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May 4, 2007

Jeffrey Bauer  
TEL +1 (202) 639-7721  
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Via Hand Delivery

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E. Street, SW  
Washington, D.C. 20423

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Office of Proceedings

MAY - 7 2007

Part of  
Public Record

MAY 4 2007  
RECEIVED

RE: New England Transrail, LLC  
FD-34797

Dear Secretary Williams,

Enclosed for filing in Finance Docket Number 34797 are an original and ten (10) copies each of NEI's Response to the Request of the Town of Wilmington's For Leave To File A Post-Hearing Statement. Please time-stamp the extra copy and return it to our messenger

Thank you in advance for your consideration.

Sincerely,



Jeffrey M. Bauer

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34797



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

**RESPONSE TO POST-HEARING STATEMENT OF TOWN OF WILMINGTON**

On April 30, the Town of Wilmington (“Wilmington”) requested leave to file what it characterized as a “Post-Hearing Statement.” In the event that the Board grants Wilmington’s request to file its statement, NET hereby submits its response.

First, NET reserves the right to address Wilmington’s comments on environmental matters, including truck volume and the redevelopment of the Olin Site, at the appropriate time in the future. Wilmington Post-Hearing Statement at 3, 5-6 Those issues are not presently before the Board, because by order dated June 13, 2006, the Board directed the Section of Environmental Analysis (“SEA”) to suspend further environmental review pending the Board’s decision on the jurisdictional issue. The Board may address environmental issues, such as those raised in Wilmington’s Post-Hearing Statement, in connection with SEA’s environmental review. However, that review will not occur until after the Board renders its decision on the jurisdictional question. As the Board made clear in its June 13, 2006 Order, the jurisdictional question presently before the Board does not turn on environmental concerns, and is limited to whether NET’s proposed handling activities constitute “transportation ”

The voluminous record before the Board demonstrates that NET’s proposed handling does in fact constitute “transportation” subject to the exclusive jurisdiction of the Board. With its Petition, NET submitted verified statements of Robert W. Jones and Thomas Egan regarding

the transportation purpose of NET's proposed handling. The testimony of Messrs. Jones and Egan is uncontroverted and is actually supported by the testimony elicited by the Board on April 19. For example, on behalf of NSWMA, Mr. Camara described in great detail the transportation purposes of baling MSW. April 19 Hearing Tr. at 382-384. In addition, despite their arguments throughout this proceeding to the contrary, even the Massachusetts Department of Environmental Protection ("MADEP") has formally acknowledged that the shredding of C&D serves a transportation purpose.<sup>1</sup> As the record makes clear, NET's proposed handling operations are the type that have long been determined to constitute "transportation."

Second, contrary to Wilmington's Post-Hearing Statement at 1, 3, NET's April 19 Supplemental Verified Statement did not disclose any new intentions for the project, and the scope of the NET project has not changed. From its inception, NET has sought Board authority to operate as a common carrier. See NET Petition, Finance Docket No. 34391, at 1-4 (filed December 3, 2003), NET Petition, Finance Docket No. 34797 (filed December 5, 2005). There are certain requirements with which NET must comply—and with which NET has always intended to comply—as a common carrier. In its April 19 Supplemental Verified Statement, NET simply acknowledged several of those requirements and confirmed its long-stated intention to operate as a common carrier by rail.

Also from its inception, NET has sought Board authority to operate a rail transloading facility that handles various commodities, including waste. See NET Petition, Finance Docket No. 34391, at 5 (filed December 3, 2003); NET Petition, Finance Docket No. 34797, at 10-12

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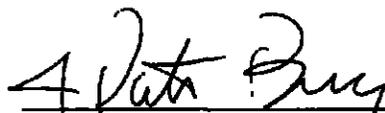
<sup>1</sup> See Fact Sheet attached to Permit Approval for Peabody Solid Wastes Wood Recycling Transfer Station (November 15, 2004) (attached hereto as Exhibit A). On November 15, 2004, in connection with a requested modification of the Peabody Permit, MADEP authorized the operator of that solid waste transfer facility to install a shredder to shred C&D material "to allow more efficient loading" of the material, which is exactly the same transportation purpose for which NET proposes to use a shredder. The MADEP Fact Sheet stated at page 3 that the applicant had proposed to add a shredder "to process waste materials so as to reduce bulk and increase density of the waste" (emphasis added). The MADEP Fact Sheet further stated that "installation and operation of the shredder will not alter the type of waste handled by the facility" and "will not alter the manner of loading or handling transfer vehicles or containers" id.

(filed December 5, 2005). NET has reiterated that point throughout this proceeding and did so again in both its March 23 Supplemental Verified Statement and its April 19 Supplemental Verified Statement

NET's April 19 Supplemental Verified Statement also answered a number of specific questions based on the recurrent speculation that NET intends to profit from recycling. NET's answers, however, were not new. In its Petition, NET stated that it was not going to recycle. NET Petition, Finance Docket No. 34797, at 22 ("NET's shredding and baling activities are not being undertaken . . . to provide a separate business service (e.g., recycling)"); Jones V.S. at 18 NET has not retreated from that statement. See NET Consolidated Reply at 9 (filed on February 21, 2006); NET Reply to Jurisdictional Comments at 13-15 (filed on August 2, 2006). NET's April 19 Verified Statement was an attempt to eliminate any possible argument on that issue.

Accordingly, NET respectfully requests that, to the extent the Board is going to consider Wilmington's statement, the Board should consider this submission in response

Respectfully submitted,



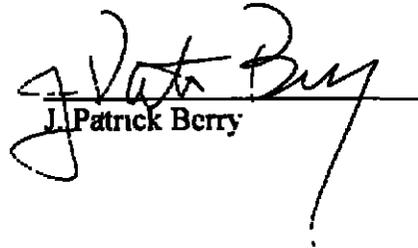
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Kirk K. Van Tine  
J. Patrick Berry  
Jeffrey M. Bauer  
BAKER BOTTS LLP  
1299 Pennsylvania Avenue, N W  
Washington, DC 20004  
(202) 639-7700

Attorneys for New England Transrail, LLC  
Date May 4, 2007

**CERTIFICATE OF SERVICE**

I do hereby certify that on this May 4, 2007, I served a copy of the foregoing by causing a copy to be delivered by first class mail, postage prepaid, to each person listed on the STB Service list for Finance Docket No. 34797

  
J. Patrick Berry



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
METROPOLITAN BOSTON - NORTHEAST REGIONAL OFFICE

EXHIBIT A

MITT ROMNEY  
Governor

ELLEN ROY HERZFE  
Sec.

MERRY HEALEY  
Lieutenant Governor

ROBERT W. GOLLEDC  
Commiss

*This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.*

November 15, 2004

John DiNapoli  
Allied Waste Systems, Inc  
150 Cordaville Road  
Southborough, MA 01772

RE: PEABODY - Solid Wastes  
Wood Recycling Transfer Station  
Modification of Facility - Shredder Installation  
Approval  
File Number: W051295  
FMF No.. 326371

Dear Mr. DiNapoli:

The Metropolitan Boston/Northeast Regional Office, Department of Environmental Protection, Bureau of Waste Prevention, Solid Waste Management Section has reviewed your application relative to the proposed modification of the Wood Recycling Transfer Station, 300 Forrest Road, Peabody, Massachusetts (BWPSW07, Modification of a Large Handling Facility). The application was prepared on your behalf by Brown and Caldwell, Middleborough, Massachusetts.

By this application, Allied Waste Systems, Inc. (Allied) has proposed to install a Komptech Farwick Terminator 5000S shredder at the Wood Recycling Transfer Station, 300 Forest Street, Peabody, Massachusetts. The shredder will be located within the existing waste handling building at the facility. Installation of the shredder will not require modification of the building. Installation of the shredder will not alter the permitted capacity of the facility.

The application includes a revised operation and maintenance manual (O&M manual), titled

Operation and Maintenance Plan  
Wood Recycling Transfer Station  
Peabody, Massachusetts  
June 2004

The revised O&M manual supercedes and replaces the O&M manual approved September 26, 2000

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator, at 1-617-856-1857. TDD Service - 1-800-298-2207

8<sup>th</sup> Floor One Winter Street Boston, MA 02108 • Phone (617) 854-6500 • Fax (617) 658-1049 • TDD # (800) 298-2207

DEP on the World Wide Web <http://www.state.ma.us/dep>

Printed on Recycled Paper

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The Department has determined that the proposed modification complies with applicable requirements. The Department, therefore, hereby approves the modification of the facility as proposed, subject to the following conditions:

- 1 Allied shall obtain and comply with the requirements of all state, federal and local permits as may pertain to this project. Should Allied determine that a local Building Permit is not required, Allied shall, prior to installation, submit to the Department, for the record, notification of that determination.
- 2 The Department reserves the right to modify, suspend or revoke this approval as necessary to protect the public health, safety or the environment, or as may otherwise be directed by law or regulation.
- 3 Following completion of installation, but prior to start of operation of the shredder, Allied shall submit to the Department, for the record, a notification of the date operation will commence. This approval shall, upon submission of the notice of start of operation, constitute an Authorization to Operate (ATO) the shredder.

#### NOTICE OF RIGHT TO APPEAL

Allied Waste Systems, Inc (the "Allied") is hereby notified that it may within twenty-one (21) days file a request that this decision be deemed a provisional decision under 310 CMR 19.037(4)(b), by submitting a written statement of the basis on which Allied believes it is aggrieved, together with any supporting materials. Upon timely filing of such a request, the decision shall be deemed a provisional decision with an effective date twenty-one (21) days after the Department's receipt of the request. Such a request shall reopen the administrative record, and the Department may rescind, supplement, modify, or reaffirm its decision. Failure by Allied to exercise the right provided in this section shall constitute a waiver of Allied's right to appeal.

Appeal Any person aggrieved by the issuance of this decision, except as provided for under 310 CMR 19.037(4)(b), may file an appeal for judicial review of said decision in accordance with the provisions of M G L c. 111, s. 150A, and M G L c. 30A, not later than thirty (30) days following the receipt of the final decision. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M G L c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the decision by a court of competent jurisdiction, the decision shall remain effective.

Notice of Action Any aggrieved person intending to appeal this decision to the Superior Court shall first provide notice to the Department of their intention to commence such action. Said notice of intention shall include the Department file number and shall identify with particularity the issues and reasons why it is believed the decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the application. The appropriate addresses to which to send such notices are:

General Counsel  
Department of Environmental Protection  
One Winter Street - 3rd Floor  
Boston, MA 02108

Regional Director  
Department of Environmental Protection  
NERO  
One Winter Street - 5<sup>th</sup> Floor  
Boston, MA 02108

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in those regulations, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised.

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during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity

The Department observes that the permittee is variously referred to as "Allied Waste Systems, Inc ", "Allied Waste Industries, Inc " and "BFI/Allied Waste Industries, Inc " in the documents. The Department's records and the permit list the permittee as "Allied Waste Systems, Inc ". Should Allied change its name it is required that the Department be notified of the name change within seven (7) days of the effective date of the change.

It is further noted that the facility is variously identified in the documents as the "Wood Recycling Transfer Station", the "BFI/Wood Recycling and Transfer Station", and the "Peabody Transfer Station". The Department's records and the permit identify the facility as the "Wood Recycling Transfer Station". It is also noted that the inactive transfer station located at 295 Forest Street, Peabody, Massachusetts, is also known as the "Peabody Transfer Station".<sup>1</sup> While both facilities are owned by Allied, they exist and are permitted as separate facilities. To avoid confusion and resulting delays, all documents relative to the facility should refer to the facility by a consistent name and should include the facility's Facility Master File Facility Number ("FMF Number").

If you have any questions about this matter, please contact David Adams at 617-654-6677

Sincerely,

Sincerely,

*This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.*

DCA  
David C Adams  
Environmental Engineer  
Solid Waste Management

JAC  
John A Carrigan  
Section Chief  
Solid Waste Management

JAC/DCA/dca

enclosure Fact Sheet

cc

City of Peabody  
Dept of Human Services  
Peabody, MA 01960  
email [bernard.horowitz@Peabody-ma.gov](mailto:bernard.horowitz@Peabody-ma.gov)

Alan Kirschner  
Brown and Caldwell  
48 Iona Drive Suite C  
Middleborough, MA 02346

Jose Favazza  
BFI/Allied Waste Industries, Inc  
300 Forest Street  
Peabody, MA 01960

<sup>1</sup> While the "Peabody Transfer Station" at 295 Forest Street, Peabody, Massachusetts (FMF # 326368), is currently not receiving waste, that facility has not been closed pursuant to the requirements established at 310 CMR 19.045(4)

**FACT SHEET  
Peabody Transfer Station  
Modification of Facility**

**File No. WW051295  
Page 1**

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**Permittee:** Allied Waste Systems, Inc  
**Mailing Address:** 150 Cordaville Road  
Southborough, MA 01772

**Name of Facility:** Wood Recycling Transfer Station  
**Facility Address:** 300 Forest Street  
Peabody, MA 01960

**ID:** Facility Number: 326371  
Regulated Object Number: 326372  
Permit Number: NESW-TS-044  
SWM ID: TR0229 007

**Operator:** BFI/Allied Waste Systems, Inc  
**Mailing Address:** 300 Forest Street  
Peabody, MA 01960

**Owner:** BFI/Allied Waste Systems, Inc  
**Address:** 150 Cordaville Road  
Southborough, MA 01772

**I FACILITY DESCRIPTION AND OUTSTANDING APPROVAL STATUS**

**A. Facility**

**Type:** Municipal Solid Waste Transfer Station

**Type(s) of Waste Accepted:** Municipal Solid Waste (MSW) from residential, commercial and industrial sources

**Approved Amount of Waste Acceptance:** 1350 tons per day maximum

**B. Reviews and Approvals Affecting Current or Planned Operation**

**Facility Permit:**  
Transmittal #: W014429  
Issued: September 26, 2000  
Effective date: October 1, 2000

**MEPA:** The proposed modification does not trigger any MEPA Process review threshold

**FACT SHEET**  
**Peabody Transfer Station**  
**Modification of Facility**

**File No. WW051295**  
**Page 2**

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**II. APPLICATION**

**A. Application:**

Applicant Name BFI/Allied Waste Systems, Inc

Application type Modification of Large Handling Facility (BWP SW 21)

Transmittal Number W051295

Engineer of Record Brown and Caldwell, Inc  
48 Leona Drive, Suite C  
Middleborough, MA 02346  
Alan Kirschner, PE

**B. Submissions with this application:**

report Modification to a Large Handling facility  
BFI Wood Recycling and Transfer Station  
Peabody, Massachusetts  
Transmittal No W051295  
June 2004

plan Figure 2  
Site Plan  
Peabody Transfer Station  
Peabody, Massachusetts  
6/8/04

o&m Operation and Maintenance Plan  
Wood Recycling Transfer Station  
Peabody, Massachusetts  
June 2004

letter Brown and Caldwell to DEP  
September 14, 2004  
Re response to Administrative Deficiency

**C. Discussion:**

BFI/Allied Waste Systems, Inc (BFI)<sup>1</sup> operates the solid waste transfer station at 300 Forest Street, Peabody, Massachusetts (permittee Allied Waste Systems, Inc <sup>2</sup>) BFI has proposed to modify the facility

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<sup>1</sup> The operator of the facility is variously referred to as BFI/Allied Waste Industries, Inc , BFI of Massachusetts, Inc ; Browning-Ferris Industries, and Regional Waste Services, Inc in the application. The operator is identified as BFI/Allied Waste Systems, Inc in the Department's records. For this action the Department uses the operator name as appearing in the Department's records.

<sup>2</sup> Also identified as Allied Waste Industries, Inc in the application.

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by the addition of a shredder to process waste materials so as to reduce bulk and increase density of the waste

The application includes a revised operation and maintenance manual. The shredder will principally be used to "crush" construction and demolition debris (C&D) materials to allow more efficient loading of trucks. Waste materials which may be effectively compacted during handling, or otherwise in excess of the shredder's capacity, will continue to be directly transferred to transfer vehicles (trailer, etc.) or containers.

The shredder is a self-contained unit, powered by a 465 HP diesel engine. The engine is estimated to operate at a fuel consumption of approximately 17.2 gallons per hour (~2.4 million BTU/hr), and thus is not subject to an Air Quality Control Permit<sup>3</sup> for exhaust emissions.

The shredder has an estimated capacity of up to 80 tons per hour (1120 tons per day<sup>4</sup>).

The shredder will be located within the existing waste handling building. Therefore, the installation and operation of the shredder will not alter any setbacks stipulated at 310 CMR 16.40.

The shredder will be located at the rear of the tipping floor. The location allows waste to continue to be received within the building, while allowing waste to either be directly transferred to a waiting transfer vehicle or container, or be diverted to the shredder for processing. Processed waste will be stored at the rear of the tipping floor pending loading to transfer vehicle or container.

The installation and operation of the shredder will not alter the capacity of the facility.

The installation and operation of the shredder will not alter the type of waste handled by the facility.

The installation and operation of the shredder will not alter the manner of loading or handling transfer vehicles or containers, nor the methods of unloading incoming trucks or containers.

The applicant has not been able to obtain a definitive response from the City of Peabody as to whether a Building Permit will be required. No other federal, state or local permits are required.

#### Permit

The application included a copy of the facility's permit as issued March 21, 1995 to Wood Recycling, Inc. (the prior owner/operator of the facility). On September 26, 2000 the Department issued a revised permit for the facility, effective October 1, 2000, to Allied Waste Systems, Inc. (the current permittee), by which the authorized capacity of the facility was increased from 1000 tons per day to 1350 tons per day (maximum daily receipt of waste). The October 1, 2000 permit superceded and replaced the March 21, 1995 permit. The March 21, 1995 permit is, thus, no longer valid or pertinent to the facility operation.

<sup>3</sup> Re 310 CMR 7.00, stationary engines under 3 million BTU/hr

<sup>4</sup> Based on continual operation at the facility's normal weekday operation schedule, 14 hours per day