

SURFACE TRANSPORTATION BOARD ISSUES PRELIMINARY DECISION IN "NEW ENGLAND TRANSRAIL" CASE

The Surface Transportation Board (Board) announced today that certain activities contemplated by New England Transrail (NET) at its proposed transload facility in Wilmington and Woburn, MA, would be subject to state and local environmental and other regulation because they would not be part of the rail transportation that is subject to the Board's exclusive jurisdiction. In addition, the Board announced that NET's proposed project will not be considered for final approval until a wide range of environmental and public interest safeguards are met.

In today's decision, the Board concluded that the proposed transaction, if approved, would make NET a rail carrier, but that the part of NET's plan involving shredding of construction and demolition debris would extend beyond the scope of rail transportation and would therefore be subject to the full panoply of state and local regulation. The Board also concluded that other proposed activities--such as loading, unloading, handling and storing--that are defined in federal statute as being part of "transportation," would fall within the Board's exclusive jurisdiction. But the Board emphasized that even as to those activities, its decision does not entirely limit the application of state and local police powers.

The Board's decision emphasized that NET will not be allowed to enter the rail business until extensive environmental, safety, public health and other public interest considerations are fully addressed. Specifically, the Board will: 1) await completion by the United States Environmental Protection Agency of an ongoing remedial investigation and feasibility study of the site on which NET proposes to operate; 2) conduct a thorough environmental review pursuant to the National Environmental Policy Act, which will include opportunities for public input; 3) impose any appropriate environmental and other conditions, which could include specific monitoring, inspection and oversight by the Board or, for matters within the Board's exclusive jurisdiction, on the Board's behalf by federal, state and/or local agencies; and 4) make its staff and resources available to facilitate negotiations between NET, Massachusetts and local agencies to reach a mutually acceptable environmental mitigation plan.

Commissioner Mulvey dissented from the Board's decision.

The Board's [decision issued in New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway--Construction, Acquisition and Operation Exemption--in Wilmington and Woburn, MA, STB Finance Docket No. 34797](#), is available for viewing and downloading via the Board's Web site at <http://www.stb.dot.gov>, under "E-Library," then under "Decisions & Notices," beneath the date "7/10/2007." A printed copy of the Board's decision also is available for a fee by contacting **ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone (202) 306-4004**, or via asapdc@verizon.net.

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