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January 27, 2006

**VIA ELECTRONIC FILING**

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

Re: *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, Finance Docket No. 34797*

Dear Secretary Williams:

Enclosed for electronic filing is our Reply to New England Transrail, LLC's Petition for Exemption from 49 U.S.C. § 10901, filed on behalf of National Solid Wastes Management Association, Solid Waste Association of North America (National and Massachusetts chapters), Massachusetts Municipal Association, Construction Materials Recycling Association, Integrated Waste Services Association, and New Bedford Waste Services, LLC.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen M. Richmond".

Stephen M. Richmond

SMR:mjg  
Attachment

cc: Service List for STB Finance Docket No. 34797 (by mail with attachment)

16533v1 Boston 012346

Washington, D.C. Maryland New York Massachusetts New Jersey Texas California

**Beveridge & Diamond, P.C.**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 34797

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**NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND 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**

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**REPLY OF NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL.  
TO NEW ENGLAND TRANSRAIL, LLC'S PETITION FOR EXEMPTION  
FROM 49 U.S.C. § 10901**

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**January 27, 2006**

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**BEFORE THE  
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**NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND WOBURN  
TERMINAL RAILWAY - PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901 TO  
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**REPLY OF NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL.  
TO NEW ENGLAND TRANSRAIL, LLC'S PETITION FOR EXEMPTION  
FROM 49 U.S.C. § 10901  
AND REQUEST FOR LOCAL HEARING**

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**PRELIMINARY STATEMENT**

The National Solid Wastes Management Association, the Solid Waste Association of North America and its Massachusetts chapter, the Massachusetts Municipal Association, the Construction Materials Recycling Association, the Integrated Waste Services Association, and New Bedford Waste Services, LLC (collectively, the "Coalition Parties") respectfully oppose New England Transrail, LLC's ("NET") second petition for exemption from 49 U.S.C. § 10901. NET's petition is a continuation of its odyssey to engage the Surface Transportation Board (the "Board") in a scheme to avoid complying with environmental and public health laws and deny the entire waste management industry in New England the level playing field that is the foundation of fair and open competition.

After the Board rejected its first petition as insufficient, NET has taken a second bite at this apple. NET proposes a scheme that will undermine a large existing segment of the solid waste industry that currently utilizes rail, truck, and barge transportation, subject to all federal, state and local law and completely independent of Board jurisdiction. The NET proposal seeks

to destroy the fair and equal competitive business environment that currently exists in New England and throughout the nation. NET's application is an attempt to avoid compliance with state and local environmental laws and regulations in order to gain an unfair competitive advantage over responsible solid waste facility operators who comply with important state and local requirements.

In this second petition, NET essentially repeats its jurisdictional argument from its first petition. NET argues the waste processing capabilities of the proposed NET facility are all exclusively transportation functions or at the very least are integrally related to transportation. Consequently, NET suggests, the Board has exclusive jurisdiction over the proposed facility.

However, NET's proposed so-called "transload" facility does not constitute "transportation by rail carrier," nor is it "integrally related to the provision of interstate rail service," as the Board has interpreted those terms. Instead, NET seeks an impermissible safe harbor under the preemption provisions of Section 10501(b) in order to operate free from the important protections and limitations, and the accompanying high costs, imposed by environmental and public health regulations applicable to every other solid waste management facility in the Commonwealth of Massachusetts.

The Coalition Parties do not question the exclusive jurisdiction of the Board to regulate rail carriers and transportation by rail, despite NET's attempts to mischaracterize their past position. Were NET simply a common carrier proposing to build and operate a traditional transload facility for the transfer from truck to rail of commodities - including wastes - with no materials processing and no materials extraction, the Coalition Parties would have no jurisdictional objection. The critical problem with the NET proposal is that the facility is not a

traditional transload facility, and in fact the transportation component of the proposal is purely incidental to its true economic purpose as a waste processing facility.

Moreover, NET's new petition suffers from the same lack of specificity and candor that ultimately doomed its initial petition in STB Finance Docket No. 34391. Having wasted more than two years on an original flawed application that was devoid of critical facts, NET now wishes to rush its new petition through the Board. NET proposes there be no comprehensive environmental review on the basis of a tentative finding that its prior proposal met the standards of 49 U.S.C. § 10502 – an approval of a different project that was based on NET's flawed initial petition. Ironically, NET wishes to simultaneously skirt the federal environmental review process and circumvent local and state environmental review, effectively creating a solid waste processing facility exempt from *any* meaningful environmental review.

The Board should recognize this petition for what it is: an anti-competitive scheme to avoid reasonable state and local laws and discourage open and fair competition. This application has everything to do with promoting unfair and improper advantages and undermining the solid waste management and recycling industry in New England and nothing to do with regulating railroads or promoting the efficient operation of rail facilities.

NET is using the need to transport material from its processing facility as a smokescreen to misapply the Board's authority under the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the "ICCTA"). This approach seeks to distort the exclusive jurisdiction language in the ICCTA to obtain an enormous and improper economic and anti-competitive benefit.

Just as the filing date for this reply has arrived, NET has submitted a number of letters that all contain essentially the same statement addressing the minority ownership of NET and the

allegation that the NET application is made “to develop a project in an industry that has shamefully lacked African-American representation and that NET’s commitment to minority hiring will redress that imbalance.” *See* Letter of Nyjah Wyche to Vernon Williams (January 23, 2006) at 1.<sup>1</sup>

The Coalition Parties find these letters curious, both as to their intent and their factual basis. Both this Reply and the previous Reply of the Coalition Parties to the prior NET petition contain a verified statement from Jesse Jeter, Vice President of Jet-A-Way, Inc., a solid waste processing company in Boston. Jet-A-Way, Inc. is a minority-owned company (its principals and several officers, including Mr. Jeter, are African-American), and is also a majority female-owned company. Neither the Coalition Parties nor Mr. Jeter have ever believed there is any reason to identify these facts in their filings with the Board and believe them to be irrelevant to the proceedings. We offer this information simply to rebut the veracity of claims that this is “an industry that has shamefully lacked African-American representation.”

## **I. INTRODUCTION**

### **A. Description of Parties and Interest**

The National Solid Wastes Management Association (“NSWMA”) is a trade association representing companies in North America that provide solid, hazardous and medical waste collection, recycling and disposal services. Members of NSWMA operate in all 50 states and the District of Columbia and share a common mission to promote the management of waste in a manner that is environmentally responsible, efficient, profitable and ethical, while benefiting the public and protecting employees.

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<sup>1</sup> *See also* Letter from John W. Carrington, Sr. to Vernon Williams (January 23, 2006); Letter from Sen. Bill Owens (Ret.) to Vernon Williams (January 23, 2006).

The Solid Waste Association of North America ("SWANA") is a national professional association representing individuals from municipalities and private sector businesses that provide solid waste and recyclables collection, processing, transfer, and disposal. Members of SWANA and its Massachusetts chapter, which is also a party here, include construction and demolition debris, collection, processing, transfer, and disposal facilities throughout the United States and the Commonwealth. SWANA's mission is to advance the practice of environmentally and economically sound management of municipal solid waste in North America. In support of this mission, SWANA is involved in educating and training its membership on sound solid waste management practices that are environmentally responsible, efficient, and economically sound while protecting public health and safety.

The Massachusetts Municipal Association ("MMA") is a non-profit, non-partisan association whose members include 347 of the 351 cities and towns in Massachusetts. MMA's affiliated organizations include associations of mayors, selectmen, municipal managers, and human resource professionals. MMA serves as the advocacy group that speaks on behalf of the interests of Massachusetts cities and towns on state and federal legislation and, on occasion, court cases.

The Construction Materials Recycling Association ("CMRA") is a non-profit association that promotes the recycling and reuse of construction and demolition materials throughout North America.

The Integrated Waste Services Association ("IWSA") is a national trade group representing 67 of the 89 waste-to-energy facilities in 29 states around the country that generate approximately 2,750 megawatts of power from the disposal of about 29 million tons of trash each year. IWSA members include 28 municipalities and an equal number of private companies.

The seven waste-to-energy facilities operating in Massachusetts are represented by IWSA, including Haverhill Resource Recovery, Springfield Resource Recovery, Pittsfield Resource Recovery, SEMASS Resource Recovery, Wheelabrator Millbury Resource Recovery, Wheelabrator North Andover Resource Recovery, and Wheelabrator Saugus Resource Recovery.

New Bedford Waste Services, LLC is the operator of a permitted solid waste management facility in New Bedford, Massachusetts, and at that facility processes significant quantities of construction and demolition debris to extract valuable commodities.

**B. Procedural History**

NET filed a petition for exemption for construction, acquisition and operation as a rail carrier on December 3, 2003 in STB Finance Docket No. 34391. The Board conditionally granted an exemption on March 2, 2004, and reserved final decision until after completion of the environmental review process.

On August 4, 2004, the Board's Section of Environmental Analysis ("SEA") issued an Environmental Assessment of the proposal. The Massachusetts Department of Environmental Protection ("MADEP") and others commented on the lack of detailed information regarding the nature of the solid waste activities that would occur on the site. By letter of September 29, 2004, following the close of the formal comment period, NET provided new and critical information that materially altered the proposal. This information included, among other things, disclosure that NET intended to manage loose waste materials, store loose waste materials, grind different waste streams, segregate waste materials, bale waste materials, manage unspecified non-conforming waste materials, transport waste materials on a conveyor system, and crush waste materials using heavy mobile equipment. *See New England Transrail, LLC, Petition for Exemption*, STB Finance Docket No. 34391 (STB served May 3, 2005) at 2; Letter of John

McHugh to Victoria Ruston, Chief, SEA, dated September 29, 2004, in STB Finance Docket No. 34391.

SEA issued a Post Environmental Assessment on December 22, 2004, after which NET submitted additional information on the proposed site. A number of parties, including the Coalition Parties, petitioned the Board for additional review of NET's project on the basis that NET had provided inadequate, incomplete, and misleading information about its proposal. In its decision dated May 3, 2005, the Board dismissed NET's petition, citing to NET's material changes to its proposal after the SEA had completed its review. The Board found that "NET did not provide SEA with important details about the project... . In short, ... NET presented a version of the project that is fundamentally different from the modifications that it submitted to MADEP...." *New England Transrail, LLC, supra* at 4-5.

On December 5, 2005, NET filed a new petition under a new docket number (STB Finance Docket No. 34797) requesting an exemption from 49 U.S.C. § 10901 ("NET Petition") on an expedited basis. The Board granted an extension for responses to January 27, 2006.

### **C. NET's Proposal**

NET has obtained an option to purchase a 53-acre parcel of industrial land in Wilmington, Massachusetts from Olin Corp. The parcel, formerly occupied by a chemical plant, is the subject of ongoing environmental remediation activity. NET proposes to acquire the parcel, restore and construct new track, and construct significant improvements on the property, including installation of buildings, underground utilities, storm water management system, new roadways, and an asphalt cap for part of the contaminated site. NET Petition at 8-9. NET proposes at an unspecified time in the future to connect to the Wilmington-Woburn-West Medford branch line of the Boston & Maine Railroad ("B&M") and the Boston-Concord line operated by the Massachusetts Bay Transportation Authority ("MBTA"). *Id.* at 6. NET

concedes that these connections are purely speculative at this time: it does not have any agreements with either railroad and even the "precise locations of these connections are still to be investigated." *Id.*

NET's petition states that the proposed facility will "transload" a variety of commodities, including aggregates, brick, cement, construction and demolition debris ("C&D Debris"), contaminated soils, liquids chemicals, non-explosive liquids and dry chemicals, non-hazardous solid waste, paper products, plastics, scrap steel and recycled paper. NET Petition at 10 n.15.

NET proposes to handle "pumpable" materials in what is described as the northern area of the site; bulk materials in the western area of the site; and C&D Debris and municipal solid waste ("MSW") in the central area, utilizing a so-called Transloading Structure. In addition, NET has provided some limited detail regarding "the proposed grinding, baling, and other processes to which construction waste and solid waste could be subjected at the Olin site" as required by the Board's May 3, 2005 decision, and those details confirm that extensive solid waste management activities will occur at the facility. NET plans to dump C&D Debris on a concrete slab and "segregate certain metal and wood or other materials" which will be transported to "an appropriate receiving facility by rail...." NET Petition at 11. Remaining C&D Debris will be conveyed to shredders that will reduce its size. *Id.* MSW arriving as bulk material will be unloaded from trucks to the concrete floor where it will be baled and loaded into rail cars. *Id.* at 12.<sup>2</sup>

In short, NET will manage and store loose waste materials, grind different waste streams, sort and separate components of waste streams that are shipped to the facility, ship some of those

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<sup>2</sup> NET indicates that some MSW will arrive pre-baled but provides no quantity or ratio of baled versus unbaled MSW it expects to receive and process.

and potentially other treatment, segregated into waste types, aggregated, and containerized on site. Only after these solid waste management activities have been completed will the material be stored and placed in containers for transloading to railcars for shipment off-site by an entity other than NET for further processing and disposal.

The function of the facility that is integral to the operation of a railroad is the final loading of materials onto rail cars and the rail transport of the materials by an entity other than NET. All of the other above-described activities that will occur will be identical to those currently performed by a large network of waste handlers who have no integral nexus whatsoever to railroads, except as customers. These activities are simply not part of the operation of a railroad.

Currently, solid waste operators compete against each other on a level playing field where all businesses are subject to the same important and comprehensive requirements, and state and local governments regulate these facilities equally. The Massachusetts solid waste regulatory regime is typical of state programs throughout the country. Thus, this is not simply an issue of introducing unwarranted distortion into the marketplace within Massachusetts, but the nation as a whole.<sup>3</sup>

If the Board proceeds to apply its exclusive jurisdiction to solid waste management facilities that choose a location near a railroad, this will precipitate a "race to the bottom," as new bare bones facilities are constructed to manage waste streams at far lower cost than the current environmentally protective facilities that exist.

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<sup>3</sup> Indeed, as the Board is well aware, this issue is also before the Board concerning a similarly-situated facility in New Jersey. See *National Solid Wastes Management Association, Petition for Declaratory Order*, STB Finance Docket No. 34776.

Solid waste processing facilities are controversial operations. Adjacent property owners, local governments, environmental groups, and citizens groups often offer stiff opposition due to the perception that various adverse impacts will result. The exploration of these impacts and the balancing of competing interests and needs are currently managed through the lengthy and highly technical facility siting and permitting processes that are administered under state and local environmental laws and regulations. If the Board applies its exclusive jurisdiction to solid waste management facilities, the Board will become the sole regulator of these often controversial facilities and will have sole responsibility for the establishment of technical standards protective of public health and the environment, for the arbitration of often bitter siting, construction, and operational disputes, and for inspecting and enforcing applicable requirements.

One critical area where this new regulatory structure will have immediate economic impact is the recycling industry. Facilities such as the one proposed by NET will be capable of, and are likely designed specifically for the purpose of, bypassing the waste separation and disposal ban requirements adopted by the Massachusetts Department of Environmental Protection ("MADEP") at 310 CMR 19.017. These requirements mandate the separation of many different recyclable materials from waste streams by prohibiting their transfer or disposal prior to separation. See Verification of Michael A. Camara (January 26, 2006) at ¶ 17 (hereinafter "Camara Verification") (attached at Tab 1); Verification of Jesse Jeter (January 26, 2006) at ¶ 17 (hereinafter "Jeter Verification") (attached at Tab 2). Indeed, NET has already declared that it will not comply with the waste separation and disposal ban, which it claims is merely economic and not for the protection of health and safety. NET Petition at 15. While there is a component of the waste ban that seeks to supply a steady stream of recyclables to

recycling facilities throughout New England, the removal of significant amounts of recyclable materials from New England's limited number of landfills is clearly a matter of environmental protection as well as health and safety since recycling avoids the need to extract and process virgin materials, conserves energy, and conserves scarce landfill space needed for other materials.

As another example of immediate economic impact, existing solid waste facilities in Massachusetts are subject to significant local control, including site suitability evaluations by MADEP and site assignment by municipalities, in accordance with G.L. c. 111, § 150A, special permitting and site plan review procedures in accordance with the state zoning act, G.L. c. 40A, and wetlands regulation pursuant to the Wetlands Protection Act, G.L. c. 131, § 40, and local by-laws. *See* Camara Verification at ¶¶ 15-17; Jeter Verification at ¶¶ 15-17; Verification of Steve Changaris (January 26, 2006) at ¶¶ 4-7 (hereinafter "Changaris Verification")(attached at Tab 3). The ability to avoid this extensive permitting and approval process will allow NET to bypass the important negotiations with local authorities that precede facility construction and lead to the balancing of interests and reduced environmental impacts. These negotiations sometimes include the provision of substantial financial benefits to municipal governments to compensate for the costs and impacts of hosting facilities. By seeking exclusive Board jurisdiction, NET seeks to bypass a critical cost component of developing and operating a solid waste facility in Massachusetts.

The difficulty in completing the local siting process in Massachusetts strongly suggests that the management and diversion of waste materials is the true purpose for the proposed facility. In support of the prior NET petition, Robert W. Jones, III, the managing principal of

NET, stated that it is extremely difficult to site and build a waste processing facility in

Massachusetts. Mr. Jones certified that:

Due to local permitting laws and regulations, the siting of any such facility is nearly impossible. Nobody wants a waste handling facility in their town, neighborhood or county. Local laws in Massachusetts in particular, give local communities essentially complete veto power over the location of any waste facility. Any application to the state must begin with local site approval. Thus there are almost no facilities to load waste onto railcars.

See Verified Statement of Robert W. Jones, III (March 2, 2005) at ¶ 7 filed in *New England Transrail*, STB Finance Docket No. 34391 (hereinafter "March 2005 Jones Verification"). NET therefore conceded that its proposal was intended to bypass the difficult permitting process in Massachusetts.

It is clear from the existence of the many solid waste processing facilities in Massachusetts, including the many facilities that ship waste materials by rail, that waste handling facilities are in fact constructed in Massachusetts and that many of these facilities either directly ship waste materials by rail (see Changaris Verification ¶¶ 4, 8, 10) or transfer waste materials to other facilities that ship by rail (see Jeter Verification at ¶ 7).

Allowing the NET Solid Waste Facility to proceed under a claim of exclusive Board jurisdiction will unnecessarily introduce economic distortion to the solid waste industry and open the door to nationwide circumvention of the long-standing state and local control and oversight of the storage, transfer, and handling of solid waste. These marketplace distortions will undermine the economic viability of the many solid waste facilities that have played by the rules and to remove state and local authority to regulate the solid waste industry and protect the environment and public health. That weighty regulatory responsibility will be placed directly into the hands of the Board.

## II. DISCUSSION

### A. The NET Solid Waste Facility is not Within the Board's Exclusive Jurisdiction.

1. *The NET Solid Waste Facility Will Not Constitute Transportation by Rail Carrier Under Section 10501 of the ICCTA and Therefore Is Not Subject to the Board's Jurisdiction.*

Contrary to its name, NET is not a rail carrier engaged in transportation and, therefore, its proposed facility does not fall within the statutory definition of "transportation." *See Town of Milford, MA, Petition for Declaratory Order*, STB Finance Docket No. 34444 (STB served Aug. 11, 2004). First, for transloading activities to qualify for an exemption under the Board's jurisdiction, they must be offered by a rail carrier. NET admits that it is not a common carrier. NET Petition at 5.

Instead, NET seeks authority to operate as a rail carrier by "utilizing the rail lines and terminal facilities" described in the NET Petition. *Id.* However, NET has no agreements with *any* railroad for use of its tracks and provides no information on the likelihood of striking a deal with either B&M or MBTA or on a timetable for putting such agreements in place. *Id.* at 6. Unable to establish this threshold issue, NET's petition fails and should be dismissed. If the Board is reluctant to dismiss NET's Petition for a second time, the Board should issue a stay of this proceeding until NET can conclusively demonstrate its status as a rail carrier.<sup>4</sup>

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<sup>4</sup> Even if the rail agreements desired by NET were in place, based on NET's previous description, the B&M will apparently transport all processed wastes from this facility, not NET acting as a railroad. NET itself will not transport any processed wastes by rail, but will only make available to B&M the cars it has loaded with the wastes NET has processed at the NET Solid Waste Facility. The mere fact that NET-processed waste is eventually transported by rail does not magically qualify NET's activities as transportation by rail carrier. In a case raising similar issues, the U.S. Court of Appeals for the Third Circuit has determined that a solid waste facility operator providing only transloading and transfer from trucks to rail carrier was not providing transportation by rail carrier. *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3rd Cir. 2004).

Second, the processing, sorting, grinding, aggregating, and segregating of solid waste do not constitute transportation by rail carrier. These activities, which are admitted by NET, have no nexus to the transportation function that is served by rail carriers. As the Board has previously determined, activities prior to the delivery of waste materials to a rail carrier for transportation do not fall within the Board's exclusive jurisdiction. *See Hi Tech Trans, LLC, Petition for Declaratory Order*, STB Finance Docket No. 34192 (STB served November 20, 2002), at 3; *aff'd, Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3rd Cir. 2004). Furthermore, fabrication activities are not transportation and "many shippers that own and operate locomotives and transloading facilities are not considered to be rail carriers under the statute." *Town of Milford, supra* at 3.

The mere fact that NET claims to be a rail carrier does not establish that its activities constitute transportation by rail carrier. If this were the case, NET could just as readily propose to build a shopping center adjacent to a rail spur and claim that because some goods would be shipped by rail the entire project falls under the exclusive jurisdiction of the Board. It could also propose to build a facility to process and ship sewage sludge, or animal wastes, or myriad other facilities that are difficult to site and are subject to state or local laws. Such facilities would be subject to the same claim that they fall under the exclusive jurisdiction of the Board simply because the proponent claims to be a rail carrier and intends to use an adjacent rail spur.

NET's proposal to load commodities onto rail cars and make the rail cars available to be shipped, presumably by the B&M, is *purely incidental* to its primary intended business of processing, storing, and handling solid waste. NET's claim that it will ultimately place its processed waste onto rail cars does not mean that it will be engaged in "transportation" by rail carrier. *See, e.g., Hi Tech Trans*, 382 F.3d at 308 (Board does not have exclusive jurisdiction

over waste facility where C&D Debris is trucked to facility operated by third party under license from rail carrier, and third party transloaded into rail cars owned and operated by rail carrier, because activity at facility is not transportation by rail carrier); *Hub City Foods, Inc. v. Commissioner of Internal Revenue*, 884 F.2d 320, 323-35 (7th Cir. 1989) (food wholesaler who delivered its products by trucks was not in “transportation business”).

Third, the Board does not know whether NET intends to operate the proposed facility on its own or cede all operations to a solid waste company or other third party. It is critical to the Board’s inquiry to understand the full extent to which a railroad is actually involved in any operation claimed to fall within its exclusive jurisdiction. *See Hi Tech Trans*, 382 F.3d at 308 (third-party C&D Debris processor not engaged in transportation by rail carrier); *Florida East Coast Railway Co. v. City of West Palm Beach*, 110 F. Supp. 2d 1367, 1377-78 (S.D. Fla. 2000), *aff’d*, 266 F.3d 1336 (11th Cir. 2001) (rejecting argument that a facility’s proximity and connection to a railroad shield it from local regulation). The current petition is entirely silent as to NET’s operational intent. This is surprising in light of the verified statement that NET filed with its prior petition, quite clearly stating the following:

We are also in discussions with a company which operates transload terminals nationwide for rail companies and is an expert in doing so. We are discussing the possibility of providing them with a location inside the NET Terminal or, in the alternative, the prospects of their assuming the day to day operation of the transload terminal as the agent of the Wilmington & Woburn Terminal Railroad.

*See* March 2005 Jones Verification at ¶ 4.

Solid waste management facilities presently operating in Massachusetts are not engaged in rail “transportation,” even though a substantial quantity of the solid waste they handle is delivered and shipped to railroads to reach a final destination. The primary purpose of these legitimate waste processing facilities is to receive, separate, process, and otherwise handle solid

waste and then send it out into the stream of commerce, exactly as proposed by NET. Camara Verification at ¶ 7; Jeter Verification at ¶ 7; Changaris Verification at ¶ 13. The NET Solid Waste Facility will have the primary purpose of receiving, separating, processing, and handling solid waste that is then carried into the stream of commerce.

For the foregoing reasons, NET's proposal does not constitute transportation by rail carrier and therefore is not subject to the Board's exclusive jurisdiction.

2. *The NET Solid Waste Facility Will Not Be Integrally Related to the Provision of Interstate Rail Service and Therefore is not Subject to the Board's Exclusive Jurisdiction.*

Even if the Board were to determine that NET is a rail carrier engaged in transportation, the Board's exclusive jurisdiction is limited to those facilities that are integrally related to a railroad's ability to provide transportation services, and even then, the Board has acknowledged that it does not necessarily have exclusive jurisdiction over the construction and maintenance of those facilities. *See Borough of Riverdale, Petition for Declaratory Order, The New York Susquehanna and Western Railway Corporation*, STB Finance Docket 33466 (STB served Sept. 9, 1999). Manufacturing and other facilities owned by a railroad that are not integrally related to the railroad's provision of rail service are clearly not within the Board's exclusive jurisdiction. *See Flynn v. Burlington Northern Santa Fe Corp.*, 98 F.Supp.2d 1186 (E.D.Wa. 2000). Co-location of a business at a rail yard or under claim of railroad control cannot be used to distort the important connection that must exist between the activity and the provision of rail services. *See Florida East Coast*, 110 F. Supp. 2d at 1377 (railroad and third party "were not involved in 'rail transportation' or even activities related to rail transportation at the 15th Street yard; rather [they] entered into an arrangement whereby [the third party], [the railroad's] largest customer, would operate an aggregate distribution operation on [railroad] property."). Consequently, if a facility serves primarily a manufacturing or production purpose, then it is not within the

exclusive jurisdiction of the Board and is subject to state and local law and regulations. *See also Riverdale, supra.*

NET attempts to characterize its waste processing activities as necessary to reduce damage to rail cars and promotion of efficient transfer of cargoes. *See Verified Statement of Thomas Egan (Nov. 7, 2005) ¶¶ 5-8.* NET would have the Board believe that the processing, sorting, grinding, aggregating, and segregating of solid waste at its facility would add no value to the waste material and would relate solely to transportation. This defies common sense and industry practices and is an attempt to cloak the company's true goal: creation of economic value and generation of profit unrelated to transportation activity.

Here, NET admits that it will separate out wood and metals from the waste streams it receives. *See NET Petition at 11.* The metal and wood in these waste streams is a valuable commodity, as is the concrete (*see Camara Verification at ¶¶ 3, 13-14; Jeter Verification at ¶¶ 3, 13-14; and Changaris Verification at ¶¶ 11-12*), but this fact is entirely avoided in NET's presentation. NET appears to have been purposefully ambiguous about what materials it will segregate and the reasons for doing so. In an interesting choice of wording, NET states: "NET will segregate certain metal and wood or other materials that may damage NET's loading equipment and rail cars." NET's description appears to suggest that all material segregation is for purposes of protecting loading equipment and rail cars, but a critical read allows that the language may also mean NET is intending to segregate (1) metal and wood (for purposes unknown) and (2) other materials that may damage NET's loading equipment and rail cars.

Scrap metal currently has such a high market value that, according to a recent newspaper article in *The Boston Sunday Globe*, aluminum siding is being stolen from the sides of buildings and copper fixtures are being removed illegally from buildings. *See Changaris Verification at ¶*

12 and Exhibit 1. Aluminum siding and copper fixtures from demolished buildings are exactly the same material that NET would receive at its facility and that NET seems to suggest would be separated solely to protect loading equipment and rail cars.

Even if it seeks to assert that wood, metal, and concrete would damage equipment, NET has failed to disclose to the Board that this sorting and segregation activity creates significant economic value because these extracted commodities are sold for a profit. The Board has no information on what percentage of revenues NET or its affiliates would expect to receive from the resale of these commodities or from the avoided disposal costs derived when these materials are diverted from disposal. The Board has no information from NET on the true economic impetus for this facility.

The transfer, processing, aggregation, and storage of solid waste is a business in itself, unrelated to the provision of rail transportation. The sorting, bailing, crushing, aggregation, and storage proposed by NET is indistinguishable from the sorting, bailing, crushing, aggregation, and storage performed by scores of solid waste companies that have no connection to rail transportation other than their use of rail for transport. *See Camara Verification at ¶¶ 8-14; Jeter Verification at ¶¶ 8-14.*

At legitimate solid waste processing facilities throughout Massachusetts, the same C&D Debris intended to be received by NET is received, crushed to reduce the size of the pieces of material that must be handled, screened, and separated, often using a conveyor belt, and separated by type for aggregation. *See Camara Verification at ¶¶ 9-11; Jeter Verification at ¶¶ 9-11.* The crushing is a necessary component of processing to ensure that certain recyclable materials such as wood, metals, and concrete will be reduced to a size that can be separated from other material and can be handled. The screening and separation is performed to facilitate the

separation of different commodities that can be recycled and to size the material to specifications necessary for receipt by the different customers who purchase the material. *Id.*; Changaris Verification at ¶ 13. This process creates a product, and significant economic value, from material that is received at the facility as a waste. *See* Camara Verification at ¶¶ 9-11; Jeter Verification at ¶¶ 9-11.

While there may be some incidental benefit for transportation once material has been crushed, separated, screened, and sized, the purpose of these activities is to prepare the material for market, not to prepare it for transportation. *Id.*; Changaris Verification at ¶ 13. The processing of C&D Debris is conducted largely to create economic value and is in no way integrally related to the provision of rail transportation.

The processing activities conducted by properly permitted solid waste facilities are identical to those described by NET in its petition and supporting materials. It is therefore necessary for the Board to conclude that the processing is not related to NET's *ability* to provide transportation services and cannot fall within the Board's exclusive jurisdiction. *See Hi Tech Trans; Florida East Coast*. In fact, the transportation services to be provided from the NET facility are likely to be at most incidental to and supportive of the processing business.

In all cases, the facilities that conduct these activities are heavily reliant on transportation, and a combination of rail, truck, and intermodal transport is used as a support function to the businesses. Rail is an important component of the transportation network used by the solid waste industry. In 2003 alone, 41,497,000 tons of waste and scrap materials were transported by rail, providing gross revenue to rail companies of \$799 million. *See Class 1 Railroad Statistics, Association of American Railroads - Policy & Economics Department, October 28, 2004*. In Massachusetts, substantial quantities of solid waste are shipped by rail, including an intermodal

facility adjacent to the CSX rail yard in Boston and a permitted solid waste facility in Brockton. Changaris Verification at ¶ 10. However, the importance or even frequency of rail use by solid waste shippers does not make solid waste processing a transportation function.

NET proposes to transform the waste materials it receives before there is any connection to rail activities. Such activity cannot rationally be construed as merely a transload. This is not simply an operation that transfers goods already in shipment from one transport mode to another. The processing activities described by NET are not integrally related to the provision of rail service and are therefore not within the exclusive jurisdiction of the Board.

**B. Insufficient Detail in NET's Proposal Prevents the Board from Making a Fully-Informed Decision and Prevents the Granting of Any Preferential or Expedited Treatment.**

NET continues to provide insufficient information regarding its proposed facility and operations, a flaw that proved fatal to its first petition, and the scant details it has provided confirm that it should not be granted expedited review or a reduction in filing fees.

Despite the Board's admonition that NET "be as forthcoming as possible with all project details," *New England Transrail, supra* at 5, the Board still does not know many critical facts about the project. For example:

- NET has not provided information on the distances from the waste handling areas to the nearest property lines or to the closest sensitive receptors to waste handling areas;
- NET has failed to evaluate the noise or odor impacts from the proposed activities at the property line<sup>5</sup>;

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<sup>5</sup> NET proposes to reduce odor from MSW simply by baling. See Ryan Verification at ¶ 11. The Board has no information to support the premise that the management of putrescible MSW simply by baling is an effective odor control strategy for MSW management, particularly where management will occur either in a fabric building or outdoors. NET also proposes to comply with MADEP technical specifications for mitigation of odors, despite the fact that NET cannot identify any MADEP written technical specifications for odors.

- NET has failed to evaluate the air emission impacts from the proposed waste handling activities, including shredding, crushing, and baling operations<sup>6</sup>;
- NET has failed to provide a traffic analysis to allow evaluation of public safety impacts from truck traffic;
- NET has failed to provide stormwater design information to ensure that the site will adequately address stormwater impacts from waste receipts and handling;
- NET proposes to excavate up to 17,600 cubic yards of soils that may very well be contaminated without knowing if there are environmental impacts from that excavation;
- NET proposes to build a 12-13 foot deep “recessed concrete area” for MSW management, previously designated by NET as the “vault”, but has provided no information on the capacity of this storage structure or how it will be maintained so as not to violate NET’s assurance that it will not store MSW on site;
- NET proposes to “temporarily” store bulk materials in the northeastern area of the site and asserts this will present no environmental risk, without any clarification of the materials to be stored, the potential impacts, or proposed mitigation; and
- NET has failed to provide the ratios of intended commodity receipts or sufficient details concerning the methods and procedures for their storage, handing, or processing other than that different types of transloading will occur.<sup>7</sup>

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<sup>6</sup> NET proposes to comply with technical specifications for mitigation of dust. See Ryan Verification at ¶ 12. The Board has no information to evaluate what emissions would be expected, has no commitment from NET on what specifications it is willing to meet, and has no identified air emission control technologies to be used, if any.

<sup>7</sup> Interestingly, while the current petition is devoid of this information, NET’s managing principal previously certified to the Board for the prior NET petition that “(w)aste is expected to be less than half the terminal’s business upon start up and to become far less than half as time goes on.” See March 2005 Jones Verification at ¶ 2.

Without critical details about NET's proposed operation, the Board is in no position to make a determination on the request for a exemption. NET seems to have determined that as long as it proposes to build a facility that is "'state of the art' within the railroad transloading industry" that it has provided sufficient detail to the Board on facility design. *See Ryan Verification at ¶ 2.* However, NET provides no analysis of whether the facility would be considered state of the art in the solid waste industry or whether the facility provides sufficient environmental protections such that NET could ever hope to obtain state and local solid waste permits and authorizations as currently designed. Indeed, from the little detail that is provided, the proposed facility could not constitute state of the art for a solid waste processing facility without substantial and costly enhancements. *Changaris Verification at ¶ 9.*

This litany of omissions is particularly blatant given the consequences that similar omissions had during its previous petition. Yet, in this same deficient petition, NET requests preferential treatment from the Board in the form of an expedited review that would circumvent SEA's full environmental review and a public inquiry into environmental impacts, a reduction in filing fees, and reliance on the Board's conditional approval on NET's original petition.

The NET Petition is materially different from the project *that was actually reviewed* by the Board prior to its conditional approval and by SEA. NET points to the alleged similarity between the current project and the project that was ultimately before the Board at the time of the its decision in May 2005; however, that was a substantively different project than the one the Board and SEA actually evaluated months earlier. NET disclosed critical information – particularly with respect to its handling and processing of MSW and C&D Debris – after the Board's conditional approval and SEA's Post-EA. Consequently, any reliance by NET on the Board's conditional approval in STB Finance Docket No. 34797 is seriously misplaced. NET's

predicament here is self-created, and the Board should not reward NET for its past errors. The requests for preferential and expedited treatment should be denied.

Similarly, the Board should reject NET's request to waive filing fees. NET simply cannot establish that "the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor," 49 CFR § 1002.2(e)(2)(ii). The errors in the prior NET filing led to enormous expenditures of time and money by interested parties who were compelled to pursue filings with the Board to ensure that the record was accurate. NET's need to pay another filing fee is the direct result of its past actions and errors.

**C. The State Requirements for Solid Waste Facilities are not Pre-Empted by 49 U.S.C. § 10501(B).**

Even if the Board were to determine that it had exclusive jurisdiction over the NET Solid Waste Facility, state and local environmental and public health laws are not pre-empted under Section 10501(B) of the ICCTA.

"Consideration under the Supremacy Clause starts with the basic assumption that *Congress did not intend to displace state law.*" *Florida East Coast*, 110 F. Supp. 2d at 1327 (emphasis added). "The task is to identify the domain expressly pre-empted because an express definition of the pre-emptive reach of a statute supports a reasonable inference that Congress did not intend to preempt other matters." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541 (2001).

The preemption analysis begins with the language of the statute. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999).

(b) The jurisdiction of the [Surface Transportation Board] over-

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal and State law.

49 U.S.C. § 10501(b)

The ICCTA clearly does not specifically address solid waste, but rather focuses on rail transportation and related activities. Thus, based on the admonition of the Supreme Court in *Lorillard*, the presumption must be that Section 10501 preemption is limited to the rail transportation portion of a project and is not intended to reach and include solid waste management activities because the relationship between the two is indirect at most. See *Lorillard*, 533 U.S. at 541.

This is especially so in light of the federal-state partnership that exists in the solid waste management area as established pursuant to the Resource Conservation and Recovery Act ("RCRA"), 49 U.S.C. § 6902(7). RCRA contains a mandate that the states must establish and implement solid waste management plans. See 49 U.S.C. §§ 6942-48. Congress specifically provided in RCRA that the states would play the primary role in the management and regulation of hazardous and solid waste. See *Resource Inv., Inc. v. U.S. Army Corps of Engineers*, 151 F.3d 1162, 1164 (9th Cir. 1998); *Clean Harbors of Braintree, Inc. v. Bd. of Health of Braintree*, 409 Mass 834, 840, 570 N.E.2d 987, 990 (1991).

Federal courts have been cautioned not to apply preemption language too broadly. See *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995). Section 10501(b) does not state that laws "affecting" or "having an effect on" permitting or operation of rail transportation are pre-empted. Instead, Congress established a

narrow area of exclusive jurisdiction: *with respect to regulation of rail transportation*. That phrase must be understood within the context of the statute. *See id.* at 656.

The focus of the ICCTA was to remove direct state regulation of railroads, which was previously permitted for intrastate rail transportation. *See, e.g., Burlington N. Santa Fe Corp. v. Anderson*, 959 F.Supp. 1288 (D. Mont. 1997) (ICCTA pre-empts Montana law authorizing state agency to exercise regulatory authority over railroad agencies in Montana); *CSX Transp., Inc. v. Georgia Public Serv. Comm'n*, 944 F.Supp. 1573 (N.D.Ga. 1996) (ICCTA pre-empts state regulatory authority over railroad closings); *Burlington N. Railroad Co. v. Paige Grain Co.*, 249 Neb. 821, 545 N.W.2d 749 (1996) (After ICCTA, State Public Service Commission no longer had jurisdiction over discontinuance of Railroad service agency).

Where state and local laws do not directly regulate railroads and their transportation function, they are not preempted. The Eleventh Circuit Court of Appeals held in *Florida East Coast* that local zoning and licensing ordinances were not regulations *with respect to regulation of rail transportation* and, therefore, did not fall under the express pre-emption provision of the statute. *Florida East Coast Railway Co. v. City of West Palm Beach*, 266 F.3d 1336 (11th Cir. 2001). Similarly, Massachusetts and local solid waste management laws and regulations are not regulations “with respect to regulation of rail transportation.”

The solid waste processing aspect of the proposed NET Solid Waste Facility performs the same non-transportation related services as many other facilities in Massachusetts that are not located on a rail spur and are not owned by a rail carrier. These are the same type and manner of non-transportation services as were before the Eleventh Circuit in *Florida East Coast*. Although the *Florida East Coast* court declined to address whether local zoning laws could limit the solid waste transfer operations if the railway operated the facility, the Board should embrace the

*Florida East Coast* interpretation of the limitation of pre-emption by its terms and should determine that non-discriminatory state and local solid waste regulations are not pre-empted by the ICCTA, provided they are not targeted at railroads.

Moreover, the Board has repeatedly stated “nothing in section 10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental Statutes such as the Clean Air Act, the Clean Water Act and the Safe Drinking Water Act, unless the regulation is being applied in such a manner as to unduly restrict the railroad from conducting its operations or unreasonably burden interstate commerce.” *Green Mountain Railroad Corporation, Petition for Declaratory Order*, STB Finance Docket No. 34052 (STB served May 28, 2002) at 6, citing *Friends of the Aquifer, City of Hauser, et al*, (STB Finance Docket No. 33966 (STB served Aug. 15, 2001) at 5-6; see also *Boston & Maine Corp., Joint Petition for Declaratory Order*, STB Finance Docket No. 33971 (STB served May 1, 2001) at 9. The Board further stated: “Whether a particular Federal environmental statute, local land use restriction or other local regulation is being applied so as to unduly restrict the RR from conducting its operations, or unreasonably burden interstate commerce, is a fact-bound question.” *Green Mountain Railroad*, at 6-7.

In this case, at the direction of Congress, state and local laws and regulations in Massachusetts and similar non-federal laws and regulations throughout the United States operate in lieu of federal solid waste requirements under RCRA. As they apply to the NET proposal, there is nothing in the record that suggests these laws and regulations would impose an

unreasonable burden on interstate commerce.<sup>8</sup>

Moreover, as discussed above, pre-empting such laws would dramatically distort the current marketplace, and result in discrimination against all other solid waste transfer stations that are subject to state and local solid waste management laws and regulations. Therefore, the burden rests squarely on NET to demonstrate why application of Massachusetts and local solid waste management laws and regulations “would unduly restrict” NET from conducting its operations, or “unreasonably burden interstate commerce.” The Coalition Parties respectfully suggest that this burden cannot be met.

The Coalition Parties do not seek to deny NET the ability to construct any particular facility, to apply state or local law to the regulation of tracks and switches, or to interfere in any way with trackage rights. The Coalition Parties request only that NET comply with the same state and local solid waste laws and regulations as required by all other waste processing facilities in Massachusetts.

The Board should determine that the state and local solid waste management laws and regulations applicable to the NET Solid Waste Facility do not unreasonably burden interstate commerce, and do not impose an unreasonable burden on interstate transportation, and therefore are not pre-empted.

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<sup>8</sup> It does not appear that the Board could disagree with this proposition based on the limited facts supplied by NET about its proposed facility and operations. No discriminatory impact could be shown from the application of state and local laws. *Borough of Riverdale, Petition for Declaratory Order, The New York Susquehanna and Western Railway Corporation*, STB Finance Docket 33466 (STB served Sept. 9, 1999).

### **III. REQUEST FOR HEARING**

The Coalition Parties respectfully request that the Board schedule an informal hearing in accordance with the provisions of 49 CFR § 1121.4 at or near the locus of the proposed site in order to receive oral comments from the many adversely affected parties on the issues addressed in the Petition and in other papers filed on this matter. A hearing is necessary so that the Board may fully understand the importance and far reaching consequences of its decision on NET's petition. There are currently several petitions pending before the Board relating to solid waste facilities, and it is important for the Board to fully consider the consequences of its decision on the solid waste industry and the state and local governments that are so heavily involved in regulating the industry.

### **IV. CONCLUSION**

The importance of the Board's decision in this matter cannot be overstated for the companies that operate legitimate solid waste facilities and the communities in which they are located. Should the Board assert exclusive jurisdiction over the facility simply because it is located on a rail spur, this will have enormous consequences for the solid waste industry and its regulatory oversight. Preemption and exclusive Board jurisdiction over this facility would:

- (i) supersede the comprehensive network of state and local solid waste facility siting, construction and operating standards that currently exist in Massachusetts and other states to protect public health and the environment;
- (ii) create an unprecedented regulatory and environmental protection gap in an industry that is uniformly and heavily regulated in Massachusetts by state and local governmental bodies;
- (iii) undermine the economics of the solid waste management industry by creating an unfair competitive advantage for those who locate new facilities on rail spurs, immune to state or local laws and regulations; and
- (iv) severely undermine the recycling industry in New England and beyond, which relies heavily on feedstock from mandatory separation programs required only by state regulation.

The Coalition Parties do not question the Board's the exclusive jurisdiction to regulate rail carriers and transportation by rail. Instead, the Coalition Parties contest NET's request that the Board extend its exclusive jurisdiction to extend to solid waste facilities, thereby penalizing responsible solid waste operators who have invested hundreds of millions of dollars in creating safe and efficient waste management and disposal facilities and recycling facilities, and the municipal and state regulatory entities that have a substantial stake in this issue.

For the forgoing reasons, the Coalition Parties respectfully request that the Board deny the exemption requested by NET and find that the proposed NET facility is (i) not within the exclusive jurisdiction of the Board under Section 10501(b) of the ICCTA and is therefore not entitled to an exemption under Section 10502; or (ii) is subject to Massachusetts and local laws and regulations governing solid waste facilities because those laws and regulations are applied in a non-discriminatory manner and do not unreasonably burden interstate commerce, and are therefore not pre-empted under Section 10501(b).

The Coalition Parties also respectfully request that the Board schedule an informal hearing in accordance with the provisions of 49 CFR § 1121.4 at or near the locus of the proposed site in order to receive oral comments from the many adversely affected parties on the issues addressed herein and in replies filed on this matter.

DATED: Wellesley, Massachusetts  
January 27, 2006

Respectfully submitted,

NATIONAL SOLID WASTES  
MANAGEMENT ASSOCIATION  
and  
SOLID WASTE ASSOCIATION OF  
NORTH AMERICA  
and  
SOLID WASTE ASSOCIATION OF  
NORTH AMERICA - MASSACHUSETTS  
CHAPTER  
and  
MASSACHUSETTS MUNICIPAL  
ASSOCIATION  
and  
CONSTRUCTION MATERIALS  
RECYCLING ASSOCIATION  
and  
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and  
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By their attorneys,

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By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2006, I served the foregoing Reply of National Solid Wastes Management Association, et al. to New England Transrail, LLC's Petition for Exemption from 49 U.S.C. § 10901 by causing a copy to be delivered by first class mail, postage prepaid, to:

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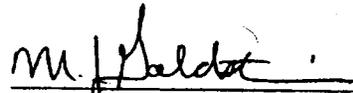
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\_\_\_\_\_  
Marc J. Goldstein

**TAB 1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 34797

---

NEW ENGLAND TRANSRAIL, LLC D/B/A WILMINGTON AND WOBURN  
TERMINAL RAILROAD CO. 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, MA

---

**VERIFICATION STATEMENT OF MICHAEL A. CAMARA**

1. My name is Michael A. Camara and I am President of New Bedford Waste Services, LLC ("NBWS"), a Massachusetts limited liability company which owns and operates a construction and demolition debris ("C&D") solid waste processing facility in New Bedford, Massachusetts. I have been actively involved in the solid waste industry for more than twenty years.

2. NBWS is a member of the National Solid Wastes Management Association ("NSWMA"). The purpose of this verified statement is to explain the operation of the NBWS facility, provide information about the solid waste industry in Massachusetts, and contrast the operation of the NBWS facility to the description of the facility proposed to be constructed by New England Transrail, LLC ("NET") in its Petition for Exemption from 49 U.S.C. § 10901, filed with the Surface Transportation Board in December, 2005.

3. NBWS operates a permitted solid waste processing facility in New Bedford, Massachusetts (the "NBWS Facility"). The NBWS Facility receives, inspects, and processes C&D, separates the C&D into various commodities and waste streams, and then ships the commodities and waste streams to various customers, including other processing facilities,

recycling markets, and disposal facilities. Of particular value is the metals, wood and concrete that are extracted from the incoming C&D and directed to market.

4. The generation of C&D waste streams has grown dramatically in eastern Massachusetts as the region has increased in urban density. The construction and rehabilitation of buildings generates large quantities of C&D, and historically this C&D was simply disposed of along with other solid wastes. However, as the prices of raw materials have increased, robust recycling markets have developed for various components of the C&D waste stream.

5. C&D waste, which was once viewed as simply a waste material, is now a valuable commodity and source of low cost feed stock for a variety of manufacturing and raw material uses. Simply put, extracted C&D has great value, both for the avoided disposal costs and for the value of specific constituents. It is rare that bulk quantities of C&D are simply shipped for disposal without processing, as this is akin to simply throwing money away.

6. To extract value from C&D, it must be processed. When a construction project generates C&D waste, the waste is typically stored in metal roll off containers at the job site as a mixture of many different waste materials. Inside those containers are many valuable commodities, but they need to be processed and separated to capture their value in the marketplace.

7. The NBWS Facility, just like many similar facilities throughout the country, exists to process and separate commodities from mixed C&D loads. The NBWS Facility receives containers full of mixed C&D wastes and processes and separates those waste to extract economic value. Following the processing and separation activities, the materials are shipped from the facility to many different locations.

8. When C&D arrives at the NBWS Facility, it is subjected to a variety of inspections to ensure that no hazardous wastes, special wastes or other banned materials are received. These inspections include visual and camera inspections, and occur at the facility scale as shipments arrive, on the facility tipping floor when the material is off-loaded, and additionally by equipment operators when the material is handled.

9. At the NBWS Facility, C&D is sorted, grinded, screened, and separated. These activities reduce the size of the pieces of material that must be handled, place them in a more usable form for sale, and allow them to be segregated by commodity type. These activities are not conducted for purposes of transporting the material from the facility; instead, they are necessary components of processing to ensure that certain recyclable materials such as wood and concrete will be reduced to a size that can be separated from other materials and can be handled.

10. In our processing building, we use conveyor belts to facilitate separation of commodity streams from waste materials.

11. Throughout the processing activities, our goal is to separate different commodities that can be recycled and to size the material to specifications necessary for receipt by the different customers who purchase our material. None of these activities is conducted for the sole purpose of facilitating transportation. While there may be some incidental benefit for transportation from the conduct of shredding, separation, screening and sizing, the purpose of these activities is to segregate reusable material for market, not to prepare the received material for transportation.

12. I have read the verification statement of Robert Jones of NET, dated November 30, 2005. Mr. Jones describes the proposed NET facility activities as including the processing of C&D to separate out wood and metal, the use of conveyor belts for C&D, and the shredding of

C&D for sizing purposes. It appears that only after these solid waste management activities have been completed will the material actually be transloaded, that is, the final shipping containers full of wastes will be stored and loaded for off-site transport. These functions appear to be the exact same processing activities that we conduct at the NBWS Facility. It would be surprising at the least if NET were to conduct these activities but then ship its commodities for disposal.

13. Mr. Jones further states that NET “will segregate certain metal and wood or other materials that may damage NET’s loading equipment and rail cars.” As is the case with the NBWS Facility, my experience in the solid waste industry suggests that while NET’s metal and wood segregation activities may have some small benefit for transportation purposes, the predominant purpose of these activities is to extract metal and wood as valuable commodities. In my experience, the processing described by Mr. Jones is not necessary for transport alone.

14. Mr. Jones also states that the NET facility will not process solid waste because it will not induce a “change to the molecular structure of C&D and MSW nor will it produce a different product than the materials originally delivered to it or shipment.” You don’t need to be a materials scientist to know that when you receive a roll off full of mixed wastes and you pull out valuable material, crush and size it, and send it off as a product, you have processed the mixed wastes for profit. This activity has nothing to do with transporting C&D by rail. It is a completely separate business.

15. The NBWS Facility is subject to stringent environmental permitting and regulation. The facility has demonstrated that it meets protective site suitability conditions in order to obtain a solid waste facility site assignment under Massachusetts law from the Department of Environmental Protection (“MA DEP”) and the City of New Bedford. The facility has obtained design and construction approval from the MA DEP prior to commencing

construction, and operating approval from the MA DEP prior to commencing operations. The facility is also subject to the many regulatory provisions of the MA DEP solid waste regulations at 310 CMR 19.000, including the waste handling provisions of 310 CMR 19.200.

16. MA DEP has the authority to seek very substantial penalties for violations of environmental provisions. Failure to comply with these environmental requirements gives rise to criminal felony liability and penalty exposure of up to \$25,000 per day for violations under Massachusetts General Laws Chapter 111, §150A.

17. At the NBWS Facility, we are required by state and local law to conduct many activities to protect worker health, our communities, and the environment. Among these requirements are the following:

a. We were required to obtain a site assignment from the MA DEP and the New Bedford board of health. The site assignment process is costly, difficult and typically results in the imposition of extensive and burdensome conditions.

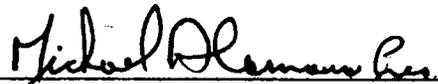
b. We were required to construct our facility to comply with the design standards established by DEP at 310 CMR 19.200 *et seq.* Compliance with those standards is costly, as they mandate detailed engineering, extensive environmental protections, and safeguards for our communities.

c. We are required to conduct inspections of incoming wastes to ensure that we identify any hazardous wastes, asbestos containing wastes, or other prohibited wastes prior to processing. These inspections are elaborately regulated under our permits, the MA DEP solid waste regulations, and required waste ban inspection plans. *See* 310 CMR 19.207(8) and (9). These inspections are costly, as they require intensive commitments of labor.

d. We are prohibited from transferring for disposal a long list of banned materials. See 310 CMR 19.017. The MA DEP mandates this diversion in an intensive regulatory program that applies uniformly to all waste handlers (as opposed to waste transporters), and that applies to our facility regardless of which modes of transportation we employ to ship waste materials. We were required to prepare elaborate waste ban plans for MA DEP approval, and we must now comply with the provisions of these plans, including extensive material tracking and recordkeeping requirements and inspection procedures. Compliance with these waste bans is costly.

#### VERIFICATION STATEMENT

I, Michael A Camara, President of New Bedford Waste Services, LLC, verify under penalties of perjury that I have reviewed the foregoing statement and state that the facts set forth therein are true and correct based upon my personal knowledge, and that I have authorized counsel for NSWMA to file the foregoing statement with the Surface Transportation Board. Signed on this 26<sup>th</sup> day of January, 2006.

  
\_\_\_\_\_  
Michael A. Camara

TAB 2

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 34797

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NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND WOBURN  
TERMINAL RAILROAD CO - 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

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**VERIFICATION STATEMENT OF JESSE JETER**

1. My name is Jesse Jeter and I am Vice President of Business Development at Jet-A-Way, Inc. ("Jet-A-Way"), a Massachusetts corporation which owns and operates a construction and demolition debris ("C&D") solid waste processing facility in Boston, Massachusetts. I have been actively involved in the solid waste industry, and specifically in the construction and demolition debris processing business, for over twenty years.

2. Jet-A-Way is a member of the National Solid Wastes Management Association ("NSWMA"). The purpose of this verified statement is to explain the operation of the Jet-A-Way facility, provide information about the solid waste industry in Massachusetts, and contrast the operation of the Jet-A-Way facility to the description of the facility proposed to be constructed by New England Transrail, LLC ("NET") in its Petition for Exemption from 49 U.S.C. § 10901, filed with the Surface Transportation Board in December, 2005.

3. Jet-A-Way operates a permitted solid waste processing facility in Boston, Massachusetts (the "Jet-A-Way Facility"). The Jet-A-Way Facility receives, inspects, and processes C&D, separates the C&D into various commodities and waste streams, and then ships the commodities and waste streams to various customers, including other processing facilities, recycling markets, and disposal facilities.

4. The generation of C&D waste streams has grown dramatically in the metropolitan Boston area as the region has increased in urban density. The construction and rehabilitation of buildings generates large quantities of C&D, and historically this C&D was simply disposed of along with other solid wastes. However, as the prices of raw materials such as wood, concrete, metal and gypsum have increased, recycling markets have developed for these components of the C&D waste stream. Of particular value are the metals, wood and concrete that are extracted from the incoming C&D.

5. C&D waste, which was once viewed as simply a waste material, is now a valuable commodity and source of low cost feed stock for a variety of manufacturing and raw material uses. Simply put, C&D has great value. It is rare that bulk quantities of C&D are simply shipped for disposal, as this is akin to simply throwing money away.

6. To extract value from C&D, it is necessary to process it. When a construction project generates C&D waste, the waste is typically stored in metal roll off containers at the job site as a mixture of many different waste materials. Inside those containers are many valuable commodities, but they need to be processed and separated to capture their value in the marketplace.

7. The Jet-A-Way Facility, just like many similar facilities throughout the country, exists to process and separate valuable commodities from mixed C&D loads. The Jet-A-Way Facility receives containers full of mixed C&D wastes and processes and separates those waste to extract economic value. Following the processing and separation activities, the materials are shipped from the facility to many different locations. While all shipments from the facility initiate by truck, Jet-A-Way material is routinely transferred to rail for long-haul transport.

8. When C&D arrives at the Jet-A-Way Facility, it is subjected to a variety of inspections to ensure that no hazardous wastes, special wastes or other banned materials are received. These inspections include visual and camera inspections at the facility scale as shipments arrive, inspections on the facility tipping floor when the material is offloaded, and additional inspections by the equipment operators when the material is first handled.

9. Following receipt of C&D material at the Jet-A-Way Facility, it is generally crushed using heavy equipment such as a bulldozer to reduce the size of the pieces of material that must be handled. This crushing is not conducted for purposes of transporting the material from the facility; instead, it is a necessary component of processing to ensure that certain recyclable materials such as wood and concrete will be reduced to a size that can be separated from other material and can be handled.

10. After the C&D material is crushed, it is often brought to our processing building, where it is generally placed on a conveyor belt and sent for screening and separation.

11. Throughout our processing activities, our goal is to separate different commodities that can be recycled and to size the material to specifications necessary for receipt by the different customers who purchase our material. None of these activities is conducted for the sole purpose of facilitating transportation, whether by rail or by truck. While there may be some incidental benefit for transportation once the material has been crushed, separated, screened and sized, the purpose of these activities is to prepare the material for market, not to prepare them for transportation.

12. I have read the verification statement of Robert Jones of NET, dated November 30, 2005. Mr. Jones describes the proposed NET facility activities as including the processing of C&D to separate out wood and metal, the use of conveyor belts for C&D, and the shredding of C&D for sizing purposes. It appears that only after these solid waste management activities have been completed will the material actually be transloaded, that is, the final shipping containers full of wastes be stored and loaded for off-site transport. These functions appear to be the exact same processing activities that we conduct at the Jet-A-Way Facility. It would be surprising at the least if NET were to conduct these activities to separate out valuable commodities but then ship those newly separated commodities for disposal.

13. Mr. Jones further states that NET "will segregate certain metal and wood or other materials that may damage NET's loading equipment and rail cars." As is the case with the Jet-A-Way Facility, my experience in the solid waste industry suggests that while NET's metal and wood segregation activities may have some small benefit for transportation purposes, the predominant purpose of these activities is to extract valuable commodities such as metals, wood and concrete, and the processing is not necessary for transport alone.

14. Mr. Jones also states that the NET facility will not process solid waste because it will not induce a "change to the molecular structure of C&D and MSW nor will it produce a different product than the materials originally delivered to it or shipment." You don't need to be a materials scientist to know that when you receive a roll off full of mixed wastes and you pull out valuable material, crush and size it, and send it off as a product, you have processed the mixed wastes for profit. This activity has nothing to do with transporting C&D by rail. It is a completely separate business.

15. The Jet-A-Way Facility is subject to stringent environmental permitting and regulation. The facility has demonstrated that it meets protective site suitability conditions in order to obtain a solid waste facility site assignment under Massachusetts law from the Department of Environmental Protection ("MA DEP") and the City of Boston. The facility has obtained design and construction approval from the MA DEP prior to commencing construction, and operating approval from the MA DEP prior to commencing operations. The facility is also subject to the many regulatory provisions of the MA DEP solid waste regulations at 310 CMR 19.000, including the waste handling provisions of 310 CMR 19.200.

16. MA DEP has the authority to seek very substantial penalties for violations of environmental provisions. Failure to comply with these environmental requirements gives rise to criminal felony liability and penalty exposure of up to \$25,000 per day for violations under Massachusetts General Laws Chapter 111, § 150A.

17. At the Jet-A-Way Facility, we are required by state and local law to conduct many activities to protect worker health, our communities, and the environment. Among these requirements are the following:

a. We were required to obtain a site assignment from the MA DEP and our local board of health. The site assignment process is costly, difficult and typically results in the imposition of extensive and burdensome conditions.

b. We were required to construct our facility to comply with the design standards established by DEP at 310 CMR 19.200 *et seq.* Compliance with those standards is costly, as they mandate detailed engineering, extensive environmental protections, and safeguards for our communities.

c. We are required to conduct inspections of incoming wastes to ensure that we identify any hazardous wastes, asbestos containing wastes, or other prohibited wastes prior to processing. These inspections are elaborately regulated under our permits, the MA DEP solid waste regulations, and required waste ban inspection plans. See 310 CMR 19.207(8) and (9). These inspections are costly, as they require intensive commitments of labor.

d. We are prohibited from transferring for disposal a long list of banned materials. See 310 CMR 19.017. The MA DEP mandates this diversion in an intensive regulatory program that applies uniformly to all waste handlers (as opposed to waste transporters), and that applies to our facility regardless of which modes of transportation we employ to ship waste materials. We were required to prepare elaborate waste ban plans for MA DEP approval, and we must now comply with the provisions of these plans, including extensive material tracking and recordkeeping requirements and inspection procedures. Compliance with these waste bans is costly.

VERIFICATION STATEMENT

I, Jesse Jeter, Vice President of Jet-A-Way, Inc., verify under penalties of perjury that I have reviewed the foregoing statement and state that the facts set forth therein are true and correct based upon my personal knowledge, and that I have authorized counsel for NSWMA to file the foregoing statement with the Surface Transportation Board. Signed on this 26th day of January 2006.

*Emmanuel A. Christou*

*Jesse Jeter*  
\_\_\_\_\_  
Jesse Jeter

HONALD A. GIESLIK  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
December 8, 2008



**TAB 3**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 34797

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NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND WOBURN  
TERMINAL RAILROAD CO - 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

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**VERIFICATION STATEMENT OF STEVEN G. CHANGARIS**

1. My name is Steven G. Changaris and I am the Northeast Regional Manager of the National Solid Wastes Management Association ("NSWMA"), a position I have held since 1996.
2. As Northeast Regional Manager of NSWMA, I am responsible for, among other things, monitoring solid waste industry practices, trends, and facilities and participating in policy and regulatory developments that affect the solid waste industry. My geographic responsibilities include the New England states, New Jersey, and New York. As part of my duties, I regularly visit solid waste facilities in my region, network with industry officials, and monitor trends in facility development and operations.
3. The purpose of this verified statement is to explain some facts about the solid waste industry in Massachusetts, and to discuss typical processing operations conducted by solid waste facilities.
4. There are many solid waste facilities in Massachusetts, representing hundreds of millions of dollars in investment capital. These facilities include transfer stations, landfills and waste-to-energy plants. In every case, these facilities are regulated by an elaborate and complex set of regulatory requirements, nearly exclusively dictated by state and local law. These laws require facilities to design substantial environmental and public health protections into all

facilities and all new expansions of existing facilities. These protections often cost a substantial amount of money.

5. For instance, to construct a new waste processing facility, an applicant must engage in an elaborate permitting process before multiple state and local agencies. A thorough environmental impact review is required before actual permitting can begin. Once the impact review is completed, new waste processing sites must obtain dual site suitability decisions from both state and local agencies with concurrent jurisdiction and must satisfy a long list of prohibited site characteristics that are specifically defined in state regulations. These siting decisions are complex and technically detailed and usually require expert testimony by engineers with substantial experience in air quality, toxicology, groundwater and surface water systems, solid waste, noise, and traffic analysis. Once favorable site suitability decisions are obtained, signifying that the proposed site is suitable for the intended solid waste processing activity, applicants must then obtain environmental permits from federal, state, and local agencies, all of which carefully regulate the design and operation of the facility. These permits each typically contain many different conditions that impose construction design and operational requirements to reduce or eliminate potential impacts on public health or the environment.

6. It is not unusual for a new waste processing facility to emerge from the permitting process with 50 or more pages of individual conditions that have been imposed by the different permitting agencies. These conditions add substantial cost to the ultimate solid waste processing service provided by the facility. By way of example, new facility construction is typically required to include a completely enclosed structure for the conduct of all waste processing operations and to be equipped with high efficiency particulate filters and elaborate dust suppression systems to control particulate emissions. Before new structures are built, extensive

groundwater modeling is often required to ensure that appropriate groundwater recharge systems are designed and installed to minimize impacts on area groundwater. Often, when dealing with facilities processing municipal solid waste, expensive odor control systems are mandated to minimize or eliminate odor impacts.

7. State and local regulatory agencies also typically impose substantial operational conditions in solid waste processing facility permits. These conditions also add substantial cost to the ultimate solid waste processing service provided by the facility. By way of example, facilities are prohibited from transferring for disposal, or disposing of, a long list of materials that have been banned for public health and environmental reasons and must administer elaborate inspectional and recordkeeping programs to ensure that they adhere to these requirements. Facilities managing construction and demolition debris (“C&D Debris”) are required to conduct intensive inspections by specially trained inspectors to ensure that they identify and remove asbestos-containing materials and other hazardous substances, and they must have contingency plans in place to manage such materials if they are discovered. Facilities must hire independent experts to conduct self-administered inspections and must report the results of these inspections to the public. Facilities must also keep substantial records and submit reports on various activities to state and local agencies.

8. In spite of the difficult process to site, permit, and construct solid waste processing facilities in Massachusetts, there is a robust pipeline of new facilities. In recent years, many new facilities have been permitted and constructed, and there are many more currently in the permitting process.

9. I have visited solid waste processing facilities that employ state of the art environmental controls, and I am certain that the facility described by New England Transrail,

LLC ("NET") in its Petition for Exemption would not constitute state of the art for a solid waste processing facility unless there were substantial and costly enhancements. I am not aware of any solid waste processing facility in Massachusetts that is currently permitted to operate with a so-called "Sprung Instant Structure" as described in the Graham Verification attached to the NET Petition for Exemption. The "Sprung Instant Structure" appears to be a mobile fabric (or membrane) building, which may be un-insulated and may also have an open side. The solid waste processing facilities in Massachusetts with which I am familiar are fixed structures, with solid walls and roofs to contain noise, particulate emissions, and odors and specific door openings to reduce potential impacts outside of the building. It is unclear how NET intends to address noise, particulate emission and odor impacts from its proposed structure.

10. Solid waste processing facilities in Massachusetts generally receive materials by truck. Following processing, materials are shipped by a variety of transportation modes, including rail. By way of example, there is a substantial amount of solid waste shipped by rail from an intermodal facility adjacent to the CSX railyard in Boston, and there is a sizable solid waste processing facility that ships by rail from an industrial spur in Brockton, Massachusetts, which serves the greater Boston market. In my experience discussing solid waste transport needs with facility owners and operators, there is ready access to rail transport for all processing facilities that desire to ship solid waste out of state.

11. The generation of C&D Debris has grown dramatically in the metropolitan Boston area as the region has increased in population and density. The construction and rehabilitation of buildings generates large quantities of C&D Debris, and historically this material was simply disposed of along with other solid wastes. However, as the prices of raw materials such as wood, concrete, metal, and gypsum have increased, recycling markets have

developed for these components of the C&D waste stream. Of particular value are the metals, wood, and concrete that are extracted from the incoming C&D.

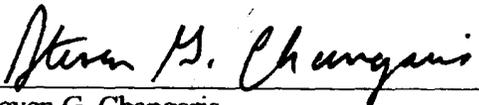
12. The newspaper article attached as Exhibit 1 from the January 22, 2006 edition of The Boston Sunday Globe documents that scrap metal has such high value that aluminum siding is now literally being stolen off of the sides of buildings for its scrap resale value and that buildings are being broken into specifically to remove copper fixtures. These are exactly the same items that are present in C&D Debris that is handled by solid waste processing facilities, and the value of these items is precisely the reason that processing facilities exist: they remove valuable commodities from the waste that is sent to them and they sell it for a profit.

13. Solid waste processing facilities separate different commodities that can be recycled and size the material to specifications necessary for receipt by the different customers who purchase it. In my experience, these processing activities are not conducted for the sole purpose of facilitating transportation, whether by rail or by truck. While there may be some incidental benefit for transportation once incoming material has been crushed, separated, screened, and sized, the purpose of these activities largely to prepare the material for market, not to prepare them for transportation.

#### VERIFICATION STATEMENT

I, Steven G. Changaris, the Northeast Regional Manager of the National Solid Wastes Management Association, verify under penalties of perjury that I have reviewed the foregoing statement and state that the facts set forth therein are true and correct based upon my personal

knowledge and that I have authorized counsel for NSWMA to file the foregoing statement with the Surface Transportation Board. Signed on this 26th day of January, 2006.

  
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Steven G. Changaris

**Exhibit 1**  
**January 22, 2006 Sunday Globe Article**

**boston.com**

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

## **Metal thefts soar with prices for scrap Copper, aluminum stolen from houses**

**The Boston Globe**

By James Hannah, Associated Press | January 22, 2006

SPRINGFIELD, Ohio – A real estate broker, Cyle Young, got a shock when he drove by the house he had purchased two days earlier.

The home had been stripped of its aluminum siding, from the ground to as high as a person could reach.

"A couple days later, they broke back in and stole all the copper in it," said Young, who has renovated the house and who now has it up for sale. "I can't tell you how many houses we've bought with no downspouts – gutters gone."

High prices for copper and aluminum are enticing thieves to steal metal to sell for scrap.

Fueled in part by a building boom in China, demand for copper has pushed its price to historic highs, and aluminum prices are the highest in 17 years.

Demand for copper has increased by 4 percent a year since 2002. It is expected to continue at that rate for three or four years, according to Robin Adams, who is a managing consultant for CRU Strategies in Seattle.

Demand for aluminum grew by almost 10 percent in 2004 and 4.6 percent in 2005, and it is expected to increase by 4.5 percent this year, he said.

The theft of metal pipes, radiators, and wires from vacant homes is not new. Authorities have long attributed this to drug addicts looking to pay for their next fix. Now, police say, they are inundated with reports of metal thefts.

In Springfield, in western Ohio, thieves hit about 70 homes and businesses in five months.

In other parts of the country, thieves carted off air conditioners from an apartment complex, stole downspouts from a church, and snipped down cables used for a tourist trolley.

In some cases, thieves have masqueraded as construction workers.

"This is just crazy," said a Springfield police detective, Geoff Ashworth, who is taking as many as two metal theft reports a day. "And there's no one or two, there's no six people that are specifically responsible for this. Everybody's doing it. People know the prices are up."

On the market, pure copper is selling for about \$2.10 a pound, and aluminum for about \$1.05.

Scrap copper, such as pipe and wire, is fetching \$1.30 to \$1.80 a pound, about double what it was a year ago. Scrap aluminum, such as siding, sells for 45 to 65 cents a pound, up 10 to 12 cents.

Mary Poulton, head of the Department of Mining and Geologic engineering at the University of Arizona, said the price of copper is likely to remain high.

"Given how long it takes for new production to come on line, we're seeing forecasts that we are looking at a 20- to 30-year high-price cycle," Poulton said.

The theft problem is not confined to the United States.

Taiwan's state-run power company says the theft of lines for their copper wire increased so much in 2005 that the company has replaced the lines with aluminum, which is less expensive. ■

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