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March 21, 2002

BY HAND DELIVERY

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

ENTERED
Office of the Secretary

MAR 22 2002

Part of
Public Record



Re: *Capitol Materials Incorporated -- Petition For Declaratory Order -- Certain Rates And Practices Of Norfolk Southern Railway Company, STB Docket No. 42068.*

Dear Secretary Williams:

We have become aware, via the Board's website, of Capitol's "Reply To Norfolk Southern Railway Company's Response To Capitol Materials Incorporated's Motion To Compel Discovery," which apparently was filed with the Board on March 19.¹

Norfolk Southern requests that Capitol's pleading be stricken, as it is a "reply to a reply" prohibited under 49 C.F.R. § 1104.13(c). The NS pleading to which Capitol's "reply to a reply" responds requests no new relief, and the "reply to a reply" says absolutely nothing new of substance. In short, there is no legitimate basis for Capitol to be excused from complying with the Board's "reply to a reply" rule.

In its "reply to a reply," Capitol requests a further extension of discovery. Capitol already made such a request in its opposition to NS' motion for protective order, to which NS filed a response earlier today. That response by NS fully demonstrates that an extension is not warranted, and nothing in Capitol's "reply to a reply" warrants any further response on that point.

¹ To date, we have not received Norfolk Southern's service copy. According to Capitol's cover letter and certificate of service, the Board was served by Federal Express, while Norfolk Southern was served via U.S. mail, in violation of 49 C.F.R. § 1104.12(a), which provides that "[s]ervice on the parties should be by the same method and class of service used in serving the Board"

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Norfolk Southern respectfully requests that Capitol's "reply to a reply" be stricken and that Capitol's request for a further extension of discovery be denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard A. Allen".

Richard A. Allen
*Counsel for Norfolk Southern
Railway Company*

cc (by mail and fax): Ira L. Rachelson, Esq.
Bruce E. Mitchell, Esq.