



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
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BOSTON, MASSACHUSETTS 02114-2023

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VIA FIRST-CLASS MAIL

May 11, 2006

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: New England Transrail Petition, STB Finance Docket 34797

Dear Ms. Rutson:

We are writing in reply to your letter of April 7th. Your letter asked all interested parties for comments on (among other things) the "potential environmental impacts" of New England Transrail's proposal to build a truck-to-rails facility at the Olin Chemical Superfund site, as well as the "level of environmental analysis" that the Section of Environmental Analysis ("SEA") should use to review this proposal. The EPA Region I Superfund office and the EPA Region I National Environmental Policy Act ("NEPA") office jointly submit the following comments.

First, we would like to take the opportunity to provide an update on the Superfund process. On April 19th, EPA formally added the Olin Chemical site to the National Priorities List ("NPL"), completing a listing process that began last September. 71 Fed. Reg. 20,016, 20,018 (April 19, 2006). As indicated in our January 26, 2006 submission to the STB, the NPL is EPA's list of the country's most serious hazardous waste sites, and the inclusion of the Olin Chemical site on the NPL list ensures a detailed investigation and evaluation of human health and environmental risks under the Superfund program.

EPA is now in the process of preparing for negotiations related to this site with the potentially responsible parties ("PRPs"), including the Olin Corporation and others. In the next few weeks, EPA expects to begin to negotiate an administrative order on consent under which the PRPs would carry out the remedial investigation and feasibility study or "RI/FS" described in our earlier letter.¹ The PRPs' work on the RI/FS would be subject to EPA's supervision and to the many requirements of the consent order. When and if negotiations result in a signed order, the PRPs will begin work on the

¹ The RI determines the nature and extent of contamination at the site and assesses health and environmental risks; the FS develops different ways of cleaning up the site, if cleanup is necessary.

investigation.² Their first order of business will be to write a report for EPA on all the data that has already been collected at the site, so that we can identify any areas where additional data might be needed. We hope to work with the PRPs to get this study underway expeditiously.

Second, as we indicated in our January 26th submission, until the RI/FS is done, or until that part of the RI/FS dealing with the parcel to be developed is done, we cannot determine whether the site can be developed (a) safely, (b) in a manner that will not exacerbate existing site conditions, and (c) consistently with whatever remedial measures might be required under the Superfund program.

Finally, with respect to SEA's environmental review of the NET proposal, we are concerned that it may be very difficult to fully understand site conditions without an inquiry into the proposal's effect on potentially contaminated soil and groundwater. Since EPA is about to initiate such an inquiry in the form of an RI/FS, SEA may want to consider deferring its environmental review until the relevant portions of the RI/FS are complete.³ With respect to the question of what level of environmental analysis is appropriate, we strongly recommend that whenever SEA does choose to conduct its review, it prepare an Environmental Impact Statement ("EIS") rather than an Environmental Assessment ("EA"), in recognition of the known environmental issues at the site and the extensive excavations being proposed. An EIS would provide a more in-depth examination of project impacts and alternatives than an EA.

We appreciate your consideration of this letter, as well as our letter of January 26th, and hope that these submissions are useful to SEA. If you should have any questions, please contact our Remedial Project Manager for this site, Jim DiLorenzo, at (617) 918-1247, or Wesley Kelman of our Superfund legal staff at (617) 918-1540.

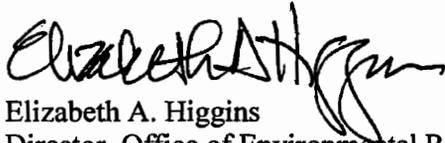
Respectfully submitted,



Tim Conway
Chief, Superfund Legal Office, EPA Region I

² If EPA and the PRPs cannot agree on a consent order, EPA will either carry out the RI/FS itself or issue a unilateral administrative order requiring the PRPs to do the RI/FS.

³ See, e.g., *Sierra Club v. Flowers*, ___ F. Supp. 2d ___, 2006 WL 760489, at *25-*27 (S.D. Fla. March 22, 2006) (Army Corps of Engineers' EIS was inadequate where it relied on future studies to be completed by local officials; "The Corps either should have waited for the County to complete its studies of wellfield protection, or the Corps should have done its own study."); *City of South Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1133 (C.D. Cal. 1999) (where agency commissioned a broad supplemental EIS but then decided to approve the project's design before this supplemental EIS was completed, agency probably violated NEPA requirement that EIS process be completed "before the final decision is made"); *Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 782 (9th Cir. 1980) (EIS was inadequate where sources for facts supporting its conclusions were not readily obtainable; "the EIS must stand or fall on its own supporting documentation" and must give "decision makers . . . sufficient data from which to draw their own conclusions about air, noise, and water pollution").



Elizabeth A. Higgins
Director, Office of Environmental Review, EPA Region I

cc (via email): Phillis Johnson-Ball, SEA

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