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**Westlake Chemical
Corporation**



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April 27, 2006

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Rail Fuel Surcharges, STB Ex Parte No. 661

Dear Secretary Williams:

Westlake Chemical Corporation ("Westlake") respectfully submits its views in response to the Notice issued by the Surface Transportation Board ("Board") inviting public comments on the manner in which fuel surcharges are calculated and charged by railroads. We appreciate the interest and involvement of the Board in the issue of fuel surcharges, which increasingly are becoming a concern to ourselves as well as other members of the shipper community.

Westlake is a vertically integrated manufacturer and marketer of petrochemicals, vinyls, polymers, and fabricated products. Our headquarters is located in Houston, Texas, and we operate at fourteen (14) locations in North America, from which we supply our products to customers on a global basis. We use rail transportation for a substantial portion of the movement of its products to customers, and in 2005 we shipped over 12,000 railcars.

We recognize that price adjustment mechanisms commonly are used to account for cost increases that are beyond the control of the supplier. We further acknowledge that fuel adjustment provisions are common in other industries, such as utilities where the cost of purchased fuel represents a significant share of the supplier's cost of service. Accordingly, we do not object to a fuel surcharge to recover unanticipated and uncontrollable increases in the cost of fuel experienced by the railroads which have not been accounted for in the pricing of service. Our concern is that railroads impose fuel surcharges in a manner which does not simply recover the unanticipated increase in the cost of fuel, but rather materially over-recovers the carriers' increased costs and has become a revenue enhancement device.

It is not our intent to single out any particular railroad. Rather, the application of fuel surcharges to enhance revenue without a direct relationship to the increased cost of fuel occurs throughout the railroad industry.

There are a number of reasons that the railroads' fuel surcharge programs have deviated from their original stated intent and why the programs as applied are inappropriate. When first instituted in 2001/2002, changes in fuel prices and the levels of the railroad fuel surcharge

programs were relatively small. Using a 2001 or 2002 benchmark, fuel surcharges were in the 1-2 % range. At this level, fuel surcharges had relatively small impact on company transportation costs, similar to a small change in the volume of shipments. As time passed and the cost of fuel continued to escalate, fuel surcharges have grown substantially, now ranging from 11+% to 17+%, depending on railroad. Considering the world oil outlook, the expectation is that the surcharges will continue to climb. Railroads, in general, continue to use benchmarks based on a fuel cost experienced in 2001 or 2002. In the meantime, however, railroads have re-priced their traffic, both in tariffs and also in contracts as old contracts have expired and the parties enter into new contracts.¹ In some cases, traffic formerly moving under contract now moves under tariff. Also, the Rail Cost Adjustment Factor ("RCAF") as published by the Board, and commonly used to escalate rail transportation rates, contains a significant component for the cost of fuel; and the quarterly adjustments themselves take into account increases in fuel costs. Notwithstanding the various sources of re-pricing of transportation services, fuel surcharges continue to be pegged to a 2001/2002 benchmark fuel price.

There are a number of other problems with the fuel surcharge as applied by the railroads. These include:

- The surcharges are applied to rates, not fuel costs. Rates include components for labor, overhead, profit and other factors not affected by changes in fuel prices. Therefore, a high-rated commodity such as chemicals pays a higher fuel surcharge per car than lower rated commodities. BNSF has begun to implement a mileage based fuel surcharge program. This is more equitable than a rate-based program, but it still contains an inequity to the extent that the conversion to a mileage-based program perpetuates BNSF's over-recovery of its increased fuel expenses.
- The benchmarks used, the price of West Texas Intermediate Crude Oil and On-Highway Diesel Fuel, are not related to the railroads' actual fuel costs. The railroads report their fuel expenses to the Association of American Railroads ("AAR"), and the AAR publishes a monthly fuel index. The AAR index is more accurate than the indexes used by the railroads, but is not employed for fuel surcharge purposes. The On-Highway Diesel Fuel index in particular is an inappropriate benchmark in that this index is affected by taxes

¹ We understand that the Board does not have jurisdiction over contracts. Nonetheless, contracts are relevant to this inquiry inasmuch as contracts generally incorporate the fuel surcharges published in the carriers' tariffs, and contract movements are a significant part of the economic picture of how fuel surcharges are used and whether they are based on the increased cost of fuel.

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April 24, 2006
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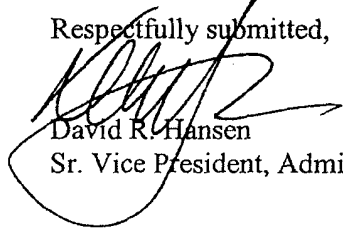
and multiple distribution chain mark-ups in addition to the costs for the diesel fuel itself.

The Board in the Notice initiating this proceeding asks whether the fuel surcharges "reflect the increasing fuel costs of the particular movements to which they are applied." We have had an analysis made to determine the effect of fuel surcharges on our movements. This analysis entailed a sample of four representative movements which traveled over three different Class I carriers.² Calculated on the basis of the 2005 volume and rates of those four movements for the year 2005, we calculate the over-compensation to the railroads for fuel only on these four lanes of traffic to exceed \$900,000.³ Stated another way, we estimate the railroads collected their fuel expense for these movements 2.4 times.

We believe the application of fuel surcharges to recover more than the increased cost of fuel is highly inappropriate. The Board can and should address the railroads' fuel surcharge practices through its jurisdiction to regulate unreasonable practices, 49 U.S.C. § 10702. In analogous circumstances, the Federal Trade Commission has treated the use of benchmark pricing for transportation service which is unrelated to the actual service rendered and the costs incurred as an unfair and deceptive trade practice.⁴ A similar outcome should be applied here under the Board's unreasonable practice jurisdiction.

We value the opportunity to share our views with the Board, and we urge the Board to establish guidelines, enforceable on complaint, to require that fuel surcharges be limited solely to those amounts necessary for railroads to recover their increased cost of fuel.

Respectfully submitted,



David R. Hansen
Sr. Vice President, Administration

² The carriers' fuel costs were calculated based on the fuel expense reported to the Securities and Exchange Commission, converted into a cost per ton-mile. The railroads' fuel revenue represents the combination of the revenue from the railroads' primary fuel surcharge program and the fuel component embedded in the rates. The embedded fuel revenue is assumed to be the railroads' fuel expense in the 4th quarter of 2001 before the initiation of the fuel surcharge programs. The total fuel expense, by traffic lane, was deducted from the fuel-based revenues.

³ To the extent rates have been increased between 2001 and 2005, either by new rates taking effect or by the RCAF or another indexing method, the over-compensation would be greater.

⁴ See *International Paper Company*, 84 F.T.C. 9 (1974).