



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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September 9, 2010

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

RE: New England Transrail, LLC, FD-34797

Dear Members of the Board:

We write to the Surface Transportation Board ("Board") on behalf of the United States Environmental Protection Agency ("EPA"). On July 23, 2010, the Board directed New England Transrail ("NET") to file a status report, and NET did so on August 23, 2010, sending a copy to EPA. In this status report NET was asked to "discuss the status of EPA's site investigation" of the Olin Chemical Superfund Site ("site"), part of which NET has proposed to turn into a truck-to-rails transfer station.

Appended to NET's status report is an August 12, 2010 site investigation update provided by Olin Corporation (the owner of the site and the party performing the site investigation under EPA oversight). While this status update accurately describes the progress to date of EPA's site investigation, there are conclusions drawn which are premature and may not be supported by the facts as known to EPA. Specifically, it is stated in the appended status update (p.3) that, "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. ... Based on this [qualitative] review, the previously completed NET Risk Assessment is still appropriate." These conclusions are then repeated or summarized in the main text of NET's status report.

EPA has received the digitized raw soil data collected by Olin Corporation in 2010, but has not received any written report or analysis of such data. It is EPA's understanding that Olin Corporation intends to provide a written report in the form of a work plan addendum to EPA on September 7, 2010. Based on Olin's verbal representation of the results, data gaps remain which require further characterization of certain soil areas.

But even once these data gaps have been filled, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," more commonly known as the "Superfund" law) requires additional work before EPA can issue remedial investigation and feasibility study ("RI/FS") reports. An EPA RI/FS contains the following primary components:

- characterization of the full nature and extent of contamination;
- quantitative human health risk assessment;
- quantitative ecological risk assessment;

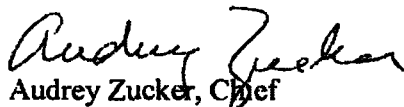
- remedial investigation report;
- determination of applicable and relevant or appropriate requirements ("ARARs");
- screening of remedial technologies (if required);
- detailed evaluation of remedial alternatives (if required); and
- feasibility study report.

The conclusions drawn in NET's status report are premature because data gaps remain, quantitative risk assessments have yet to be performed, and other steps necessary to issue the required RI/FS reports are still pending. By law, EPA is required to publish draft RI/FS reports and subject these reports to public comment; only after EPA responds to public comment can it finalize the RI/FS reports. NET's proposal includes physical changes to the site that, if implemented now, could circumvent this statutory process. Based on the current pace of the site investigation activities, we expect to finalize RI/FS reports for the relevant part of the site in 2012. The current schedule, however, may continue to be modified as the investigation proceeds.

Based largely on the status update provided by Olin Corporation, NET goes on to request that the Board "complete its environmental review" (p.4). This request is contrary to the Board's prior ruling. In its July 10, 2007 decision in this matter, the Board stated that the Section of Environmental Analysis ("SEA") should not complete its environmental review until "the RI/FS is issued by EPA" (p.17). As detailed above, EPA has not issued an RI or FS report; in fact, the site investigation is still being performed (under EPA oversight) by Olin Corporation.

While EPA's understanding of conditions at the site has progressed, we are still in the site investigation phase of the RI/FS. EPA requests that the Board continue to defer environmental analysis until the relevant RI/FS reports have been issued and finalized through the public review and comment process described above. EPA also repeats its request (see EPA's letter of May 11, 2006) that at the appropriate time, SEA undertake an environmental impact statement rather than an environmental assessment, in light of the extensive excavations proposed and the known environmental issues at the site. Should the Board's environmental staff wish to discuss this matter, they should feel free to contact Jim DiLorenzo, EPA's remedial project manager for the Olin site (dilorenzo.jim@epa.gov or 617-918-1247).

Sincerely,



Audrey Zucker, Chief
Superfund Legal Office
Office of Environmental Stewardship



Robert Cianciarulo, Chief
Massachusetts Superfund Section
Office of Site Remediation and Restoration

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cc: Phillis Johnson-Ball, Section of Environmental Analysis
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