

BEFORE THE SURFACE TRANSPORTATION BOARD

205439 → DOCKET NO. 42060
205440 → 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)

JOINT STATEMENT OF THE U.S. CLAY PRODUCERS TRAFFIC
ASSOCIATION AND THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

In its Decision served October 17, 2001, in Docket No. 42060 and related proceedings, the Board provided for industry-wide negotiations – pursuant to the agreement (the “1986 Agreement”) prescribed in Investigation of Tank Car Systems, 3 I.C.C.2d 196 (1986) regarding the storage and diversion charge issues raised in the proceedings. The Board directed the parties to provide a written report on the progress of these negotiations by January 16, 2002. (Decision at 3). In response to the joint requests of the U.S. Clay Producers Traffic Association, Inc. (“Clay Producers”), the Burlington Northern and Santa Fe Railway Company (“BNSF”), and other named parties and intervenors,¹ the Board has held its decision in abeyance for several subsequent 45 day periods to enable them to try to resolve amicably the issues without reopening the 1986 Agreement.

The Chlorine Institute and the Railway Progress Institute’s Committee on Tank Cars (RPI-CTC) negotiated separate settlements with BNSF and withdrew their petitions. See North

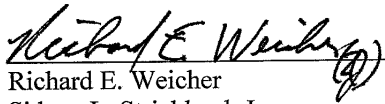
¹ The North America Freight Car Association, the National Industrial Transportation League, the Railway Progress Institute Committee on Tank Cars, the Union Pacific Railroad Company, the BP Corporation North America Inc., E.I. du Pont de Nemours and Company, and the U.S. Clay Producers Traffic Association, Inc.

American Freight Car Association—Protest and Petition for Investigation—Tariff Publications
of the Burlington Northern and Santa Fe Railway Company and Railway Progress Institute
Committee on Tank Cars Petition for Investigation and Protest Pursuant to Ex Parte No. 328,
STB Docket Nos. 42060 and 42061 (Served Mar. 19, 2002). On April 4, 2002, the remaining parties submitted a request for an additional 45 day period of negotiations to the Board. BNSF neither joined in nor objected to the request. The Clay Producers and BNSF have voluntarily negotiated a resolution of their dispute and submit this Joint Statement to the Board regarding the results of their negotiations.

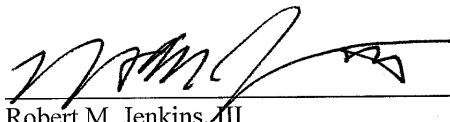
Many of the Clay Producers members are consignors that use private tank cars for shipments of kaolin clay on BNSF's system. BNSF and the Clay Producers agree that the specific needs of individual consignors are best addressed through direct discussions and, if possible, agreements with individual consignors. BNSF has agreed, therefore, to establish a system within BNSF that is specifically dedicated to individual discussions with any of the Clay Producers Traffic Association's members that wish to negotiate individual agreements with BNSF regarding their storage needs. The members will be able to contact a designated BNSF employee who will be responsible for coordinating such negotiations. This employee will be responsible for gathering the appropriate people from BNSF's business and marketing groups who have the authority to reach individual storage agreements. BNSF is committed to conducting these discussions in good faith, taking into account the circumstances of individual members and their need to have an adequate car supply for fluid shipping activity, with the purpose of alleviating congestion and improving asset utilization on its system, and covering the costs associated with empty car storage.

In exchange for BNSF's commitment to negotiate in good faith with individual members of the Clay Producers and to establish a process within BNSF for such negotiations, the U.S. Clay Producers Traffic Association has agreed to withdraw its Notice of Intent to Participate or Alternatively Petition to Intervene, filed September 10, 2001, in Docket Nos. 42060, 42060 (Sub-No. 1) and 42061.

Respectfully submitted,



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Dated: May 16, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Statement has been served by hand 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., Frederic Wood, counsel for E.I. DuPont de Nemours, and Patrick M. Raher, counsel for the Railway Progress Institute Committee on Tank Cars, Paul M. Donovan, counsel for the Chlorine Institute, and by first class mail on Sandra J. Dearden, consultant for Diversified CPC International Inc., Robert T. Opal, counsel for the Union Pacific Railroad Counsel and all parties of record in Docket No. 42061, Docket No. 42062, Docket No. 42063, and Docket No. 42064 this 20th day of May, 2002.

