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MAY 18 2005

**SURFACE
TRANSPORTATION BOARD** May 17, 2005

Of Counsel
W. Patrick Quast
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214052

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423

Re: New England Transrail, LLC, d/b/a Wilmington & Woburn
Terminal Railway-Petition for Exemption-Construction and
Operation as a rail carrier on tracks and lands acquired
from Olin Corporation.

Petition for Reconsideration
FD 34391

FEE RECEIVED

MAY 18 2005

Dear Mr. Williams:

**SURFACE
TRANSPORTATION BOARD**

Enclosed please find the original and ten copies of New England Transrail's Petition for Reconsideration along with Exhibit A the Construction Release Abatement Measure (CRAM), Exhibit B, Response to Town of Wilmington Comments, Exhibit C the Environmental Assessment and Exhibit C the Post Environmental Assessment. These documents are large. Also enclosed are two CD Rom disks one containing the Petition and supporting certification of John Ryan and the response to the Town of Wilmington Exhibit B. The second containing the Construction Release Abatement Measure (CRAM) which is Exhibit A together with such of its exhibits as we have in electronic form. The certification of Thomas Egan was only available in hard copy as is the Environmental Assessment and the Post Environmental Assessment.

Also enclosed please find my check for \$200.00, the filing fee.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

Cc: Daniel R. Deutsch
Deutsch Williams Brooks Derensis & Holland, P.C.
Attorneys for Wilmington, Massachusetts
99 Summer Street
Boston, MA 02110-1235

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BEFORE THE
SURFACE TRANSPORTATION BOARD

21405²

FINANCE DOCKET NO. 34391

NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON AND
WOBURN TERMINAL RAILROAD CO. – CONSTRUCTION,
ACQUISITION AND OPERATION EXEMPTION- IN WILMINGTON
AND WOBURN, MA

NEW ENGLAND TRANSRAIL, LLC d/b/a WILMINGTON AND
WOBURN TERMINAL RAILROAD PETITION FOR
RECONSIDERATION

The Petitioner, New England Transrail, doing business as the
Wilmington and Woburn Terminal Railroad Co. (NET) requests that the
Board reconsider its decision to dismiss Net's Petition to construct and
operate a railway in Wilmington, Massachusetts because that decision was
based on material errors of fact and as the proper action, if the facts were
correct, was to remand this matter to the Section of Environmental Analysis
("SEA") for a determination whether a supplemental Environmental
Assessment was required. However, the Board's determination that the
proposed facility reviewed by the Board's SEA is "fundamentally different
from the modifications submitted to MaDEP as part of the Construction

CRAM” is error. Reconsideration is appropriate where the Board’s decision is based upon a material error of fact or law, The Kansas City Southern Railway Company—Trackage Rights Exemption—Gateway Western Railway Company and Gateway Eastern Railway Company FD _ 33780 _ (June 5, 2000).

NET’s Construction Release Abatement Measure (“CRAM”) was submitted with a Focused Risk Assessment to the Massachusetts Department of Environmental Protection (“MADEP”) and the Town of Wilmington (the “Town”), in November, 2004 by Olin Corp. the former owner of the premises which remains responsible for resolving environmental conditions created by the property’s prior use for a chemical operation. Exhibit A. A public comment period for the comprehensive review of those documents was established. NET replied to the extensive comments of the Town on the CRAM, in its additional submission to the MADEP. Responses to Town of Wilmington Comments, Construction Related RAM, February, 2005, (CRAM Response) Exhibit B. The Environmental Assessment completed by the SEA was served August 4, 2004 (EA) is Exhibit C and the Post Environmental Assessment served December 22, 2004 (Post EA) is Exhibit D. The EA found and the CRAM established with a detailed analysis of all steps required to construct the terminal railroad and its facilities, including

any changes in those facilities, that NET's proposed railroad will have no more than a negligible environmental effect. Indeed, the EA relied in part, in reaching that conclusion that NET's construction activity was subject to the detailed environmental review under Massachusetts law of which the CRAM is a material part. The CRAM, erroneously deemed materially different from the EA by the Board, is not materially different and more importantly establishes with a detailed analysis that there is in fact no significant environmental effect due to any aspect of the construction of NET's entire railroad as described in the EA.

The decision of the Board states that the SEA had reviewed the CRAM and had determined that it showed a project which was materially different than the plan it reviewed in preparing the EA. While taking strong exception to this statement, as will be fully explained below, petitioner asserts that dismissal is not proper. Under NEPA the Board is required to determine not just that some aspects of the project may look changed, but whether any of the items it deemed to be changes had any significant adverse environmental effect. Under the ICCTA a petition for an exemption is dismissible only where fraud is involved. There is no indication in this record to support any such conclusion. None is mentioned in the decision. Had any material effect been evidenced by the CRAM, NEPA requires the

Board to supplement the Environmental Assessment. No bases exists on which to justify the dismissal of this petition. The law is clear:

NEPA does require that agencies take a "hard look" at the environmental effects of their planned action, even after a proposal has received initial approval. See Brief for Petitioners 36. Application of the "rule of reason" thus turns on the value of the new information to the still pending decision making process. In this respect the decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instance: If there remains "major Federal actio[n]" to occur, and if the new information is sufficient to show that the remaining action will "affec[t] the quality of the human environment" in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared. [FN20] Cf. 42 U.S.C. § 4332(2)(C).

Marsh v. Oregon Natural Resources Counsel, 490 U.S. 360, 374 (1989).

Therefore, the proper remedy was not to dismiss the petition but to remand this matter to the SEA for a determination whether there is any adverse environmental effect due to any new information contained in the CRAM. Without of such effect, fraud can not be established and NEPA has been complied with. Dismissal was a legal error which, as will be shown below is based upon factual errors.

FACTUAL ERRORS

The Board's conclusion is factually incorrect as:

1. There is no threefold increase in the number of planned rail segments to serve the reload facility (from rehabilitation of the one existing track to the construction of three new tracks);
2. The three newly planned rail segments to be installed over the Dense Aqueous Phase Liquid (DAPL) containment area and planned development of a storage area on the DAPL containment area are not newly proposed but were in the EA as possible a future expansion which would bring the facility to its maximum capacity, the maximum capacity reviewed by the EA; and
3. Excavation of potentially contaminated soils within the project area to construct rail lines, a vault and to remove or cap existing chemical pipelines is not new or undisclosed but required to build the facilities reviewed in the EA.

In fact, the CRAM reflects only design details which were required to support the risk assessment, including storm water management system layouts, the depth and location of excavation, and the potential location of abandoned, subsurface utilities. Other than the one short run around track through the loading structure, it does not contain changes. It contains no changes in the scope or function of the project as set forth in NET's Petition and submissions to the SEA. Indeed, the development of these construction and mitigation details pursuant to the Massachusetts process governing redevelopment of contaminated brown fields was cited in the EA as a means of determining that the NET project would have only a negligible environmental effect, EA 4.8.2 pg 4-16. Adherence to Massachusetts standards was further similarly relied upon in Mitigation Measure 34 and 35

as set forth in the Post EA. Indeed, the CRAM establishes not only NET's full disclosure of all aspects of this process but that its railroad, in fact, will have no adverse environmental effect during construction or thereafter..

NET FOLLOWED SEA'S PROSCRIBED PROCESS

Reconsideration is particularly appropriate here where the Board's decision ignores the fact that NET's submission to MaDEP is the process relied upon in the EA as assuring environmental compliance which process was extended in the Post EA to include a specific process to be followed, See Post EA Mitigation Measures 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 38. This process anticipated changes in plans in Mitigation Measures 31 and 33. Petitioner had agreed to assure, by this process, that all actions taken would comply with Massachusetts environmental standards. Board's error is due the misimpressions generated by the greater level of detail required in a Massachusetts CRAM in comparison with the EA and failing to understand that the EA relied on precisely the fact that a CRAM must explain why a construction project on a contaminated site will have no material environmental effect in reaching its conclusion that an EA was sufficient in this case to meet the requirements of NEPA.

I. TO THE EXTENT THAT THE CRAM SHOULD HAVE BEEN SUBMITTED TO THE SEA, THAT ERROR WAS BASED UPON RELIANCE ON APPLICABLE LEGAL STANDARDS

In January, 2005, NET had discussions with SEA's environmental consultants regarding details presented in the CRAM. The environmental consultants indicated that they did not believe the CRAM included any change which was sufficient to require a supplemental EA. They responded further by providing NET with the following for guidance:

"CEQ Regs (40 CFR 1502.9(c)) -

"Agencies shall prepare supplements to either draft or final EIS if:

(i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

One Supreme Court case (*Marsh v. Oregon Natural Resources Council - 1989*) found that a Supplemental Impact Statement is not required every time new information comes to light, but an agency must take a hard look at the environmental effects of an action. A supplement is only needed if the new information is sufficient to show that significant impacts would occur.

Courts have found that a Supplemental Impact Statement was not required when:

Circumstances claimed to be new were adequately discussed in the DEIS or FEIS;

The environmental impacts of the new circumstances were minor or not significant."

The bases for this conclusion was that the details presented in the CRAM were simply a full explanation of how facilities reviewed in the EA will be built without causing environmental harm. Submission of the CRAM to MADEP fully complied with all the mitigation measures agreed to as part of the process contemplated in the Post EA to deal with both these details and changes in NET's plans, and to assure that no actions will have any significant environmental impact. Based upon the process proscribed by SEA, the MaDEP approval of the CRAM would, by definition, mean that the details set forth in the CRAM would not have a significant environmental impact, and would therefore not require further review by SEA.

II. FACTUAL ERRORS

THERE IS NOT A THREEFOLD INCREASE IN THE NUMBER OF PLANNED RAIL SEGMENTS

In the CRAM only one new track is added to the central loading area for a short segment as a run around track. The (EA) shows that there are two tracks through the loading area, not one as asserted in the Board's decision, Figure 1-2, EA pg. 1-6. The Board's error is probably due to the fact that in the plan included in the EA the existing tracks to be rehabilitated are printed in light grey ink. Only the tracks to be added are included in the legend and they are dark blue. Thus, on casual inspection, the current tracks are easy to

miss. However, the change is from two tracks to three for a portion of this area—not a threefold increase.

In the process of preparing the CRAM it was determined that a third track was needed to bypass the loading area within the sprung structure. This is needed to allow a locomotive to move from one area to another without disturbing the loading operations being conducted on the two tracks initially designed within the shelter. This does not add a loading track but a running track. The additional size of the structure is to accommodate this track.

The sprung structure will be increased in length by 20 feet to accommodate this track. The increased size of the structure is not a change. The initial submission contemplated one or two sprung structures with a total space covered of 50,000 square feet, (EA pg. ES-3). The single structure now being contemplated will be 46,800 feet (e.g. within the 50,000 square foot footprint) and it remains a movable sprung structure. CRAM Appendix A 1.2 FFS, pg. 1¹.

The run around track is a change and was submitted to NET's environmental engineer as required by Mitigation Measure 31, Post EA pg.

¹ The CRAM introduces some confusion as to what this building is to be, See, ex. CRAM 3.2 e) Pg. 14 . As a sprung structure can be easily moved as needed, NET continues to plan on using such a structure rather than a prefabricated metal building. It is noted, that both types of building would use the same foundation, four feet deep, one foot in fill and three feet below the current surface.

1-6 and was included in the CRAM along with the specifications on why it had no adverse environmental effect. If this change is found by the Board to be material, the issue should be remanded to the SEA for further consideration.²

DEVELOPMENT ON THE DAPL AREA IS NOT A CHANGE

NET's initial submissions summarized by SEA at ES.5.13.2 set forth the general concept for an expansion of the break bulk activities on the DAPL area (described as the area to the south and west of the Proposed Action):

"The Applicants future plans include development of a break bulk facility (transit shed/warehouse facility) on the proposed project site with industrial spurs to serve potential industrial customers to the west and south of the Proposed Action. The details of any such facility, and when the property might be developed are not known at this time."

NET also discussed development on the DAPL area in footnote 4 on pages 6-7 of John F. McHugh's letter to the SEA dated September 29, 2004, in connection with claimed potential noise impacts emanating from that area possibly effecting a residential area west and south of the terminal:

² Approval of the CRAM by MADEP, as required under the EA and Post EA, will be further proof that placement of this additional track (or any other tracks for that matter) will not result in increased risk, prevent future remedial action, and/or exacerbate conditions. The installation of additional track will result in either removal and off-site disposal, or capping of shallow, contaminated soil, which is a remedial activity subject to the Massachusetts Contingency Plan.

...based on aerial photos, the closest residential structure in the R-20 area zoned as residential within 350 feet of the Property (west of the Property, not east of the Property) is approximately 400 feet west of the Property. However, the portion of the Property closest to this zone is the area reserved as a Conservation Restriction which will remain in its current wooded/vegetated condition without any development or activities conducted thereon. Based on aerial photos, this residential area is surrounded on three sides by industrial trucking warehouse operations, each of which is approximately 400 feet from this area—the only side not bordered by industrial warehousing, is the side facing away from the Property. **The closest portion of the Property on which development and operations can occur is almost 800 feet from the closest residence in this area**, and is buffered from those residences by two to three warehouse/truck distribution centers. The mitigation measure referred to in Item 18, will also apply to this area.

(emphasis added)

The EA anticipates storage of aggregates, lumber, sand, gravel and stone at the facility EA 1.4.3 pg. 1-4. Therefore, the CRAM description of this holding area is not a change. The CRAM simply designates where articles to be held as described in the EA will be held. The EA contemplated this development in the future—both storage and traffic on and off the DAPL area to access a further break bulk operation. SEA and NET attempted to deal with such future developmental details through the Mitigation Measures 31 and 33 both of which refer to development plans and “any changes in those plans” and establish an ongoing procedure for dealing with them. Post EA, pg. 1-6.

NET, due to its contract with Olin, is required to place a permanent cap on the DAPL containment area (an area of groundwater contamination now surrounded by a slurry wall installed to bedrock with a temporary cap to seal it against ground water) within one year after closing. Initially, there was some question as to what use the cap could be devoted to and lumber storage was always under discussion. Indeed a second sprung structure had been proposed for this area to cover a lumber operation in particular, i.e. the transit shed/warehouse referred to in the EA, (EA ES.5.13.2.). However, due to the studies required for the CRAM to design the cap, it was determined that the cap could sustain both rail and trucking activity for all planned rail transportation contemplated in its Application without any threat to the environment, i.e. to the integrity of the containment area. Thus, it was decided to extend the two track holding area, one existing track and one new track, which was in the original design (See EA Figure 1-2 page 1-6) and which ended about one car length from the edge of the cap, onto the cap and to make that area a three track break bulk and materials storage facility, the future extension of the project referred to in the EA, ES.5.13.2 pg. ES-14. Again this installation and use was reviewed by NET's LSP/environmental engineer and was submitted to the Town via the MaDEP and the Town's

comments were responded to in a timely fashion—all pursuant to the process set forth in Mitigation Measure 31.

In the CRAM all the information which allowed the extension of this track on to the cap area is fully set forth to establish that this extension will have not any adverse effect. The cap will cost about one million dollars to build. Making it an extension of the facility's break bulk and storage capacity now rather than in the future was deemed prudent once the ability to do so safely was established as it can be incorporated as part of the cap project, greatly reducing the cost over rebuilding this area in the future. This step was also prudent as by the time the ability of the cap area to be fully used was discovered, the potential customer base for the facility had greatly expanded and included materials which were within the categories NET would hold on delivery.

As is clear from the EA, NET, always anticipated that the containment area, after the installation of a permanent cap, could be used for material storage, and vehicular traffic, provided the function of the cap was maintained. The concerns regarding the type of material stored on the cap, or the presence of rail lines and trains, in particular, is a structural issue, not an environmental issue. NET's geotechnical engineer has addressed the

potential structural issues in NET's reply to the Town's comments, see Response pg. 1-8.

The CRAM discussion of the cap and its use provides the evidence, based upon on site surveys and tests, that NET's representation to the SEA that all construction, loading and discharge operations conducted by NET, either presented to the Board at this time or as dictated by changes in its operation, will have no environmental impact and fully comply with applicable State environmental standards, particularly those imposed on the Olin property. The increase in the length of trackage to be built is therefore a fact with no adverse environmental effect due to construction and it does not increase the volume of traffic to be generated by the project. It only causes the facility to have its full EA reviewed capacity sooner.

Therefore, the inclusion of the trackage on the cap is not a change. It represents only an acceleration of the build out set forth in the EA, described as a transit shed/warehouse for break bulk served by new sidings EA ES.5.13.2 pg. ES-14. NET followed the procedure agreed to in Mitigation Measure 31 in extending the facilities to the west and south as stated in NET's original submissions. The additional handling facilities may effect the speed at which NET's facility reaches its maximum projected traffic, but these additions were contemplated at all times, and do not effect the

maximum traffic levels contemplated in the EA, i.e. 400 truck trips (EA 1.4.5 pg. 1-4) and a train of about 25 railcars on average, six days a week (EA 1.4.4 pg. 1-4).

To the extent that the CRAM analysis should have been submitted to the SEA, this is an error based upon the belief that nothing in the CRAM constituted a significant change. At all times it was believed that compliance with the agreed mitigation procedures was adequate where the rearrangement of facilities and expansion to sidings and of break bulk capacity was anticipated in the original submission and the detailed response to the Town is evidence that all environmental issues have been fully addressed.

EXCAVATION OF SOILS IS NOT A CHANGE

The EA always contemplated extensive excavation for general site work, structural foundations and track foundations. The itemization in the CRAM does not evidence any change but rather sets forth the logical consequences of the work required by the full build out of the project on the Olin site as described in the EA.

1. The Vault

The Board views with concern the statement in the CRAM that NET will use a vault for its transloading operation and speculates that this will require additional extensive excavation, perhaps into the aquifer. That is not the case. The CRAM describes the vault as follows at pg. 9:

There will be an 118 feet long by 15 feet wide concrete vault structure that has a bottom at Elevation (El.) 84.0. Assuming a concrete floor 18-inches thick and 12-inches of foundation preparation material, the excavation would be approximately 8 feet deep or to El. 81.5. The groundwater monitoring wells installed within the building area by NET in January 2004 indicated groundwater to be below the proposed depth of the trench. Therefore, based upon a review of historical groundwater measurements made at the Property in nearby monitoring wells, the seasonal fluctuation of groundwater in the building area is minimal and the need to handle any significant quantities of construction related dewatering was determined to be unlikely.

The Board's conclusion that this will entail a major increase in the amount of earth that will be disturbed is incorrect. Less than 600 cubic yards of soil may have to be excavated for the foundation of the vault. Only one hot spot of contaminated soil has been located near any structure to be built by NET, CRAM Exhibit A FFS 3.2.1 Pg. 8 and figure 2. The CRAM explains how such contamination will be dealt with if it is disturbed, CRAM 3.3.1 pg. 14 and Appendix A. FFS 5.1 pg. 14 and the EA correctly states that any environmental hazard associated with the prior use of the property is Olin's responsibility, EA 4.4.3 pg. 4-12.

The Board's speculation that the vault's foundation may affect the aquifer is also incorrect. The CRAM demonstrates that it will only be 1 ½ feet below existing foundation levels, CRAM 1.1 pg. 3, 1.4 pg. 9, 3.3.5 pg 16 and Attachment II pg. 5. In particular the CRAM establishes that the vault is not deep enough to reach the variations in the water table observed in that area and that all excavated soils will be tested and properly disposed of if needed, CRAM Attachment I and contamination is found only in the extreme northwestern corner of the pit excavation area. CRAM figure 2. See also the certification of John Ryan, submitted herewith, that the facility is designed to avoid any contact with water.

The vault will house equipment now expected to be used to transload commodities from trucks to rail cars. The vault is essentially a hopper into which the trucks discharge material for transloading. The fact that trucks were to deliver break bulk materials to the facility to be loaded by the railroad onto rail cars has been well known at all times. The vault is simply an elevation differential supplied to facilitate that process.

2. Excavation For Structural Foundations, Site Leveling and Rail Line Installation.

The EA shows that a significant amount of soil must be moved to return the site to its natural condition, the condition of the surrounding area, i.e. flat, EA pg. ES-9. The analysis in the CRAM of the number of cubic yards of soil to be moved is not a change but a full explanation of how this will be accomplished. The activity, as stated in the EA does not cause a change in the topography. The EA describes (i) removing piles of dirt left behind by the prior activity on the site; (ii). The construction of one or more sprung structures also requiring soil excavation CRAM Attachment I (CRAM pg 13)³; and (iii) construction of the rail lines and loading equipment facilities which also require moving substantial amounts of soil. The EA deals with this entire logically included aspect of construction by correctly stating:

“The Proposed action is not expected to result in additional adverse impacts to soils in the proposed project area. Moreover, as discussed above, all ongoing remediation activities associated with past contamination of the property are the responsibility of Olin.”

EA 4.4.3 pg. 4-12. The CRAM contains an analysis regarding soil excavation for each aspect of the proposal, CRAM 3.3.1 pg. 15. Again, the CRAM is part of the process relied upon in the EA to assure that this project would have a negligible effect on the environment and the Board is in error

³ The CRAM introduces some confusion as to what this building is to be, See, ex. CRAM 3.2 e) Pg. 14 . As a sprung structure can be easily moved as needed, NET continues to plan on using such a structure rather than a prefabricated metal building. It is noted, that both types of building would use the same foundation, four feet deep, one foot in fill and three feet below the current surface.

in deeming the detailed descriptions of specific steps needed to carry out actions which were set forth in the EA to be material changes. Moving dirt is an action obviously necessary to build railroad tracks, the sprung structure and the loading facilities described in the EA and a description of how this will be done is not a change.⁴

REMOVING OR CAPPING OF CHEMICAL PIPELINES

The EA (EA 2.2.1.1 pg. 2-1 and 3.7 pg. 3-11) discusses the need to demolish and remove existing structures and slabs on which demolished buildings stood as part of this project. The EA also notes that this is the site of a closed chemical plant. Demolition of buildings and foundations must necessarily include facilities associated with those structures, including abandoned piping and utilities. The CRAM merely provides the necessary steps to accomplish this demolition in detail and the work needed to install storm water control facilities.

Existing underground utilities (including abandoned in-place chemical process pipelines) encountered during the installation of the storm water collection system will be removed or capped. Removed piping will be stockpiled for further characterization, and cleaning if appropriate. NET anticipates that removed piping will be disposed of off-site as scrap metal;

⁴ It should be noted that excavation and removal of soils from the Olin's site is the method of minimizing environmental impacts from a contaminated site which has been championed by the community.

CRAM 3.2(c) pg. 18.

Demolition assumes that some piping associated with the site's former use, will be discovered. Although all known subsurface piping is understood to have been cleaned, and abandoned in place at the time the facility was closed in the late 1980's, the CRAM conservatively anticipates that the piping might contain residual contamination. The CRAM describes the measures to be taken in dealing with this situation. When redeveloping any brown field site, or indeed demolishing any structure, plumbing, piping and other underground facilities associated with the prior use is an included action. This is a contaminated site undergoing remediation. Under applicable State standards the specifics of dealing with the flotsam of the prior chemical operations are fully discussed in the CRAM. However, the obligation to deal with conditions related to the past contamination of the property is Olin's not NET's. That fact is stated and relied upon in the EA 4.4.3 pg. 4-12.

Again, the CRAM is a detailed statement as to how NET will accomplish the demolition of existing structures which is referred to in the EA and must be removed to re-use this property. It establishes the truth of the general statement that NET will assure that no adverse environmental effect will result as it will comply with local specifications and will do

nothing to interfere with Olin's remediation efforts and will use the best methods available to accomplish these goals under the supervision of its Licensed State Professional ("LSP").

FEDERAL SUPERFUND SITE DESIGNATION

The Board incorrectly determined that the Eames Street property is a federal superfund site. It is NOT a superfund site and never has been. It is a Tier IA site, as defined by the Massachusetts Contingency Plan. This is relevant because the requirement that NET obtain approval from the MaDEP of a CRAM derives from the rules and regulations under the Massachusetts Contingency Plan.

III. THE CRAM PROCESS IS RELIED UPON IN THE EA TO DEMONSTRATE THAT THIS NEW RAILROAD CONSTRUCTION POSES AND WILL POSE NO SIGNIFICANT ENVIRONMENTAL IMPACT UNDER NEPA

As is stated above, the fact that NET's project would be subjected to the CRAM process was cited as a reason why it posed no significant adverse environmental effect in the EA. But as NET's project was never intended to be static, mitigation measures were agreed upon to insure that changes would also cause no environmental problem.

It has been clear from the start that as this facility was to be a terminal railroad serving a group of reload facilities located on the new rail lines on the Eames Street property. The arrangement of facilities needs to change from time to time to accommodate changes in demand. As the result of this understanding, the EA and Post EA are replete with Mitigation Measures contemplating such changes and establishing a means to certify that no significant environmental effect will result., See, Post EA Mitigation Measures 28, 30, 31, 32, 33, 34 and 38. Indeed, even the facilities to be built initially need to be movable to facilitate the efforts of Olin to remediate pre-existing environmental problems which may be discovered in the future. In contemplation of just such contingencies the mitigations measures allow a review of changes as they are deemed necessary, even though as a rail carrier such changes would normally be exempt from any review.

Mitigation measure No. 31 on page 1-6 of the Post Environmental Assessment (PEA) states in relevant part:

“Applicant shall submit all plans associated with operations to its LSP/Environmental Engineer for prior review and a determination that there would be no effect on the Town of Wilmington's water supply or the Maple Meadow Brook Aquifer. If requested to do so, Applicant shall submit its master operational plans and any **revisions that have been approved by the Applicants LSP/Environmental Engineer** to the Town of Wilmington and shall respond, in timely

fashion, to comments from the Town of Wilmington regarding the operational plans and any revisions to the plan. (Emphasis added).”

NET plans to acquire the premises from Olin Corp. under a contract that requires NET to comply with Olin’s obligations to the MaDEP. Pursuant to this commitment, NET’s proposed action was submitted to Massachusetts. Olin was committed to NET to seek approval for the Proposed Action and NET was required to participate in that process. As part of that commitment, and in accordance to a specific requirement established by MADEP in a letter to the MaDEP regarding the Eames Street Development Project (EOEA # 12245), dated November 20, 2003, NET prepared a document referred to as a Construction Related Release Abatement Measure (CRAM) Plan. The purpose of this CRAM is to demonstrate, in manner satisfactory to MADEP, that

Work at the Property shall not be implemented without a level of understanding of the disposal site conditions and surrounding receptors sufficient to support the actions taken [40.0442(1)(a)];

Work at the Property shall not be conducted in a manner that is likely to result in the exposure of surrounding human or ecological receptors to levels of oil and/or hazardous material that could pose a significant risk.... [40.0442(1)(b)];

Work at the Property shall not prevent or impede the implementation of likely future response actions [40.0442(1)(c)]; and

Work at the Property not be conducted in a manner inconsistent with the Response Action Performance Standard described in 310 CMR 40.0191 [40.0442(1)(e)].

Therefore, in the CRAM process, which the SEA was relying upon in the EA as assurance of environmental compliance and proof of no significant impact, NET has both assured that its planned facilities, including “any revisions”, comply with local environmental standards, particularly those applicable to a highly contaminated brown field site. The CRAM provides more than just assurances. It is more than a “hard look” and supports its conclusions with the results of a full environmental review.

NET more than fulfilled its commitment made in Mitigation Measure 31. It obtained the approval of its LSP/Environmental Engineer. It submitted its documentation to the Town. It replied to the Town’s comments in a timely manner. Thus, when the Town in this proceeding protested these changes as materially different, it had already had a full opportunity to seek explanation of and mitigation of any change which could have caused an environmental problem in the Massachusetts proceeding or by addressing the problem with NET’s LSP/Environmental Engineer, an opportunity it took full advantage of.

Therefore there has been no intent to hide some negative effect which would justify dismissal of the NET petition. On the contrary, because the CRAM confirmed NET’s assertions that its activities would not have an

environmental impact, it was eager to disseminate the CRAM findings, which it did to all interested parties in the State of Massachusetts who could be directly affected by the type of environmental impacts caused by construction activities. NET had complied with the SEA's mitigation measures designed specifically to provide that the details of this terminal complied with state environmental standards, the very process relied upon by the EA in deeming this project to have minimal potential adverse environmental consequences, EA 4.8.2 pg. 4-16.

Based upon the above analysis of the CRAM's disclosures, when NET inquired of the SEA's environmental consultant concerning the need to make a further submission of the CRAM to the SEA for a possible supplemental review, NET was correctly advised that no further submission was needed. The CRAM establishes, with great detail, that no adverse effect is to result from the steps needed to construct the facility. It also establishes that minor changes in the plan have no significant environmental effect, therefore none of this information establishes a significant environmental effect. It is therefore not the type of information which requires a supplemental EA under the ruling of March v. Oregon Natural Resources Counsel, supra.

Indeed in Marsh the court was confronted with a report and maps which were obtained after the EIS was completed, which materials were relevant to the effect of a dam on fish. As in the case of the CRAM here, these documents contained more information than had been reviewed in the EIS process but they showed no evidence of any previously undisclosed adverse effect. Thus, reopening the EIS to comment on the report and its maps, as is the case with the CRAM here, was not required as the report "[d]oes not purport to discuss any conditions that had changed since the EIS was completed". Marsh Supra 379. Here the SEA did receive the CRAM. It concluded incorrectly that there were material changes, but it did not conclude that they had any significant environmental effect.

It is respectfully submitted that should the Board deem the procedures followed by NET to assure its continued environmental compliance to be inappropriate notwithstanding full compliance with the requirements of Mitigation Measure 31 and full disclosure of the construction details to all effected, the solution is to resubmit the matter to the SEA for further review limited to whether any change exists and whether any change or other information contained in the CRAM has sufficient environmental significance to require a second Post EA.

IV WASTE HANDLING IS SOLELY ASSOCIATED WITH TRANSPORTATION.

The Board instructed NET to further explain why it intends to grind Construction and Demolition waste ("C&D") on the premises and bale Municipal Solid Waste ("MSW") and how these activities are related to NET's transportation services. As was stated in NET's response to the various petitions seeking dismissal of NET's petition, it is submitted that these steps, now contemplated, make the facility and its transportation operations more efficient and specifically address transportation problems associated with moving waste by rail. However, it is also submitted that the machinery required for grinding is expensive. NET maintains the capability to commence transload operations without some of these methods or in a different configuration or area, but at all times subject to the review and approvals required in Post EA Mitigation Measures 31 and 34.

The following is provided in addition to the explanation provided to the SEA in a submission from John F. McHugh on behalf of NET dated September 29, 2004, which the Post EA discussed, pgs. 2-17 to 2-19.

a. GRINDING OF C&D.

C&D includes broken building components, from demolition sites. The sizes of these materials are whatever they happen to be when placed in a

truck. As is set forth at length in the certification of Thomas Egan submitted herewith, C&D dumped as is into a rail car causes extensive damage to rail cars, no matter the care of operators. Further, C&D loaded as is has large void spaces due to the size and configuration of dumped large pieces of material. This causes loads to cube out before they weight out and it causes loads to shift in transit. It also causes loaded cars to have or, due to shifting create, variations in weight from one end to the other and even from side to side. All these problems make the transportation operation less efficient as more cars are required due to cars needing constant repairs and badly loaded cars constitute a safety issue everywhere along their route.

Mr. Egan explains as does John Ryan, an expert with experience in the waste industry, that Grinding of C&D before loading reduces the size of pieces to a uniform maximum. This allows the cars to be loaded to capacity, evenly without void spaces and without damage to the equipment. It allows the cars to be loaded by a belt system which produces a nearly continuous stream of cargo, increasing the efficiency of the operation in all respects. It allows cars to be discharged at a destination properly equipped, without risk of harm to discharging facilities or to cars.

Mr. Egan explains that grinding also addresses the safety issue. A car overloaded at one end could fight the track on curves and switches as the

ability of the trucks to swing is impeded. By grinding the material and loading it with a belt system, cars are evenly loaded from front to back and from side to side as the cars are loaded in a manner similar to coal and aggregates. Once loaded there is little likelihood of shifting.

Mr. Ryan states that in his years of experience in the waste industry, grinding and baling of waste are functions exclusively related to the need to transport waste. He states that he designed the NET facilities solely to facilitate efficient transportation of the material and for no other reason.

b. BALING OF MUNICIPAL SOLID WASTE

Mr. Ryan explains that baling of MSW is designed to make the use of equipment more efficient. MSW is generally light in weight and loosely packed. Trucks which pick this material up off the street generally compact it somewhat. Loading this slightly compacted MSW loose requires that it be compacted further in the container or rail car to obtain any level of efficiency in utilizing the car's weight carrying capacity. This compacting operation is generally accomplished by placing a heavy machine on the load inside the car or container. This causes buckling of container and car sides and then renders it difficult or impossible to seal the loaded unit, a necessary step to contain smells and litter. NET retains the option of using this system as the vault discussed above is designed to protect containers being loaded

with MSW directly from trucks during both the loading process and the compacting process using a heavy machine. The vault is convertible to accommodate a baling process..

Mr. Ryan explains that the baling option allows equipment to be loaded to or near capacity. Baling compacts the material and holds it together in a package which is easily handled. This package helps to reduce odors and eliminates litter. It facilitates loading rail equipment to maximum capacity, and facilitates using a greater variety of rail equipment, reducing the car supply costs and needs. As bales are uniform in size and do not fall apart, baling facilitates loading and discharge, reducing damage to equipment and reducing transit cycle times.

Materials consigned to NET for transport will be bound for landfills outside the State of Massachusetts. As is stated in NET's petition NET will not own these materials. Therefore NET will not be in the business of selling waste products for reuse. All processing contemplated for this operation is to facilitate ease and safety of transport only. Mr. Ryan states that in his experience these procedures are associated only with the needs of transportation of waste products.

NET will inspect waste cargos received for shipment. Nearly all rail carriers reserve the right to inspect waste shipments for compliance with the

contract of carriage. Most rail carrier waste contracts require the submission of proof that the consignee listed on the bill of lading has contracted to accept the cargo before the rail carrier will move the car. NET will be no exception and will inspect the waste and the contracts to assure itself that loaded cars will not be rejected at the destination.

It must be stated that the submissions to the Board are of what NET believes are the ideal handling procedures to be used for MSW and C&D. NET may load C&D as delivered utilizing a material excavator with a claw, as do most current transload facilities and it may not bale MSW. NET has represented to the Board that it will handle these commodities and others. The precise procedures to be used will be dictated by the economics related to actual customer's needs. However, NET has represented to the Board that its activity will conform to best practices in every case and will comply with Massachusetts standards and will not create a nuisance. It's agreed to mitigation measures are designed to assure continued compliance under all circumstances, foreseeable or unforeseeable.

CONCLUSION

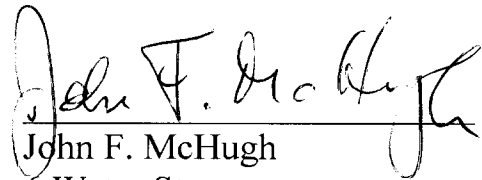
The information in the CRAM includes no material changes from the terminal railroad and facilities reviewed in the EA. The CRAM includes

extensive detail as to why the installations contemplated by NET to produce a state of the art transload facility associated with its railroad will have only a negligible environmental effect. The EA relied upon the ongoing MaDEP mandated process of which the CRAM submission was a part to assure that the specific installations in issue or the future expansion of break bulk facilities to the west and south with related new sidings noted would follow best practices and would comply with MaDEP set environmental specifications. None of the installations in issue change the maximum projected capacity of the terminal which was stated in the EA, 400 truck trips per day and 25 railcars. The only apparent change is that the facility will reach its full build out faster than initially projected, 7,400 feet of track rather than 4,000 feet of track. The grinding of C&D and the baling of MSW is fully explained to be entirely related to efficient and safe transportation. NET will not own the materials so processed for loading and therefore will not benefit from any value added to the product as a side effect of its loading procedures. NET's benefit will be in operating a more efficient transportation service by adopting state of the art loading techniques to the rail transload process.

Therefore, NET's petition to construct a new terminal railroad serving multiple Transloading operations should be granted or remanded to the

Section of Environmental Analysis for a determination whether any
information in the CRAM requires a supplemental EA.

Dated, New York, N.Y.
May 17, 2005

A handwritten signature in black ink, appearing to read "John F. McHugh", written over a horizontal line.

John F. McHugh
6 Water Street
New York, N.Y. 10004
212-483-0875

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34391

NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON AND WOBURN
TERMINAL RAILROAD CO. - CONSTRUCTION, ACQUISITION AND
OPERATION EXEMPTION- IN WILMINGTON AND WOBURN, MA

NEW ENGLAND TRANSRAIL, LLC d/b/a WILMINGTON AND WOBURN
TERMINAL RAILROAD PETITION FOR RECONSIDERATION

Thomas J. Egan certifies pursuant to 28 U.S.C. §1746 as follows:

1. I am the principal, of Egan Consulting Group an independent consultant to the rail industry and others on transportation related matters. I have just short of forty years experience in the railroad industry. My experience includes time in the mechanical department (cars and locomotives) as well as operations, inter-carrier agreements, industrial development, government relations, sales and marketing and service design.

2. I have been asked to explain the impact and importance of grinding/processing of construction and demolition materials prior to loading such materials in a rail car. Construction and Demolition materials (C&D) are inherently bulky. Unprocessed C&D if loaded in a rail car creates an uneven load and generally large and medium size voids in the load. These voids if not addressed will cause the load to shift in route.

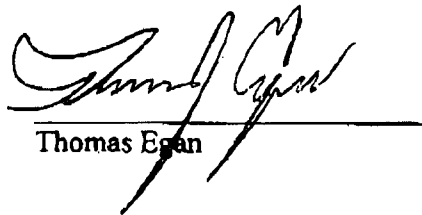
3. One common way to even the load and reduce voids is to push the load down into the car by mechanical means, such as a front-end loader or material excavator. This is akin to cramming extra clothes into a suitcase and then sitting on it. The end result may be acceptable the first few times it is done, but over time the suitcase weakens and

breaks. The same thing happens to the railcar. Cars in which C&D or other material is packed down by mechanical means quickly show signs of wear - bent or torn side sheets, cracks or warping of the top chords and often failure of the connection between the understructure and the sides of the car. These resultant defects require repair and in some cases load adjustment or load transfer.

4. In addition to the damage to the car, improperly or unevenly loaded cars can constitute a hazard in transport. If a car is loaded too heavily at one end, the ability of the truck to swivel to follow the track becomes limited, which can result in a derailment. Further, a car loaded too heavily on one side can lean excessively, which could create a side swipe hazard.

5. Material that is ground prior to loading fills the car more evenly, eliminates or minimizes voids and, in general, provides a more stable load without the need to tamp by mechanical means. This in turn reduces the likelihood of car failures due to damage incurred in the loading/tamping process.

Dated: Hingham, Ma.
May 14, 2005



Thomas Egan

Thomas J. Egan
227 Heresy Street
Hingham, MA 02043
Ph (781)-749-4873
Cell (781)-771-7759
E-mail: tomegan@comcast.net

Summary:

A performance driven, well-rounded transportation professional with extensive experience in business development, railroad and governmental relations, joint facilities, asset management/line sales, operations and strategic planning, and railroad operations

- ❖ Outstanding record for building business and fostering solid collaborative relationships.
- ❖ Solutions oriented with tactical experience.
- ❖ Develops trust and maintains integrity by following through on commitments.
- ❖ Communicates candidly and values diversity, demonstrating respect, dignity and ethical treatment at all times.
- ❖ Makes fact based decisions, with a broad perspective and thorough knowledge of customer requirements.
- ❖ Confident in leadership abilities, as manifested in communication, networking and mentoring.
- ❖ Meets or exceeds expectations with a contagious drive for excellence.

Professional Experience:

CSX Transportation

Have worked for CSXT and predecessor railroads (Conrail, Penn Central and New Haven Railroad) since 1965.

Director of Short Line and Regional Railroad Development

Current responsibilities include serving as CSXT liaison with 86 short line and regional railroads in 12 states and 2 Canadian provinces. Deal with all aspects of the relationship between CSXT and these other railroads, including commercial (business development, sales, marketing and customer relation support), operations and service design, joint facility, property, public advocacy and external communications, and field operations. Provide commercial oversight and input for line sales/leases. Am also responsible for a portion of CSXT's relationship with 4 commuter agencies.

Director of Commercial Operations- Northeast

Handled all interface between operations and commercial functions in Northeast. Worked to identify bottlenecks, remove same, and provide platform for business growth. Heavy focus on CSXT's I-95 initiative, improving service, and developing capacity on current service, between Maine and Florida.

Director of Industrial Switching-Planning, Service Design

Developed CSXT Local Area Management program, crafting mechanism for reducing costs and improving asset utilization (crews and cars). Provided tangible linkage in the field between commercial and operations sides of the business, by providing shared P&L responsibility.

Regional Account Manager-Local Area Management

Worked on Conrail Local Area Management project, focusing specifically on operations in New England and downstate New York. Made these units the premier operating units on Conrail.

Manager of Community Affairs and Special Projects

Handled Conrail community relations in New England and downstate New York. Was state coordinator for Mass. Operation Lifesaver, and Conrail liaison to Massachusetts Railroad Association, and Connecticut Railroad Association. Also worked on development of rail participation in movement of construction materials and waste.

Manager of Boston Project

Worked as lead in Conrail's initiative to become a key transportation supplier to major highway construction project (Boston's CA/T- "The Big Dig"). Also lead initiative to certify Conrail as a general contractor for purpose of bidding as prime contractor on Materials Processing Operation contract within that construction project. Initiative lead to significant railroad participation in movement of structural steel, rebar, cement, stone and contaminated dirt, commodities normally handled into and out of construction projects by truck. Initiative also lead to larger understanding of forces at play in construction industry, and mechanisms needed for rail participation.

System Supervisor of Contract Administration

Crafted, negotiated and managed joint facility agreements (interchange, haulage, trackage rights, access, run-through, etc.) with other railroads. These are the various agreements that provide for the interplay between railroads, and allow traffic to efficiently move from one railroad to another.

Terminal General Foreman for New England

Trainmaster/General Foreman

General Foreman Car and Locomotives

Foreman/Wreckmaster

Education:

Boston College, Center for Corporate Community Relations:
Certificate in Corporate Community Relations, 1996

Harvard University
Certificate of Special Studies in Administration and Management, 1990

Boston College
B.A in Education, 1971

References furnished upon request

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34391

NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON AND WOBURN
TERMINAL RAILROAD CO. - CONSTRUCTION, ACQUISITION AND
OPERATION EXEMPTION- IN WILMINGTON AND WOBURN, MA

NEW ENGLAND TRANS RAIL, LLC d/b/a WILMINGTON AND WOBURN
TERMINAL RAILROAD PETITION FOR RECONSIDERATION

John C. Ryan, P.E. certifies pursuant to 28 U.S.C. §1746 as follows:

1. I am the principal of Professional Resources Organization an independent consultant to the solid waste industry and others on regulatory and design matters. I have over thirty years experience in environmental consulting and construction including hands-on operations experience. My experience includes environmental permitting; impact assessment, analysis and mitigation; design, construction, an operation of all manner of solid waste processing and handling facilities; and the selection, specification and operation of waste processing equipment. My experience also includes the transportation and transfer of solid waste by road, rail and water.

2. I have been asked my opinion if physical operations such as grinding, baling and other processes are integral to the transportation of solid waste, including construction waste. In my opinion and experience physical processing of solid waste prior to its transportation is always considered, and in almost all cases, an integral part. As the waste is transport over longer distances, as with rail transport, it as always considered. My opinion is based on over 30 years experience in solid waste management that has included consulting and operations on all manner of solid waste handling.

3. Grinding, or shredding as it is termed in the solid waste industry, is a common process consideration for construction and demolition waste as this material is characteristically irregular in shape and therefore difficult to economically transport if not physically reduced to a more handleable size. The sizing process may be "low tech" and consist of crushing under heavy

construction equipment (such as a dozer), or more commonly, run through one of the pieces of equipment specifically designed for this purpose and material. The shredded material can then be more efficiently and safely loaded and unloaded onto and off of railcars. The shredding also provides for a higher density and therefore more economical rail transport.

4. Shredding/Grinding is not solely of solid waste. Shredding can also be part of the processing of recycled materials, such as metals and recycled paper fibers, to provide the same efficiency and economic benefits *vis a vis* transportation. Additionally, shredding of office paper prior to shipment is becoming a more prevalent occurrence due to security considerations. I am also familiar with the shredding of certain organic (top) soils to meet market requirements for size and uniformity.

5. In a similar fashion, densification and compaction (or baling) is another physical operation that is considered as part of transportation, again for efficiency and economic objectives. Municipal solid waste (MSW) is characteristically low density but highly compressible making it a prime candidate for compaction. Almost all MSW is compacted at the point of collection and then recompacted just prior to transportation. This recompaction may be low-tech, as in the case top compaction by excavator for truck-to-truck transport and in container transport on rail, or by use of more powerful and specialized densifiers and balers. The compacted material can then be loaded and unloaded more efficiently and transported more economically. Baling, a method of densification, results in a very controllable unit of material transfer, or bale, of MSW. This process has some additional benefits of eliminating litter and spillage and reducing the odor generation potential of the transported waste. In the case of rail transportation, baling is considered since it can allow the use of standard and therefore more available and economic rail cars. Otherwise, high volume cars have to be modified or built and certified, a time consuming and costly process relative to use of more popular cars.

6. The processes of shredding and baling are an integral part of rail transportation of solid waste commodities as well as for truck-to-truck, long distant distance transportation.

7. You have also asked if certain aspects of the equipment layout, specifically the area of lowered elevation which is sometimes referred to as the vault, is related to the equipment which may be used for baling or containerization. The longitudinal elevation change known as the vault

was designed to specifically integrate the layout requirements of the transloading systems considered (shredding and baling) with the site limitations.

8. The transloading systems considered for the process area of the vault included:

- direct truck to rail container top loading and densification into intermodal containers which would then be lifted onto flat cars or into gondolas, and
- direct to feed conveyor system to compactor for bale loading into gondolas

9. The “vault” was designed to be compatible with either system so that an initial decision may be later changed without significant floor plan layout, saving both construction cost and switch-over time. In the case of direct load into intermodal containers, the vault would be equipped with a series of proprietary container support and spill control devices to protect the containers from damage during the loading and densification operations. In the case of baling, the vault would accommodate the receiving and metering conveyor on which incoming materials would be loaded. The length and width of the vault has therefore been set by the dimensions of the intermodal containers to be used, the dimension of the container support and spill control device, and the size of the required receiving and metering conveyor

10. The elevation of the vault was set by a combination of limitations. Being a truck to rail transload operation, the grade of the existing rail system and the practical limitations for rail gradients on-site set the final grade on the site. Gondola car and flat car dimensions then set the loading clearances required for various rolling stock. Next the expected high seasonal groundwater level sets the lower boundary for construction to avoid handling dewatering of potentially impacted groundwater and the possibility of affecting on-going groundwater treatment on site. Finally, the length and maximum slope of the access roads, together with conveyor and container geometry, set the elevation of the vault.

11. In other words, the vault design is specifically made to accommodate the equipment to be used in the transloading (transfer and compaction) of the commodities to be handled. Furthermore, it had been designed with the flexibility to accommodate two different approaches to reloading of bulk materials, which will allow the operation to adapt to different unloading

capabilities at the destinations and different cost structure and availability of rail cars.

12. One of the objectives for efficient and economical transloading of bulk materials is to minimize the amount and degree of double handling and to automate (speed) that double handling as much as possible. As designed, compressible bulk deliveries for densification and reloading will be unloaded either into intermodal containers or onto a metering conveyor; and then densified by either top compression (in the case of container transload) or by baling equipment.

Dated: Mahopac, NY
May 16, 2005

A handwritten signature in black ink, appearing to read "John C. Ryan", written in a cursive style.

John C. Ryan, P.E.

**Technical Qualifications
Summary**

- Solid Waste: All aspects of planning and implementation including studies, permitting, design, construction, consent order negotiation, and operation
- Environmental Review: All aspects of federal, state, and NYC environmental assessments, reviews, impact investigations and mitigation analyses, impact statement preparation and public review, and the negotiation of offsets.
- Hazardous Waste: Site investigations and assessments, remedial investigation and feasibility study reports (RI/FS), remedial design and cleanup oversight, groundwater and surface water monitoring administration of New York State EQBA grants
- Wastewater: All aspects of wastewater facility planning and implementation, including national and state pollutant discharge elimination system (N/SPDES) permitting, design, construction, and operation of municipal and industrial wastewater treatment facilities and sewer and stormwater collection and pumping systems; sewer system evaluation studies; and inflow/infiltration analyses.
- Water: Design of water treatment systems for potable and boiler feed water. Studies of water quality impacts to reservoirs.

JOHN C RYAN, PE, DEE

Registration

Registered Professional Engineer (PE) in the New York

Areas of Competence

Technical - As reflected in Technical Qualification Summary, competence reflects many technical areas and project stages. Additional areas of competence include construction claim prevention and negotiation and Health and Safety Program implementation.

Project Control - Experienced in the direction and full client service and support, including agreement negotiation for project ranging from technical studies through facility operation and closure. Project size ranging up to \$40 MM for construction and \$5 MM for studies.

Administration - Has operated profit centers in both small and regional corporation. Has directed regional service programs for national corporations. Has directly managed staffs of 40 and projects including designs, studies, construction and facility operation. Experienced with all aspects of administration: financial, HR, QA/C, budgeting and planning.

Credentials

B.S., Environmental Engineering — Rensselaer Polytechnic Institute

M.E., Environmental Engineering (Solid Waste Concentration)
— Rensselaer Polytechnic Institute

Diplomate, American Academy of Environmental Engineers

Employment History

Professional Resources Organization, Principal (2002 – Present)

Hi Tech Trans, LLC, COO and Managing Principal (2001 – 2002)

American Marine Rail, LLC, Director of Development (1999 – 2001)

Roy F Weston of NY, Inc, Project Director (1994 - 1999)

W.F. Cosulich Associates, P.C., Senior Associate (1988-1994)

Stearns & Wheeler , Associate, (1973 - 1988)

Selected Projects

New England Transrail LLC – New Jersey – Material Processing Facility – Assignments included design of proprietary equipment for container loading, equipment selection and process design for sizing and compacting bulk materials and building layout for transloading to rail.

Solid Waste Authority of Central Ohio – Columbus Ohio – Waste Processing/ Transfer/ Exportation – Detailed study and analysis of the current practices, facilities and cost structure for the regional solid waste authority serving the greater Columbus metropolitan area. Study objectives were to evaluate current and evolving technologies to prolong the economic life of the Authorities landfill in an open market system. The Authorities three transfer stations were evaluated for conversion for various waste processing and transfer vehicles.

Hi Tech Trans LLC – Newark NJ – Transfer/Exportation of Waste by Train – Developed and operated (as COO) first ever waste transload (transfer) of waste in a rail yard. Waste was received by variety of ways (container, roll-off, packer and dump bodies) and loaded into special high volume gondolas for export to contracted landfills in Ohio and Michigan. Facility opened in September 2001 and was sold in 2003 processing 3000 t/wk and grossing \$7 MM.

American Marine Rail – NYC Long Term Waste Exportation - Oak Point Marine Transfer Terminal. Directed development of a 5000 tpd marine to rail waste enclosed transfer stations. Directed all aspects of the conceptual design, permitting and environmental assessment. As part of this assignment, City operations at current Marine Transfer Station (MTS) to be serviced by this Terminal were observed and analyzed.

Onondaga Resource Recovery Authority – Syracuse, NY - Long Distance Export – Assisted the Authority with the solicitation, evaluation of long distance transfer and disposal options to provide economic bridge between land filling and thermal conversion. Existing transfer facilities and rolling stock and pre-compaction were part of this assessment

NYCDOS Fresh Kill Landfill - Permitting. Directed the completion of the first and only Part 360 Permit Application for this facility. Application required extensive negotiations with the State review agencies and the assemblage and coordination of hundreds of reports and studies. The Application covered all aspects of the operation, closure and monitoring for all the components of the facility, including the construction of new Enclosed Barge unloading Facilities; waste surveillance, placement and compaction; cover management; gas collection; leachate management; and monitoring of groundwater, storm water and gas.

Mercer County Solid Waste Commission – Princeton, West Virginia – Economic Analysis and Feasibility Study for competing alternative solid waste processing as the County planned for a major investment in solids handling at all its facilities (water and wastewater treatment facilities, compost sites and landfill). Study included market analysis and cost identification. Market analysis considered both local and distant markets

Patterson Environmental Services – Various Locations on East Coast – Various studies for facility development – This developer consider purchase and startup opportunities for waste processing facilities. Work included site and building design, permitting and economic assessment. Facilities included wood processing, composting and transportation.

Franklin County Solid Waste Commission – Malone, NY – Regional Waste Collection Study – As part of the County's replacing 15 small landfills with one regional landfill, a siting study and design identified locations for transfer facilities and convenience stations.

St Lawrence County Solid Waste Authority, - Ogdensburg, NY – Transfer Station Design – A siting and design study was performed as part of the Authority's program to replace small landfill with a regional waste energy facility.

Burlington County Occupational Training Center – Mt. Holly, NJ – Materials Collection and Recycling – This facility recycles and process several types of containers and fibers. It also collects all its materials and does bulk shipping to its markets.

New York City and State Environmental Review - Various Project. Projects included the siting of solid waste facilities, the approval of Solid Waste Management Plans, the permitting of the Fresh Kills Landfill and the Long Term Transfer Stations, and the construction of various solid waste and wastewater treatment facilities.

Other Environmental Reviews. As part of both the planning process and the implementation phase for listed and other environmental projects, directed full generic and specific environmental assessment and public review. These reviews were for waste water and solid waste projects, some of which involved health risk assessments. Experienced in the administrative and adjudicatory review and appeal process. Have provided expert testimony. Review has been at all levels including Town. Participated in benefit negotiations and offsets.

Wastewater Facility Final Design/Permitting/Funding/Construction/Startup, Project Engineer/Project Manager. Facilities included: new secondary treatment facilities at Greek Peek Ski Resort, Sacketts Harbor WWTF, City of Cortland, and Village of Owego (all New York facilities). Major expansions to the City of Watertown, Village of Seneca Falls and the City of Herkimer. Work included design, permitting, construction and start up. Processes included activated sludge (step, conventional and extended), trickling filter and RBC. Associated sludge management included gravity thickening and DAF thickening, dewatering by belt plate and frame and drying bed, and disposal by incineration (fluid bed and multiple hearth), landfill co-disposal and land application.

John F. McHugh certifies under penalty of perjury pursuant to 28 U.S.C. §1746 that on this 17th day of May, 2005 I served copy of this Petition for Reconsideration including Exhibits A, B, C, and D upon:

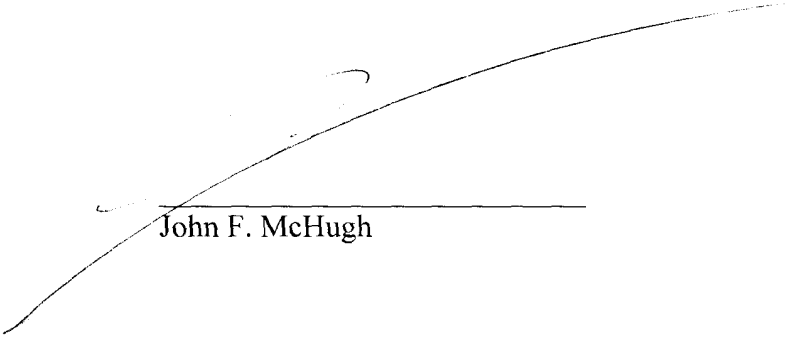
Deutch Williams
99 Summer Street
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Margaret Stolfa, General Counsel
Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental protection
One Winter Street
Boston, MA 02105

Beveridge & Dimond, P.C.
45 William Street
Wellesley, MA 02481-4044

By Federal Express.

Dated, New York, N.Y.
May 17, 2005



John F. McHugh