWMA and MADEP that it would consent to a ten (10) day extension, as confirmed in NET's December 14 reply to the request of Massachusetts State Representative James R. Miceli.² As explained in its reply to Rep. Miceli,

¹ NSWMA states that "one must wonder about NET's design in filing the Petition for Exemption at this particular time" and that requiring interested persons to work over the holidays is "a burden seemingly manufactured by NET's choice of filing date." NSWMA Motion at 2.

² Letter from J. Patrick Berry, NET's counsel, dated December 14, 2005, to Secretary Vernon A. Williams, responding to the request by Rep. Miceli ("December 14 Berry Letter"). Although NSWMA refers to Rep. Miceli

NET wants to “accommodate the legitimate needs and concerns of parties’ having to coordinate the preparation and filing of their replies over the holiday period.”³

NET submits that a total of thirty (30) days (the original 20 days provided by the Board, plus a 10 day extension) is sufficient for NSWMA and MADEP to submit their comments. Each was actively involved in the prior proceeding in Finance Docket No. 34391 and each submitted extensive comments and legal analysis and arguments to the Board. NSWMA asserts that NET’s resubmitted petition is on the “identical issue” involved in the earlier proceeding. NSWMA Motion at 1. In fact, NET’s current plan for the project eliminates some of the issues that previously raised concerns. As a result, it should be substantially easier for all parties to prepare their comments within thirty (30) days.

MADEP argues that it needs more time because “several Bureaus and Programs within MADEP must review the Petition as well as the extensive supporting documentation, and consult with one another and management to formulate MassDEP’s response.” MADEP Motion at 1. However, NET met in person with MADEP to brief staff on the project, and subsequently informed MADEP in writing of the details that would be included in NET’s resubmitted petition on October 14, 2005, more than sixty (60) days ago.⁴

In summary, a ten (10) day extension of time should be sufficient for NSWMA and MADEP to prepare their comments. Indeed, one governmental agency from the State of New Jersey, which was not even a party of record in the prior proceeding, has already submitted its reply to NET’s resubmitted petition.⁵

as the “Chairman of the Massachusetts House of Representatives” (NSWMA Motion at 2), Rep. Miceli is Chairman of the House Committee on Personnel and Administration.

³ December 14 Berry Letter at 1.

⁴ A copy of the October 14, 2005 letter from Jeffrey R. Porter, NET’s counsel, to Susan Ruch, Counsel of the MADEP, is attached as Exhibit 1.

⁵ Comments of the Mercer County Improvement Authority, filed December 15, 2005.

One other issue should be addressed. Both NSWMA and MADEP argue that the Board should extend the deadline for filing replies in order to afford other interested members of the public the opportunity to comment.⁶ However, during the course of conducting its environmental review, the Section of Environmental Analysis (“SEA”) will provide ample opportunity for all parties, and all members of the public, to submit their written views on the project. For example, the public will be invited to submit written comments on any Environmental Assessment prepared by SEA. Thus, it is not necessary to extend the initial comment period to accommodate members of the public who may have an interest. The Board’s regulations and procedures already ensure that that opportunity will occur.

For these reasons, NET submits that the motions by NSWMA and MADEP should be denied, but NET consents to an extension of the time for filing replies to NET’s resubmitted petition to January 6, 2006.

⁶ “Requiring comments and responses by December 27 will unreasonably restrict the ability of interested parties to participate by requiring parties to choose between taking planned vacations and observing the holidays with family and filing comments on a critically important issue.” NSWMA Motion at 1. “As further cause for this extension request, MassDEP notes that the issues raised in this case are of interest to many other persons and entities, both within Massachusetts and throughout the country.” MADEP Motion at 2.

Respectfully submitted,



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Attorneys for New England
Transrail, LLC

Date: December 16, 2005

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October 14, 2005

BY COURIER

Susan Ruch, Esquire
Office of General Counsel
Massachusetts Department of Environmental Protection
One Winter Street
Boston, Massachusetts

Re: New England Transrail, LLC

Dear Susan:

Thank you again for arranging the meeting between representatives of New England Transrail, LLC (NET) and the Department on September 20. We very much appreciate the courtesy and thoughts shared at that meeting. As we agreed then, we are providing the following information requested by the Department: (1) a draft plan depicting NET's proposed improvements to the site; (2) aerial photographs showing the site vicinity and demonstrating the absence of sensitive receptors in that vicinity; (3) the proposed hours of operation of the NET facility; (4) a conceptual description of the construction and operations anticipated at the site and the DEP health and safety requirements we agree are applicable to those activities; and (5) information regarding structures of the sort to be constructed on the site.

1. Plan Depicting NET's Proposed Improvements

I have enclosed as Exhibit A a color copy of the draft plan we discussed at our meeting. Although this is the most current draft plan, it is only a draft and, therefore, subject to further changes. For example, this draft plan does not show the exact point of connection of the NET rail lines with the rail lines operated by the MBTA and the B&M Railroad. However, the approximate location and configuration of the rail lines are not expected to change (including the absence of any rail lines on the so called "containment area"). Of course, we would be happy to provide you with future revisions of this plan in connection with the dialogue we hope will continue between the Department and NET.

2. Aerial Photographs Demonstrating Absence of "Sensitive Receptors"

I have enclosed as Exhibits B and C two aerial photographs of the site and the vicinity. Exhibit B more clearly shows the homes closest to the site (on the far side of the industrial buildings to the west) described by Mr. Pyott at our meeting as being located approximately 800 feet from the area where the transloading of MSW and C&D will occur. Exhibit C more clearly

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shows the proximity of the site to Interstate 93. Both Exhibits B and C clearly show the current site conditions, including the so-called "containment area".

3. Hours of NET Operations

NET expects to operate Monday through Friday from 5:00 a.m. to 6:30 pm, Saturdays from 7:00 am to 5:00 pm and Sundays from 7:00 am to 12:00 pm. NET will not operate on January 1, July 4, Labor Day, Thanksgiving Day and Christmas Day.

4. Conceptual Description of Construction and Operations and Applicable DEP Requirements

A. Construction Activities

As requested when we met, the following is a recounting of our discussion of NET's construction activities which will consist of demolition of the buildings and railroad tracks currently on the site, limited excavation in connection with the construction of new rail lines and NET's transloading facilities, and the construction of those rail lines and transloading facilities.

NET will demolish the so-called West Warehouse, East Warehouse and Office Building formerly part of the Olin Corporation facilities on the site. The existing railroad tracks will also be removed. The existing underground utilities (including abandoned in-place chemical process pipelines) will be removed or capped in place. Existing asphalt and concrete roadbeds on the site will be removed or used as the base for new roadways.

NET's excavation activities will include (i) excavation in connection with the installation of new underground utilities (involving approximately 1,500 cubic yards of excavated material), (ii) excavation in connection with the construction of new rail lines (involving excavation to a depth of approximately 3 feet below the current grade surface and approximately 10,250 cubic yards of excavated material), (iii) excavation in connection with the construction of the foundation of the waste transloading structure (involving excavation to a depth of up to approximately 5 feet below the current grade surface in the location of the concrete substructure that will house the facility's loading and conveyance equipment and approximately 1,500 cubic yards of excavated material), and (iv) excavation in connection with the construction of the NET facility's storm water management system (involving approximately 3,000 cubic yards of excavated material). No excavation is anticipated at a depth greater than 8 feet below the current grade surface. Groundwater is located at a depth of approximately 6 to 9 feet below the current grade surface.

NET will install two siding tracks in the northeastern area of the site (for transloading pumpable products such as plastic resins and liquids), two siding tracks in the central area of the site for transloading C&D and MSW, three siding tracks in the western area of the site for transloading bulk materials such as sand, gravel and wood chips, and one main track (which will run between the two siding tracks in the central area of the site) that will connect the MBTA

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lines on the east side of the site and the B&M line on the west side of the site. The approximate locations of all of these rail lines are depicted in Exhibit A.

NET will install a "sprung-type" structure in the central area of the site for transloading C&D and MSW. It is within this structure that the concrete substructure (the "Transload Equipment Area") discussed above will be located.

NET will reinstall underground utilities, construct a storm water management system, new roadways, transloading equipment and gravel ground cover, all as depicted in Exhibit A.

Finally, NET will install an Engineered Barrier as proposed by Olin Corporation, and agreed by the Department, in the so-called "containment area". As we discussed when we met, this Engineered Barrier will be engineered to support certain aspects of NET's operations, such as the storage of bulk materials and the movement of vehicles associated with such storage. However, no rail lines will be constructed in this area.

B. Transloading Operations

NET expects to receive and transload a wide range of commodities. However, as we discussed when we met, and as is discussed below, NET will not receive and transload any shipments of any material that is defined as a hazardous waste by applicable federal and state laws and regulations.

NET presently expects to receive and transload different categories of material in three distinct areas of the site.

The northeastern area of the site will be used to handle "pumpable" materials including, but not limited to, liquid commodities (such as corn sweeteners and vegetable oil) that will be heated and pumped using portable equipment; and pumpable dry materials (such as soda ash and plastic pellets) that will be transferred between trucks and rail cars using portable blower equipment.

The western area of the site will be used to handle other "bulk" materials" (including, but not limited to, lumber, salt, sand, gravel, aggregates and woodchips) that will be stored and transloaded using portable equipment.

The central area of the site will be used to handle C&D and MSW.

C&D will be unloaded from trucks onto the concrete floor of the transloading structure discussed above. Each shipment of C&D will be inspected to ensure that it is consistent with the terms of its bill of lading and contains no hazardous waste. NET will segregate certain metal and wood or other materials which may damage NET's loading equipment and rail cars. Any segregated material will be transported to an appropriate receiving facility or returned to the shipper. C&D will be conveyed to shredders that will reduce it to a maximum size that can be loaded into rail cars with conveyor belts.

Susan Ruch, Esquire

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Generally speaking, there are two ways in which MSW will be transloaded. MSW will be delivered to the site pre-baled (but not wrapped in plastic). Such pre-baled waste will be removed from trucks in the transloading structure and directly loaded into rail cars. Each shipment of MSW that has not been pre-baled will be unloaded from trucks onto the concrete floor of the transloading structure where it will be inspected to ensure that it contains no hazardous waste or other materials which do not conform to a bill of lading. The remaining unbaled MSW will be transloaded onto rail cars in one of the following three ways: (i) it will be loaded into containers positioned in the Transload Equipment Area, which, once loaded, will be covered and lifted onto rail cars; (ii) it will be baled (but not wrapped in plastic) and then loaded into rail cars; or (iii) it will be baled and wrapped in plastic and then loaded into rail cars.

C. Compliance with Applicable DEP Health and Safety Requirements

As we discussed at our meeting, NET intends to comply fully with all applicable substantive state health and safety regulations governing NET's construction and operations.

More specifically, NET expects to conduct the construction activities described above pursuant to a Construction Release Abatement Measure (CRAM) plan as specified by the Massachusetts Contingency Plan, 310 CMR 40.0000, *et seq.* We were glad to hear that the Department believes that a CRAM can sufficiently account for the presence of any hazardous materials that may be encountered in the course of NET's construction activities and we will present a revised CRAM to the Department to that end. As we move forward, we want to better understand those conditions on the site that the Department believes may interfere with the attainment of a Permanent Solution to releases at, as opposed to from, the site so that NET can work with Olin Corporation and DEP to achieve a Permanent Solution to those conditions prior to commencing operations at the site, if possible. However, as we discussed when we met, NET will provide whatever access to the site Olin needs to conduct further response actions in accordance with its obligations to the federal and state governments even where such access requires the relocation of NET's facilities.

Other substantive state health and safety regulations pertaining to NET's operations with which NET expects to comply include:

- the Department's standards relating to air pollution (310 CMR 7.02(2)) and idling of vehicles (310 CMR 7.11(1) and (2));
- the Department's performance, design, operation and maintenance standards for transfer stations as set forth in 310 CMR 19.205 through 19.212 and 19.216 through 19.219; and
- the Department's standards regarding the rejection and appropriate disposition of "hazardous wastes", as defined by 310 CMR 30.00, and "special wastes", as defined by 310 CMR 19.061(2) and (3), including radioactive waste, asbestos-containing material, infectious waste, bio-hazardous waste, or other wastes

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Susan Ruch, Esquire

October 14, 2005

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designated by the Department as requiring special management to protect public health, safety and the environment based on their physical, biological or chemical properties.

We offer these citations in the hope that by doing so we clarify NET's intent, not to provide a comprehensive list of the Massachusetts regulations applicable to NET's operations.

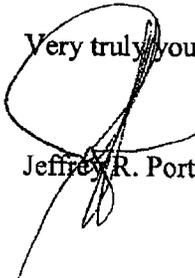
5. Information Regarding "Sprung" Structures

Enclosed as Exhibit D is information regarding "sprung" structures of the sort that NET intends to use on the site. As we discussed at our meeting, one advantage of such structures is that they can be easily relocated if necessary. As is discussed above, NET plans to install at least one of these structures in the central area of the site to be used for the transloading of MSW and C&D and may install others for the storage of other bulk materials.

We hope that the information provided herein eliminates any confusion over NET's proposed construction and operational activities, or the sort of DEP requirements that NET agrees will govern those activities. If the Department has any additional questions, please let me know. Otherwise, we'll look forward to hearing the Department's thoughts on how NET and the Department might memorialize NET's agreement to abide by the regulations governing its activities in a manner that secures the Department's ability to enforce that agreement.

NET will return to beneficial use an industrial site that I am sure the Department will agree has been idle for far too long. This use will bring jobs and tax revenue to the Town of Wilmington and a much needed transportation alternative to the Commonwealth that will reduce the amount of truck traffic on our highways. We look forward to working with the Department toward these ends.

Very truly yours,


Jeffrey R. Porter

cc: Mr. Robert Jones
J. Patrick Berry, Esquire
Marilyn Newman, Esquire

CERTIFICATE OF SERVICE

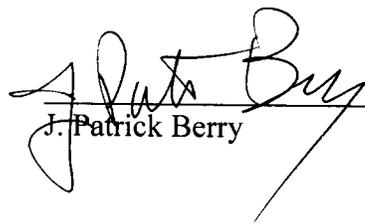
I hereby certify that on this 16th day of December, 2005, a copy of the foregoing was served on the following persons by electronic mail and first-class mail:

Rep. James R. Miceli
Room 448
State House
Boston, MA 02133-1054

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