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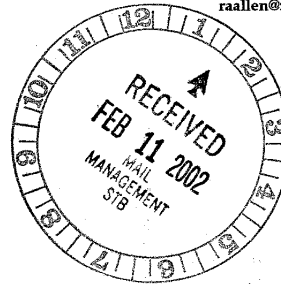
RICHARD A. ALLEN

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February 11, 2002

BY HAND

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



**Re: STB Docket No. 42068, Capitol Materials, Inc. – Petition For
Declaratory Order**

Dear Secretary Williams:

I enclose for filing in the above-referenced matter an original and 10 copies of the Norfolk Southern's Motion for Leave to Reply In Support of Opposition to Capitol Material's Request For Extension of Procedural Schedule.

Sincerely,

Richard A. Allen

ENTERED
Office of the Secretary
FEB 11 2002
Part of
Public Record

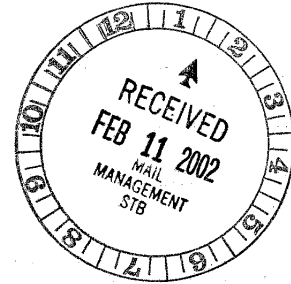
Enclosure

cc : Ira L. Rachelson, Esq.
Bruce E. Mitchell, Esq.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42068



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CAPITOL MATERIALS INCORPORATED —
PETITION FOR DECLARATORY ORDER — CERTAIN RATES AND
PRACTICES OF NORFOLK SOUTHERN RAILWAY COMPANY

**NORFOLK SOUTHERN'S MOTION FOR LEAVE TO
REPLY IN SUPPORT OF OPPOSITION
TO CAPITOL MATERIALS' REQUEST
FOR EXTENSION OF PROCEDURAL SCHEDULE**

Respondent Norfolk Southern Railway Company ("NS") respectfully requests leave to file this reply to a letter filed by counsel for petitioner Capitol Materials Incorporated ("Capitol") on February 8, 2002 in order to correct certain misstatements of fact contained therein. Capitol's February 8, 2002 letter responded to the opposition filed by NS on February 7, 2002 to Capitol's request for an extension of the procedural schedule established by the Board's decision served January 16, 2002. Granting the requested leave to reply is warranted because Capitol's February 8, 2002 letter alleges certain facts for the first time in support of its requested extension, and those allegations are not correct.

Capitol's request for a 90-day extension of the schedule is based on an asserted need to engage in discovery. In opposing that request, NS noted, among other things, that Capitol's request for document production served on NS on November 4, 2002 — the only discovery

propounded to date by Capitol – largely replicates discovery propounded by Capitol in the underlying state court case and that NS responded to those requests in late 2000 and early 2001.

In his February 8, 2002 letter, counsel for Capitol admits that its recent discovery request replicates its earlier requests in the court case and that NS responded to those requests, but asserts:

The difficulty, however, is that [NS] never produced the requested documents. On the contrary, the responses of NS indicated that no such documents were available, when in fact these very type documents (engineer's daily report of cars spotted and pulled) were later brought to a deposition by NS in another demurrage case in Atlanta. Counsel for Capitol for the first time became aware of the existence of such documents at the deposition and requested NS to produce them. Significantly, NS has never produced such documents and a motion to compel has been filed with the court in the other case.

The claim that NS never produced the documents requested by Capitol's discovery in the court case is incorrect. NS in fact produced hundreds of documents responsive to Capitol's extensive discovery requests; these included waybills, freight bills, computer print outs and other documents showing the switching dates and times of cars delivered to Capitol at its Atlanta and Duluth facilities during the relevant period, the origin dates of such cars, and summaries of the same.

As to the alleged "engineer's daily reports of cars spotted and pulled" referred to in counsel's letter, NS is not aware of any reports by that designation that report on the placement of cars to customers. The documents that are the subject of the referenced discovery dispute in an unrelated Georgia state court case are various work orders, end of trip reports and special handling instructions generated on a daily basis by train crews. As explained in the attached affidavit of G. Brenton Bailey, which was filed by NS in support of its opposition to Capitol's

motion to compel in the other case, thousands of these documents are generated in a short period of time, the data on them is entered on NS' computer system for billing and other purposes, and they are not filed in any organized or readily retrievable fashion. NS is therefore opposing the motion to compel in the other state case on the ground that the request is unduly burdensome and unnecessary, given that the relevant information from the documents is routinely entered in the ordinary course of business on business records that already have been produced.

In sum, Capitol is not correct that "NS never produced the requested documents." For the reasons discussed here and in NS' Opposition To Capitol Materials' Request For Extension of the Procedural Schedule, there is no basis for extending the procedural schedule established by the Board on January 16, 2002.

Respectfully submitted,



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*Attorneys for
Norfolk Southern Railway Company*

February 11, 2002

ATTACHMENT

STATE OF GEORGIA)
)
FULTON COUNTY)

AFFIDAVIT OF G. BRENTON BAILEY

Personally appeared before the undersigned officer, duly authorized to administer oaths in the State of Georgia, G. BRENTON BAILEY, who, after having first been duly sworn, deposes and states:

1.

My name is G. Brenton Bailey. I am over the age of twenty-one years and am competent to testify. This affidavit is based upon personal knowledge.

2.

I am the manager of the Georgia Division of Centralized Yard Operations of Norfolk Southern Railway Company. I have held this position since March of 2001. As such, I am familiar with the procedures for generation and retention of documents in connection with service to Norfolk Southern's rail customers.

3.

Documents such as work orders, end of trip reports, and special handling instructions are typically generated on a daily basis by train crews working individual trains at the railroad's various serving yards. Because of the large number of rail customers and the fact that these documents may be several pages in length and are generated on a daily basis, many thousands of pages of these paper documents are generated in a short period of time.

4.

After a train crew finishes a trip to deliver or remove cars from a customer's facility, the data on these documents is entered into the railroad's computer system and used for billing and other purposes. The original paper documents are filed, but they are not organized or indexed in any way that would facilitate their retrieval for these purposes, and no copies are retained by any other railroad personnel unless there is a specific reason for doing so. There is no reason to retain these original documents because the data on them is much more easily obtainable from the railroad's computer system.

5.

I am aware that Integrated Distribution, Inc. has requested the railroad to produce the original work orders and similar documents for service to it for the period of December 1998 through June 2000. Because these documents are among many thousands of pages not indexed in a useful way and because there is no way to know at what storage facilities these documents may be presently kept, if at all, they are for all practical purposes lost. There is no practical way to determine how long it would take to retrieve these documents if that is possible, but my rough estimate is that it would take a minimum of 80 man-hours.


G. BRENTON BAILEY

Subscribed and sworn to before me this
19th day of December, 2001.


NOTARY PUBLIC

My Commission Expires: Notary Public, Fulton County, Georgia
My Commission Expires October 1st, 2002

[SEAL]

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CERTIFICATE OF SERVICE

I certify that on February 11, 2001, a true copy of the foregoing "Norfolk Southern's
Opposition to Capitol Material's Request For Extension of Procedural Schedule" was served by
first class U.S. mail, with courtesy copies by fax, upon:

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Richard A. Allen