

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 11, 2017
Part of
Public Record

NORTH AMERICA FREIGHT CAR
ASSOCIATION; AMERICAN FUEL &
PETROCHEMICALS MANUFACTURERS;
THE CHLORINE INSTITUTE; THE
FERTILIZER INSTITUTE; AMERICAN
CHEMISTRY COUNCIL; ETHANOL
PRODUCTS, LLC D/B/A POET ETHANOL
PRODUCTS; POET NUTRITION, INC.; and
CARGILL INCORPORATED,

Complainants,

v.

PACIFIC RAILROAD COMPANY,

Defendant.

NOR 42144, *et al*
(consolidated)

COMPLAINANTS' FIFTH BI-WEEKLY STATUS REPORT

Pursuant to the Decision served in this case on March 3, 2017, the Complainants in this case hereby submit the following fifth report on the status of discovery in this case. The report follows the four categories of information listed in the Decision.

1. Progress Accomplished Since April 27, 2017

a. POET Nutrition and POET Ethanol –Depositions of representatives of the POET entities occurred on April 27-28, 2017. On May 5, 2017 counsel for POET Nutrition and POET Ethanol received a letter from UP counsel listing several discovery-related issues that arose from the testimony provided during the depositions. POET Nutrition and POET Ethanol are in the process of formulating their respective responses to the letter.

b. Cargill, Incorporated – Cargill has substantially completed its search for hardcopy documents. Cargill is also currently working to complete the final phase of its responses to UP's discovery requests – the search and review of relevant emails accounts. Cargill has extracted and is searching approximately 200,000 emails and other electronic documents in order to identify, review and produce documents responsive to UP's discovery requests. Cargill anticipates serving final responses to UP's discovery requests and completing production of electronic documents by May 19, 2017.

2. Outstanding Discovery Matters

Complainants' principal outstanding concern with UP's discovery production continues to be the lack of a privilege log from UP for the reasons discussed in Complainants' First Bi-Weekly Status Report. Complainants' other principal concern continues to be the third party discovery sought by UP from the four tank car owners. Both concerns were discussed at the April 19, 2017 status conference before Judge Dring.

3. Participants' Plans to Address Outstanding Discovery

a. Cargill is currently working to complete the search, review and production of email and other electronic documents, and expects to complete production by May 19, 2017. Cargill anticipates that it will produce its privilege log approximately one week following the completion of the production of email and hard-copy/archived documents. Cargill will also be prepared to schedule the deposition requested by UP during May or June 2017, following the completion of its supplemental responses and production of documents responsive to UP's written discovery. Cargill, Incorporated expects to complete its responses and production of data and documents to all outstanding written discovery requests from UP by May 19, 2017.

4. Estimated Time Required to Address Outstanding Discovery Concerns

- a. Cargill, Incorporated – Please see Cargill's status update in Part 3(a) above.

Respectfully submitted,



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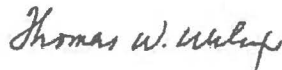
*Counsel for The Fertilizer Institute and the
American Chemistry Council*

Dated: May 11, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2017, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery, on all of the parties of record in NOR 42144, *et al* (consolidated).

I also caused a copy of the foregoing document to be served by hand on Administrative Law Judge John P. Dring, Federal Energy Regulatory Commission Office of Administrative Law Judges, 888 First Street, N.E., Washington DC 20426.

A handwritten signature in cursive script, reading "Thomas W. Wilcox".

Thomas W. Wilcox