

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY;
GATEWAY EASTERN RAILWAY COMPANY; AND
THE TEXAS MEXICAN RAILWAY COMPANY

JOINT NOTICE OF SETTLEMENT AGREEMENT

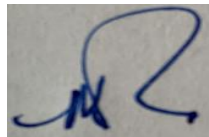
Canadian Pacific¹ (“CP”) and Bayer CropScience LP (“Bayer”) jointly provide notice that CP and Bayer have entered into a Settlement Agreement with regard to the CP/KCS Transaction (the “Agreement”). A copy of the Agreement is attached as Exhibit 1.

As contemplated by Section 3 of the Agreement, CP and Bayer request that the Board (a) impose as a condition of its approval of the CP/KCS Transaction the specific commitments made by Applicants that are set forth in the Agreement and (b) confirm that the Board has and will have jurisdiction to enforce the Agreement.

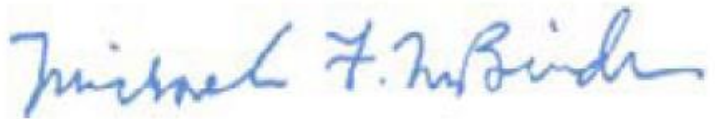
¹ “Canadian Pacific” or “CP” means Canadian Pacific Railway Company, with offices currently located at 7550 Ogden Dale Road S.E., Calgary, Alberta. T2C 4X9, and its current and future United States rail operating subsidiaries, including Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc., and their affiliates.

In exchange for the commitments provided by CP in the Agreement, and subject to the ability of Bayer and relevant shippers (as defined in the Agreement) to enforce the Agreement (including by any of Bayer or relevant shippers at the Board to the extent the Board, as requested by Bayer and CP, imposes a condition requiring CP to honor its commitments in the Agreement), Bayer is submitting notice that its concerns with respect to CP's proposed control of KCS have been resolved, that Bayer will not seek additional conditions in connection with CP's application, and that Bayer is withdrawing from participation in STB Finance Docket No. 36500.

Respectfully submitted,



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Counsel for CP

May 25, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Joint Notice of Settlement Agreement to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ *Sonia Gupta*

Sonia Gupta

March 25, 2022

Exhibit 1

Settlement Agreement between Bayer
CropSciences LP and Canadian Pacific Railway
Company et al as of April 12, 2022.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), is effective as of April 12, 2022, by and between CP and Bayer. CP and Bayer are each a "Party," and collectively the "Parties."

WHEREAS, CP filed with the Surface Transportation Board ("STB" or "Board") an application in STB Finance Docket No. 36500 for authority to acquire control of Kansas City Southern and its railroad affiliates (collectively, "KCS"); and

WHEREAS, Bayer wants to ensure prior notice of certain possible adverse changes in tariffs applicable to certain shipments of TIH/PIH commodities to be transported on the KCS Network to Bayer's Kansas City facility; and

WHEREAS, in consideration of certain commitments by CP, which shall become effective only in the event CP exercises control of KCS following a decision of the STB authorizing such control, Bayer is prepared to withdraw its Comments opposing and seeking conditions on approval of the CP/KCS combination;

THEREFORE, Bayer and CP hereby agree to the following:

Defined Terms

"Bayer" means Bayer CropScience LP, a limited partnership with offices currently located at 800 North Lindbergh Boulevard, St Louis, Missouri 63167, and its affiliates.

"CP" means Canadian Pacific Railway Company, with offices currently located at 7550 Ogden Dale Road S.E., Calgary, Alberta. T2C 4X9, and its current and future United States rail operating subsidiaries, including Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc., and their affiliates.

"KCS" means Kansas City Southern and its U.S. railway affiliates.

"KCS Network" means the rail network of Kansas City Southern and its U.S. railway affiliates as it existed prior to CP's acquisition of control of KCS.

"Tariff Change Notice" means a written notice to Bayer, delivered as indicated below, that CP has altered, or will alter, the governing tariff terms and conditions in relation to the indemnity obligations that would, absent the notice requirement set forth herein, be applicable to the shipment of TIH/PIH commodities to be transported on the KCS Network to Bayer's Kansas City facility, and such notice shall contain the language of any such intended changes. Such notice shall reference this Agreement and be delivered via overnight delivery to Bayer Crop Science, Head of Procurement, 800 North Lindbergh Boulevard, St Louis, Missouri 63167, with an electronic copy via email to LegalNotices.CropScience.USLPC@bayer.com.

Commitments

1. Unless CP has provided a Tariff Change Notice to Bayer at least three (3) years prior, CP shall not alter the governing tariff terms and conditions in relation to any shipper's indemnity obligations applicable to the shipment of TIH/PIH commodities to be transported on the KCS Network to Bayer's Kansas City facility (the "Applicable Tariff") in a way that would make the Applicable Tariff more onerous than Items 260 and 520 (with the exception of section J of Item 520, governing insurance requirements) of KCS's Rules Publication applicable to shipments of TIH/PIH commodities in effect immediately before the STB's control approval in STB Finance Docket No. 36500. CP agrees that shippers proposing to ship

TIH/PIH materials to Bayer's Kansas City facility are third party beneficiaries of this Agreement and that Bayer may inform such shippers of the contents of this Agreement. For greater clarity, (a) this Agreement does not limit CP's ability to make changes to KCS' tariffs pertaining to insurance requirements for shippers of TIH/PIH commodities and (b) the three-year notice requirement shall not apply to tariff changes that become effective following the expiration of the first three-year notice period.

2. As to any particular shipper, the commitment in Paragraph 1 shall apply to that shipper only if such shipper agrees to enter into an agreement with CP wherein the shipper will, on commercially reasonable terms and conditions to be negotiated in good faith by CP and shipper, make best efforts to ensure that the railcars tendered are, in all respects, in full and strict compliance with the highest and most stringent applicable governing safety laws and standards, including Dangerous Goods Laws and Rules as defined below.
 - a. Applicable Dangerous Goods Laws means all applicable Canadian and United States federal, provincial, state, and local laws, rules and regulations governing the handling, packaging, disposing and transportation of dangerous goods in Canada and hazardous materials in the United States, including but not limited to:
 - i. Transportation of Dangerous Goods Act, 1992, S.C. 1992, c. 34
 - ii. Title 49 CFR of the United States Code of Federal Regulations
 - iii. Hazardous Material Transportation Act (49 U.S.C 5101 et. Seq.)
 - iv. Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et. Seq.)
 - v. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et. Seq.) and regulations promulgated thereunder.
 - b. Applicable Rules shall mean all customs, practices, rules and industry standards in Canada and the United States, including those established by the Association of American Railroads, Railway Association of Canada, Transport Canada, the U.S. Department of Transportation, the Federal Railroad Administration.
3. CP shall request that the Board impose, as part of its review of CP's application, a condition requiring CP to honor its commitments to Bayer as described in this Agreement. A decision by the Board to decline to impose such a condition shall not otherwise affect CP's obligations under this Agreement.
4. In consideration for CP commitments, Bayer will not seek additional conditions in connection with CP's application and shall promptly submit notice to the STB that its concerns with respect to CP's proposed control of KCS have been resolved and, subject to Bayer's and relevant shippers' ability to enforce this Agreement (including by any of Bayer or relevant shippers at the Board to the extent it imposes a condition requiring CP to honor its commitments herein), that Bayer is withdrawing from participation in STB Finance Docket No. 36500. CP understands and agrees that Bayer is not waiving its right to assert that any changes to the Applicable Tariff are incompatible with CP's common carrier obligations.

5. The Parties agree that this Agreement is binding on the Parties and their successors and shall be construed in accordance with and governed by the internal laws of Illinois without reference to its conflict of laws principles and may be enforced by any of Bayer or relevant shippers in state or federal courts in Illinois (and by any of Bayer or relevant shippers at the Board to the extent it imposes a condition requiring CP to honor its commitments herein). The Parties agree that they will meet and confer with regard to any disputes under this Agreement.

AGREED as of April 12, 2022:

Bayer

CP

Kevin L. Statzer

Kevin Statzer

Head of Procurement, Seeds/North America



James Clements

Senior Vice President