

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

242821

ENTERED
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March 16, 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.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

NOR 42144

COMPLAINANTS' FIRST 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 report on the status of discovery in this case. This report updates the status report provided to Your Honor on February 7, 2017 as part of Complainants' Status Report to Administrative Law Judge and Request for Establishment of Discovery End Dates. The report follows the four categories of information listed in the Decision.

1. Progress Accomplished Since February 7, 2017

a. POET Ethanol Products – Subsequent to February 7, counsel for POET Ethanol Products has fielded several follow-up questions on POET Ethanol's document production from counsel for Union Pacific Railroad Company ("UP"). Responses to UP's latest inquiries were

supplied to UP counsel via email on March 15, 2017. In addition, counsel for the parties have agreed that the depositions of certain POET Ethanol Products and POET Nutrition, Inc. personnel will be held on either April 26-27, 2017, or April 27-28, 2017. The depositions will take place in either Sioux Falls, S.D. or Wichita, KS.

b. Cargill, Incorporated – Cargill provided supplemental responses to UP’s Third Set of Discovery on March 13, 2017. In addition, on March 13, 2017, Cargill also responded to UP’s letter request for additional information and explanations relating to the voluminous cost and other data produced by Cargill in December, 2016.

2. Outstanding Discovery Matters

On March 10, 2017, counsel for Complainants received a USB drive with “updated tank car shipment records with waybill dates from January 2015 through December 2016,” according to UP counsel. This material was forwarded to Complainants’ experts on March 13, 2017 for analysis and determination if follow up discussions are necessary.

Complainants’ principal outstanding concern with UP’s discovery production is the lack of a privilege log from UP despite the fact that UP first produced documents in June 2016 and substantially completed its production on November 2, 2016, with the exception of a small number of mostly duplicate documents produced on February 28, 2017. Based upon UP’s production, Complainants have concerns as to whether UP has wrongly withheld certain relevant and discoverable materials relating to its development of UPRR Tariff 6004, Item 55-C on the basis of attorney client privilege or attorney work product doctrines. However, the extent to which this concern is justified cannot be ascertained until UP produces its privilege log.

Complainants' other principal concern pertains to the third party discovery sought by UP from the four tank car owners, which has proceeded at an extremely slow pace without a clear timeline for completion.

3. Participants' Plans to Address Outstanding Discovery

a. Cargill, Incorporated expects to complete its responses and production of data and documents to all outstanding written discovery requests from UP by March 31, 2017. Cargill plans to provide supplemental responses to UP's First and Second Sets of Discovery, including the production of email data responsive to numerous requests, by March 31, 2017. Cargill also anticipates it will complete its search, review and production of hard-copy and/or archived documents by March 31, 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 for April 2017, following the completion of its supplemental responses and production of documents responsive to UP written discovery.

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,



Thomas W. Wilcox, Esq.
David K. Monroe, Esq.
Svetlana Lyubchenko, Esq.
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248

*Counsel for North America
Freight Car Association; Ethanol Products,
LLC d/b/a POET Ethanol Products;
POET Nutrition, Inc., and Cargill
Incorporated*



Justin A. Savage, Esq.
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5558

*Counsel for American Fuel &
Petrochemicals Manufacturers*



Paul M. Donovan, Esq.
LaRoe, Winn, Moerman & Donovan
1250 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036
(202) 298-8100

Counsel for The Chlorine Institute



Jeffrey O. Moreno, Esq.
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 263-4107

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

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 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

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.



Thomas W. Wilcox