

HENRY M. WICK, JR.
CHARLES J. STREIFF
CARL F. MEYER
DAVID M. O'BOYLE
VINCENT P. SZELIGO
LUCILLE N. WICK
RICHARD T. SCHADLE

ENTERED
Office of the Secretary

MAY 20 2002

Part of
Public Record

LAW OFFICES

WICK, STREIFF, MEYER, O'BOYLE & SZELIGO, P.C.

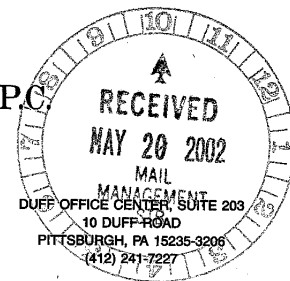
1450 TWO CHATHAM CENTER

PITTSBURGH, PA 15219-3427

(412) 765-1600

FACSIMILE
(412) 261-3783

E-MAIL
wsmos@sgi.net



May 17, 2002

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

FEDERAL EXPRESS

Re: North America Freight Car Association - Protest and
Petition for Investigation

Docket No. 42060 205421
and

North America Freight Car Association v. The Burlington
Northern and Santa Fe Railway Company

Docket No. 42060 (Sub-No.1) 205422
and

Railway Progress Institute, Inc. - Protest and Petition
for Investigation

Docket No. 42061 205423

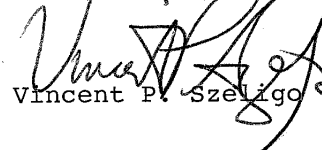
Dear Secretary Williams:

Please find enclosed three sets of an originals and ten (10) copies of the NOTICE OF SETTLEMENT AND WITHDRAWAL OF PETITION TO INTERVENE BY U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION. The three proceedings identified above involve related issues which affect the interests of the US Clay Producers Traffic Association, Inc. ("Clay Producers"). Also enclosed is a 3.5 inch disk, containing the text of the Notice in Word Perfect 6/7/8 format.

I would appreciate it if you would date-stamp the enclosed extra copy of the Motion and return same in the self-addressed, stamped envelope.

Very truly yours,

WICK, STREIFF, MEYER,
O'BOYLE & SZELIGO, P.C.


Vincent P. Szeligo

Enclosures

cc: All Parties of Record

vps8255.wpd

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. 42060
DOCKET NO. 42060 (Sub no. 1)
DOCKET NO. 42061



NORTH AMERICAN FREIGHT CAR ASSOCIATION – PROTEST AND
PETITION FOR INVESTIGATION – TARIFF PUBLICATION OF THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY COMPANY
(and related proceedings)

NOTICE OF SETTLEMENT AND WITHDRAWAL OF PETITION TO INTERVENE
BY U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION

The U.S. Clay Producers Traffic Association, Inc. ("Clay Producers") respectfully submits this notice of settlement and hereby withdraws its Notice of Intent to Participate and Petition to Intervene in Docket No. 42060 and related proceedings, filed September 10, 2001, involving the Burlington Northern and Santa Fe Railway Company's ("BNSF") tariff publication concerning private car storage charges.

Clay Producers sought intervention to preserve its right to challenge the validity of a railroad's publication of storage charges on private tank cars outside of the procedures proscribed in Investigation of Tank Car Systems, 3 I.C.C. 2d 196 (1986). Clay Producers believe that some degree of private tank car storage immediately prior to a loaded revenue move is inherent in the normal transportation cycle of tank car traffic and, therefore, is a necessary cost in furnishing an instrumentality of transportation. Clay Producers also believe that the actions taken by BNSF are in reaction to a current congestion problem which is a temporary situation caused by the service disruptions arising out of recent rail system merger and acquisitions.

ENTERED
Office of the Secretary

MAY 20 2002

Part of
Public Record

The difficult question of determining the reasonable degree of private car storage which must be absorbed by the railroads would require costly factual investigation and litigation which would be made more difficult in light of the fact that rail service has not been normal during the recent merger and acquisition years. Clay Producers believe that a determination of what amount of free storage is reasonable under the circumstances (i.e., not causing congesting, while still allowing for an adequate car supply), can best be resolved through site specific negotiations between BNSF and individual Clay Producer Members.

In exchange for BNSF's commitment to negotiate in good faith with individual members of the Clay Producers, taking into consideration the individual circumstances of members and their needs for an adequate car supply for fluid shipping activity, and to establish a process within BNSF for negotiations leading up to execution of individual agreements between BNSF and members, the US Clay Producers Traffic Association has agreed to withdraw its Notice of Intent to Participate or Alternatively Petition to Intervene,, in Docket Nos. 42060, 42060 (Sub-No. 1) and 42061.

Accordingly, U.S. Clay Producers Traffic Association hereby withdraws its Notice of Intent to Participate or Alternatively Petition to Intervene and respectfully requests that its Petition be dismissed without prejudice.

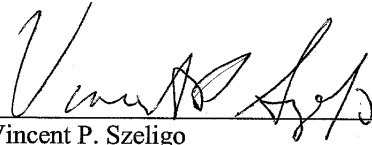
Respectfully submitted,

Dated: May 17, 2002


Vincent P. Szeligo
Henry M. Wick, Jr.
WICK, STREIFF, MEYER, O'BOYLE &
SZELIGO, P.C.
1450 Two Chatham Center
Pittsburgh, PA 15219
Counsel for U.S. Clay Producers Traffic
Association, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Settlement and Withdrawal of Motion to Intervene has been served by first class mail on counsel for North America Freight Car Association, Andrew P. Goldstein, Nicholas J. DeMichael, counsel for the National Industrial Transportation League, Fritz R. Kahn, counsel. for BP Corporation North America Inc., Sandra J. Dearden, consultant for Diversified CPC International Inc., Frederic Wood, counsel for E.I. DuPont de Nemours, William McCurdy, counsel for E.I. DuPont de Nemours and all parties of record in Docket No. 42061, Docket No. 42062, Docket No. 62063, and Docket No. 42064 this 20th day of May, 2002.



Vincent P. Szeligo