

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 34797

**NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON & WOBURN TERMINAL RAILWAY
PETITION FOR CONSTRUCTION, ACQUISITION, AND OPERATION EXEMPTION
IN WILMINGTON AND WOBURN, MASS.**

PETITIONER'S STATUS REPORT

On December 5, 2005, New England Transrail, LLC (“NET”) filed its Petition for an Exemption from the application requirements of 49 U.S.C. § 10901 (“Petition”) to acquire, construct, and operate as a rail carrier on tracks and land owned by the Olin Chemical Corporation (“Olin Chemical”) and located in Wilmington and Woburn, Massachusetts. In a decision dated July 10, 2007 (“July 2007 Decision”), the Board found that, if authorized, NET would become a rail carrier subject to the Board’s jurisdiction. The Board also noted that the Environmental Protection Agency (“EPA”) and the Board itself would need to complete environmental reviews prior to addressing whether to authorize NET’s proposal.

Subsequent to the July 2007 Decision, the Commonwealth of Massachusetts (“Massachusetts”) filed a petition for reconsideration, to which NET filed a reply. In August 2007, NET filed supplemental information regarding its proposal, to which Massachusetts and others replied. In October 2008, before the issues raised on reconsideration could be decided, Congress enacted the Clean Railroads Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (codified at 49 U.S.C. § § 10501(c)(2), 10908-10910) (“CRA”). Because the CRA changed the

Board's jurisdiction over the regulation of solid waste rail transfer facilities, in a decision dated July 23, 2010 ("July 2010 Decision"), the Board directed NET to file a status report no later than August 23, 2010.

In response to the July 2010 Decision, NET hereby informs the Board that it intends to pursue its Petition for an Exemption. NET respectfully requests that the Board complete its environmental review and approve NET's Petition to develop a general transloading facility handling multiple commodities, as described in Sections 2 and 3, below. At this time, NET will not transload solid waste at the facility unless it obtains all legally required approvals to do so in the future.

1. Olin Chemical Reports that the Remedial Investigation and Feasibility Study is Proceeding According to the EPA Order

Olin Chemical ("Olin") is responsible for an environmental cleanup of the proposed site of the facility, and has entered into a written settlement agreement with the EPA. Work plans and reports submitted to the EPA can be retrieved from the following website:

http://yosemite.epa.gov/r1/npl_pad.nsf/701b6886f189ceae85256bd20014e93d/1927672eca2d788b852571060051d142!OpenDocument. Olin has provided NET with a report on the status of the cleanup, which is attached hereto as Exhibit A. A summary of Olin's representations follows.

In June 2007, Olin and the EPA executed an Administrative Settlement Agreement and Order ("EPA Order") to conduct a Remedial Investigation and Feasibility Study of the Olin Chemical Superfund Site. The EPA Order included a Statement of Work ("SOW"), which required a Focused Remedial Investigation Report (submitted to EPA October 2007), Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan," submitted to EPA August 2009), and an Interim Response Steps Work Plan (status report submitted to EPA July 2010). The RI/FS Work Plan divides the site into three Operable Units: the property, surface water and

sediment, and groundwater. The RI/FS Work Plan requires the evaluation of property soil, sediment, surface water, and vapor; off-property surface water and sediment; and all on- and off-property groundwater and vapor.

Olin Chemical met with the EPA and Massachusetts Department of Environmental Protection (“MADEP”) on June 29, 2010, to present the results of property surface and subsurface soil testing (addendum to be submitted in August 2010). A qualitative review of the validated data collected from the property determined that the constituents and concentrations detected are similar to previous sampling data, and that the prior Risk Assessment remains valid. Off-property surface water and sediment samples have not been collected due to the need to reach access agreements with affected property owners. Off-property groundwater samples were collected in May 2010 and groundwater validation will begin in August 2010. Some additional groundwater wells have not yet been sampled and several off-property monitoring wells have not been installed due to the need to reach access agreements with surrounding property owners. Further soil, surface water and sediment, and groundwater samples will be collected and tested later in 2010, and the installation of off-property monitoring wells will be completed.

NET has expressly committed that it will comply with all substantive health and safety laws, including regulations of the Commonwealth of Massachusetts and federal environmental laws, such as the Clean Air Act. Petition at 15. Jones V.S. at ¶ 16. As NET has stated in previous filings in this matter, the Board could make NET’s compliance with all applicable substantive health and safety laws a condition of its exemption.

NET requests that the Board complete its environmental review of the site as soon as possible and approve NET’s proposal.

2. NET Plans to Transload Multiple Commodities at the Proposed Facility.

NET plans to develop a general transloading facility for multiple commodities. The commodities to be transloaded at NET's proposed facility will depend on the demands of the markets at that time. Based on prior solicitations, these commodities may include biofuels, dry-goods, salt, sand, gravel, soil, lumber, plastics, steel, paper, woodchips, clay, brick, and, pursuant to the regulatory requirements of the U.S. Department of Transportation, some types of hazardous materials. They would not include solid waste unless and until all necessary additional approvals had been granted.

3. NET Reserves the Right to Seek a Land-Use-Exemption Permit to Operate a Solid Waste Rail Transfer Facility in Accordance with the CRA in the Future.

NET plans to develop the site as a general rail transloading facility upon receiving its license and approval order from the Board. Should NET decide to develop and operate a solid waste rail transfer facility in the future, that facility would be separate, distinct, and in addition to NET's other transloading facilities. To the extent that NET determines that it is feasible to transload solid waste, that portion of NET's activity at the site would be deemed a solid waste rail transfer facility under the CRA, 49 U.S.C. § 10908, and in connection therewith NET would comply fully with the requirements of the CRA. In accordance with the CRA, NET reserves the right to petition the Board for a land-use-exemption permit should the need arise.

Conclusion

For the reasons set forth in the Petition, and for the additional reasons set forth above, NET requests that the Board complete its environmental review and grant the Petition for an Exemption.

Respectfully submitted,

/s/ Kirk K. Van Tine

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Date: August 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document and related exhibit by United States first-class mail.

/s/ Kirk K. Van Tine _____

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Olin Chemical Superfund Site
Wilmington, Massachusetts

Administrative Settlement Agreement
And Order on Consent for Remedial
Investigation/Feasibility

USEPA Region I
CERCLA Docket No. 01-2007-0102

August 12, 2010
Status Update

The above referenced Order was executed June 27th 2007 to conduct a Remedial Investigation and Feasibility Study. A detailed Statement of Work (SOW) was included in the Order. Included in the SOW were the following tasks:

- **Perform Interim Response Steps Work Plan**
 - OM&M of the Interim Remedial Measures previously put in place at the Site and the maintenance and inspection of the Slurry Wall and Temporary Cap.
 - Semi Annual Status Reports-Last Report # 6 Submitted July 2010.
 - Implement the off- Property West Ditch pilot extraction test.

- **Focused RI Report**
 - Merge Previously compiled environmental Report, results of testing and other relevant information into Operable Unit specific summaries for existing Site conditions and provide an evaluation of the existing data relative to EPA data quality and usability objectives.
 - The Focused RI Report was submitted to UESPA - October 1, 2007.

- **RI/FS Work Plan**
 - The Site was divided into Three Operable Units for the RI/FS. “The RI/FS will proceed as a Site-wide process encompassing all three OUs (i.e., RI/FS work is expected to proceed concurrently and independently on all OUs...”
 - **Operable Unit 1**-“Defined as the approximately 50-acre Olin Property hereafter, the “Olin Property” or “Property”), including the former facility area, the established conservation area, the on-property ditch system, the calcium sulfate landfill, and the slurry wall/containment area. *The OU 1 RI/FS will evaluate soil,*

sediment, surface water (including the on-property ditch system), and potential vapor issues (if applicable),”

- **Operable Unit 2-**“Defined as off-property surface water and sediment areas including, as a minimum, the off Property East Ditch, South Ditch and West Ditch. *The OU2 RI/FS will evaluate surface water and sediment issues.”*
- **Operable Unit 3-**“Defined as all on- and off-Property groundwater areas including Maple Meadow Brook aquifer, groundwater beneath the Olin Property and groundwater located south and east of the Olin Property. *The OU3 RI/FS will evaluate groundwater and potential vapor issues (if applicable).”*

- Document Submitted to USEPA-August 14, 2009

- **Work Completed on Each Operable Unit**

- **Operable Unit 1-The ‘Property’**
 - A total of 266 surface soil samples and 564 subsurface soil samples have been collected on the Property.
 - Analytical results have been validated and provided to USEPA in electronic format for their review and use.
 - A meeting was held on June 29th 2010 with USEPA, their consultant and MADEP to present the analytical results.
 - An Addendum to close minor data gaps will be submitted the end of August 2010.
 - Based on Quarterly Inspections, the Temporary Cap on the Slurry Wall is still serviceable
 - A contractor has been selected to perform testing on the Slurry Wall to confirm integrity. Baseline testing will be conducted in 4th quarter of 2010.
 - The Plant B Pump and Treat system continues to operate effectively.
- **Operable Unit 2-Surface Water and Sediment**
 - Surface Water and sediment samples have not been collected due to outstanding Access Agreements.
- **Operable Unit 3-Groundwater**
 - The majority of the 1st round of off-Property groundwater samples was collected May of 2010.
 - Analytical results have been received.
 - Groundwater validation will start August of 2010.
 - There are some off-Property wells that have not been sampled and several additional off-Property monitoring wells that have not been installed due to outstanding access agreements.
 - Completed seismic survey to locate additional off-Property monitoring wells

- Data under review to determine location of additional off-Property wells
- **Future Work**
 - **Operable Unit 1-The 'Property'**
 - Collect Additional soil samples in 4th quarter of 2010
 - Validate data
 - **Operable Unit 2-Surface Water and Sediment**
 - Collect fall of 2010 and spring of 2011 Surface Water and sediment samples
 - Conduct bio-assay testing of South Ditch Sediment Sample
 - **Operable Unit 3-Groundwater**
 - Validate groundwater data from wells located on Property and off-Property wells starting in August 2010
 - Finish the installation of off-Property monitoring wells fall of 2010
 - Collect fall of 2010 groundwater samples and water levels from wells located on the Property and off-Property wells
 - Collect spring of 2011 groundwater samples and water levels from off-Property wells not sampled in 2010.
- **NET Redevelopment**
 - Based on a qualitative review of the validated data collected from OU-1 in 2010, the constituents and concentrations detected are similar to previous sampling data.
 - A qualitative review of the 2010 data complements the Risk Assessment previously conducted for the NET redevelopment
 - Based on this review, the previously completed NET Risk Assessment is still appropriate.
 - The NET development of buildings, paving and covering of the site would further reduce any risk of site workers.
 - Should a remedy be required for OU-2 Surface Water and Sediment, the NET development would not impact this area or the ability to conduct a remedy.
 - The installation of a paved area over the Slurry Wall area would be beneficial to further reduce infiltration.
 - An Activity and Use Limitation will be placed on the property to prohibit the use of groundwater, pursuant to the current purchase and sale agreement.
 - Should a remedy be required for OU-3 the NET development would not interfere with its implementation.

- Should the Plant B Treatment Facility need to remain operational, it could remain in operation with the NET Development in place and is 'carved' out of the NET Development.