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May 24, 2007

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

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, MA
Finance Docket No. 34797

Dear Secretary Williams:

I attach for filing the Response of the Commonwealth of Massachusetts to New England Transrail, LLC's Post-Hearing Filing along with the Verified Statement of John A. Carrigan.

Please call me at x2418 if you have any questions on the attached document. Thank you for your attention to this matter.

Very truly yours,

Siu Tip Lam
Assistant Attorney General
Environmental Protection Division

cc: Service List in STB Finance Docket No. 34797 (by first-class mail)

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 OF THE COMMONWEALTH OF MASSACHUSETTS TO
NEW ENGLAND TRANSRAIL, LLC'S POST-HEARING FILING**

**MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

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Dated: May 24, 2007

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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34797

**RESPONSE OF THE COMMONWEALTH OF MASSACHUSETTS TO
NEW ENGLAND TRANSRAIL, LLC'S POST-HEARING FILING**

After the Board held a hearing on this matter on April 19, 2007, New England Transrail, LLC, ("NET") submitted a post-hearing filing to the Board, purportedly to respond to the Town of Wilmington's filing of a "Post-Hearing Statement." In NET's response ("NET's Response") to the Town, NET submitted a document issued by the Massachusetts Department of Environmental Protection ("MassDEP") and represented to the Board that in that document, MassDEP "formally acknowledged that the shredding of C&D serves a transportation purpose." (NET's Response at 2.) The MassDEP did no such thing. In the event that the Board accepts and considers NET's Response to the Town, the Commonwealth of Massachusetts, through MassDEP and the Massachusetts Attorney General, submits this response and the attached Verified Statement of John A. Carrigan to dispel any misrepresentations or misunderstandings concerning that document.

The document at issue is a letter dated November 15, 2004 ("Approval"), that MassDEP had issued to a Massachusetts solid waste facility ("Facility") approving a modification of its facility permit. (Carrigan Statement at ¶¶ 3-4.) It allowed the Facility to install and use a shredder to process construction and demolition debris ("C&D") that the Facility receives, processes, and then transfers to trucks for transportation to disposal sites. (*Id.* at ¶¶ 4-8.) Attached to the Approval is a "Fact Sheet" that describes the Facility, its history of approvals,

and reiterates the Facility's purpose for proposing to install and use the shredder. (Id. at ¶¶ 8-9.) It is this Fact Sheet on which NET based its mistaken representations.

As the Solid Waste Management Section Chief Carrigan, who issued the Approval and the attached Fact Sheet, explains, the Fact Sheet was intended to summarize the relevant details regarding the Facility's operations, the history of approvals issued to the Facility, and information from the Facility's application concerning the proposed use of the shredder. (Id. at ¶ 9.) In fact, the information on the purpose and proposed use of the shredder was taken from Facility application. (Id.) The Fact Sheet merely reiterated what the application asserted – that the shredder would process waste “to reduce bulk and increase density of waste” and would “allow more efficient loading.” (Id. at ¶¶ 9, 7, and Ex. 1 attached thereto.) This reiteration of the Facility's assertions was not intended to and does not constitute a finding by MassDEP that the use of the shredder would achieve the goals for which it had been proposed. (Carrigan Statement at ¶ 9.)

Thus, contrary to NET's representations, the Fact Sheet does not demonstrate MassDEP's acknowledgment (formal or otherwise) that shredding of C&D “serves a transportation purpose.” In fact, the Facility demonstrates that the use of the shredder is not necessary for loading C&D waste onto trucks. After MassDEP issued the Approval, the Facility removed the shredder and now no longer uses a shredder to crush and process the C&D prior to loading it onto trucks. (Id. at ¶ 10.) The Facility continues to process the same amount of solid waste and transfer it onto trucks for shipment to other locations without the need of a shredder. (Id.) If anything, this case demonstrates that shredding and processing of C&D is not integral to the loading process (to trucks or rail cars). Furthermore, the Approval and the Fact Sheet demonstrate the

Comments of the Commonwealth of Massachusetts
STB Finance Docket No. 34797

Commonwealth's consistent position that processing of solid waste is subject to regulation under the Solid Waste Management Act.

Therefore, the Board should reject NET's representations concerning the Approval and Fact Sheet attached to its Response to the Town's Post-Hearing Statement.

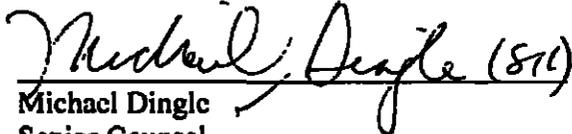
Respectfully submitted by,

MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

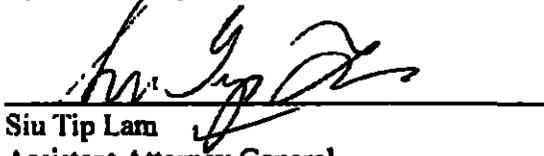
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By its attorney,

By her attorney,



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Dated: May 24, 2007

Dated: May 24, 2007

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**

VERIFIED STATEMENT OF JOHN A. CARRIGAN

- 1 My name is John A. Carrigan. I am currently employed by the Massachusetts Department of Environmental Protection (“MassDEP”) at MassDEP’s Metropolitan Boston/Northeast Regional Office (“NERO”), 205B Lowell Street, Wilmington, Massachusetts 01877 as Chief of the Solid Waste Management Section. I have held this position since November 2002. I was the Chief of the Policy and Regulation Branch of MassDEP’s Bureau of Waste Site Cleanup from approximately September 2001 to November 2002. Prior to that, from approximately July 1987 to approximately September 2001, I held positions as a Geologist and Environmental Analyst IV at MassDEP’s Bureau of Waste Prevention, Business Compliance Division.
2. As Chief of the Solid Waste Management Section (“Section”), my primary duty is the supervision of staff. We implement and enforce the Massachusetts Solid Waste Management Act, M.G.L. Ch. 111 Sec 150A (the “Solid Waste Act”), and the regulations promulgated thereunder at 310 CMR 16 00 and 19.000 (the “Solid Waste Regulations”). My staff and I conduct the following activities.

- a. **Review, interpret and evaluate professionally prepared plans and reports as part of permit applications submitted by facilities pursuant to the Solid Waste Regulations.**
 - b. **Inspect solid waste management facilities.**
 - c. **Investigate complaints and unauthorized solid waste disposal sites and facilities.**
 - d. **Review and evaluate reports including environmental assessment and monitoring and self-inspection reports submitted by facilities pursuant to the Solid Waste Regulations.**
 - e. **Prepare written field reports.**
 - f. **Prepare and implement appropriate enforcement actions.**
 - g. **Provide technical information and assistance to the public and regulated facilities on implementation of and compliance with the Solid Waste Regulations.**
3. **I received and reviewed a document entitled "Response to Post-Hearing Statement of Town of Wilmington" ("Response") submitted by New England Transrail, LLC ("NET"), to the Surface Transportation Board in the above-captioned matter. Attached to NET's Response is a copy of a letter dated November 15, 2004, that I had issued as Section Chief to Allied Waste Systems, Inc. ("Allied").**
4. **I issued the November 15, 2004, letter ("Approval") to approve Allied's request for installation of a shredder at its solid waste facility, the Wood Recycling Transfer Station ("Facility"), located at 300 Forest Street, Peabody, Massachusetts, that Allied owns and operates. I am familiar with the Facility's application for the approval of the shredder installation. I am also familiar with the Facility's solid waste operations as my office regulates this facility and has issued solid waste permits to this facility.**

5. **Allied obtained a solid waste facility permit ("Facility Permit") from MassDEP in or about 2000 allowing it to conduct solid waste handling activities, including the receipt, processing, and transfer to trucks of municipal solid waste ("MSW") and construction and demolition debris ("C&D"), at its Facility. Pursuant to its Facility Permit, Allied must comply with the Solid Waste Act and all applicable Solid Waste Regulations, including those which govern the management, processing and transfer of solid waste.**
6. **During inspections in January, March and April of 2004, my staff observed that Allied had installed and was using equipment to shred C&D waste at the Facility. The Facility Permit did not allow the use of the shredding equipment to process the waste. The shredding equipment had been installed without application for or receipt of MassDEP approval for a modification of the Facility Permit. Installation and operation of solid waste processing equipment without MassDEP approval is a violation of 310 CMR 19.015 and 19.039(1) of the Solid Waste Regulations. Accordingly, on May 28, 2004, I in my capacity as Section Chief issued a Notice of Noncompliance to Allied, ordering it to, among other things, cease using the shredder to process waste at the Facility until such time as Allied has applied for and received MassDEP approval for modification of its Facility Permit to allow it to install and use the shredder.**
7. **On July 1, 2004, Allied submitted to my office an application to modify the Facility Permit. In its application, Allied proposed to install and operate the shredder inside an existing waste handling building at the Facility. Allied proposed to use the shredder to "crush" C&D waste purportedly to reduce its bulk and increase its density, all of which, according to Allied, would allow more efficient loading of trucks. (See Excerpts from Allied's Application, a true and accurate copy of which is attached hereto as Ex. 1.)**

8. On November 15, 2004, I as Section Chief issued the Approval of Allied's application to modify its Facility Permit. In this Approval, I included a "Fact Sheet" which described the Facility, its history of approvals, and reiterated Allied's purpose for proposing to install and use the shredder.
9. The use of the "Fact Sheet" as part of this Approval was intended to summarize the relevant details regarding the Facility's operations and history of approvals and information from the application submitted by Allied concerning the proposed use of the shredder. The information on the purpose and proposed use of the shredder was taken from Allied's application. (See Ex. 1.) The summary of this information concerning the shredder in the Fact Sheet was not intended to and does not constitute a finding by MassDEP that the use of the shredder would achieve the goals for which it had been proposed.
10. After MassDEP issued the Approval, my staff inspected the Facility and found that Allied had removed the shredder from the Facility, and it no longer uses a shredder to crush and process the C&D prior to loading it onto trucks. The Facility continues to process the same amount of solid waste and transfer it onto trucks for shipment to other locations without the need of a shredder.

Verification:

I, John A. Carrigan, certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 23, 2007.



John A. Carrigan
Chief, Solid Waste Management Section
Metropolitan Boston/Northeast Regional Office
Massachusetts Department of Environmental Protection

FILE

**MODIFICATION TO A LARGE HANDLING FACILITY
BFI WOOD RECYCLING AND TRANSFER STATION
PEABODY, MASSACHUSETTS
TRANSMITTAL NO. W051295**

COPY

June 2004

Prepared for

**BFI of Massachusetts, Inc.
300 Forest Street
Peabody, Massachusetts 01960**

Prepared by



**48 Leona Drive, Suite C
Middleboro, Massachusetts 02346**

EXHIBIT I

Under the current operations, ten vehicles with a capacity of greater than five cubic yards are being inspected each month. The waste spotter directs vehicles to be inspected to an inspection area, away from general facility traffic. Using a front-end loader the solid waste is spread out and the facility inspector then searches the load for banned materials. If any unacceptable material is discovered, the load is rejected. Unacceptable materials may be loaded back on the collection vehicle, segregated for recycling, or set aside for the hauler to remove at a later time. The hauler will be instructed by Facility personnel that the rejected load contained unacceptable material which cannot be accepted at the Facility, and that the material must be returned to the generator or delivered to another facility which is permitted to accept the material.

4.2 Operational Odor Controls

Several odor controls are utilized to minimize odors at and around the site, including a misting system and operational controls. The frequency of spraying with the misting system is based on operating conditions such as heat, types of waste being accepted, and amount of waste. Particularly odorous waste loads are quickly loaded into rail containers or transfer trailers and covered with other materials. Waste collected at the site is not allowed to accumulate on the tipping floor and is delivered to various disposal facilities on a daily basis.

Several types of waste, such as supermarket waste, which have a tendency to be particularly odorous, are frequently rejected at the facility. By being selective in the waste loads accepted at the site, the facility has been able to reduce potential odor problems. In general, the operational odor controls will remain the same. Incoming waste loads will continue to be monitored for odorous products and rejected as necessary.

5.0 PROPOSED FACILITY MODIFICATION

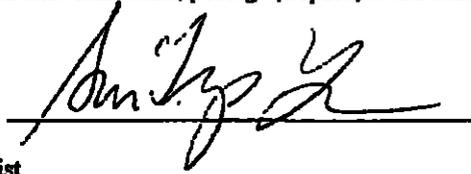
5.1 Proposed Permit Modification

The facility is seeking a permit modification to allow the use of a Komptech Farwick Terminator 5000 "S" primary shredder. The shredder unit takes solid waste materials, particularly the C&D waste materials, and crushes it into smaller waste components. The shredding process results in a denser waste material that can be packed more efficiently into the transfer trailers for delivery to waste disposal or recycling facilities by truck. Traffic to and from the facility will be reduced through the use of the shredder by decreasing the volume of the outgoing waste, while maintaining the approved daily tonnage of 1,350 tons per day.

The shredding of the waste is accomplished using a front-end loader to deposit the waste into the shredder unit. The shredder crushes and tears the waste, and deposits the shredded waste into a stockpile within the building. The front-end loaders and an excavator with a grapple then consolidate the shredded waste and transfer it to long-haul transfer trailers and rail containers. The waste is handled as indicated in previous sections and inspected at regular intervals. Sufficient room exists within the building to accommodate the use of the shredder unit and the stockpiles of material produced by the shredding process. The shredded stockpiles will take up less space than the unshredded material due to the additional density. Please refer to Figure 2 for additional information on the placement of the shredder unit and material stockpiles within the building.

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2007, I served the foregoing Response of the Commonwealth of Massachusetts to New England Transrail, LLC's Post-Hearing Filing along with Verified Statement of John A. Carrigan by causing copies of the documents to be delivered via first class mail, postage prepaid, to the individuals and entities listed below



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**Comments of the Commonwealth of Massachusetts
STB Finance Docket No. 34797**

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**Comments of the Commonwealth of Massachusetts
STB Finance Docket No. 34797**

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STB Finance Docket No. 34797**

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