

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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April 13, 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, *et al*
(consolidated)

COMPLAINANTS' THIRD 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 third 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 March 30, 2017

a. POET Nutrition – POET Nutrition continues to field a few follow up discovery questions from UP counsel.

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.

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. Complainants' experts are continuing the process of segregating the data by each of the four car owners for eventual production to them, subject to receiving input from the four car owners on certain questions about the data. Nevertheless, the third party discovery continues at an extremely slow pace without a clear timeline for completion.

3. Participants' Plans to Address Outstanding Discovery

a. Cargill has completed its search and review of hard-copy and/or archived documents and will serve supplemental responses to UP's First and Second Sets of Discovery by April 19, 2017. Cargill is currently working to complete the search, review and production of email data, and expects to complete production of email data by April 28, 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 2017, following the completion of its supplemental responses and production of documents responsive to UP written discovery. Cargill, Incorporated expects to complete its responses and production of data and documents to all outstanding written discovery requests from UP by April 28, 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,



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 13th day of April, 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.



Thomas W. Wilcox