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July 20, 2006

VIA HAND DELIVERY

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

ATTENTION: Mr. Troy Brady

Re: Docket No. AB-290 (Sub-No. 254X) Norfolk Southern Railway Company –
Petition for Exemption – Discontinuance of Service – Between Halls Ferry
Junction, NC and Badin, NC in Stanly County, NC; Docket No. AB-290
(Sub-No. 274X) Yadkin Railroad Company – Petition for Exemption –
Discontinuance of Service and Operating Rights Under Lease – Between Halls
Ferry, NC and Badin, NC in Stanly County, NC [Re-styled]; Docket No. AB-149
(Sub-No.2) Winston-Salem Southbound Railroad Company – Petition for
Exemption – Discontinuance of Service and Operating Rights Under Lease –
Between Whitney, NC and Badin, NC in Stanly County, NC [Re-styled]

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceedings are the original and two copies of the "Reply of Alcoa Inc. in Opposition to 'Petitioners' Response to Alcoa's Comments to the Environmental Assessment and Motion and Request for Relief Under That Style'" on behalf of Alcoa Inc. Also enclosed is a diskette containing the Comments and three additional copies for date-stamping and return via courier.

Respectfully submitted,

Michael F. McBride

Michael F. McBride
Ahren S. Tryon

Attorneys for Alcoa Inc.

Enclosures

(cc w/encl.): James R. Paschall, Esq.

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UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD



_____ 217106
Docket No. AB-290 (Sub-No. 254X)
Norfolk Southern Railway Company –
Petition for Exemption – Discontinuance of Service –
Between Halls Ferry Junction, NC and Badin, NC in Stanly County, NC;

Docket No. AB-290 (Sub-No. 274X) 217107
Yadkin Railroad Company –
Petition for Exemption – Discontinuance of Service and Operating Rights Under
Lease –
Between Halls Ferry, NC and Badin, NC in Stanly County, NC [Re-styled];

Docket No. AB-149 (Sub-No. 2) 217108
Winston-Salem Southbound Railroad Company –
Petition for Exemption – Discontinuance of Service and Operating Rights Under
Lease –
Between Whitney, NC and Badin, NC in Stanly County, NC [Re-styled]

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Office of Proceedings
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**REPLY OF ALCOA INC. IN OPPOSITION TO "PETITIONERS' RESPONSE TO
ALCOA'S COMMENTS TO THE ENVIRONMENTAL ASSESSMENT AND
MOTION AND REQUEST FOR RELIEF UNDER THAT STYLE"**

Alcoa Inc. ("Alcoa"), the only shipper on the Line at issue in this proceeding, and the owner of the Line,¹ hereby submits its Reply in Opposition to "Petitioners' Response to Alcoa's Comments to the Environmental Assessment and Motion and Request for Relief Under That Style" ("NS's Response/Motion"), filed July 18, 2006.

INTRODUCTION

Petitioners filed an amended Petition for Exemption ("Petition") on April 25, 2006, seeking to discontinue service on 11.11 miles of the Line owned by

¹ There are two lines, and two leases between NS and Alcoa, one for each line, but for convenience we refer to both lines as "the Line."

and leased² from Alcoa between Halls Ferry Junction and Badin in Stanly County, North Carolina.

On June 12, 2006, the Board's Section of Environmental Analysis ("SEA") issued a proposed Environmental Assessment ("EA") in the above-captioned proceedings. The EA addressed environmental impacts associated with the discontinuance of service requested by Norfolk Southern Railway Company ("NS") on behalf of itself, Winston-Salem Southbound Railway Company, and Yadkin Railroad Company ("Yadkin") (collectively, "NS" or "Petitioners").

All parties were given until July 12, 2006 to file Comments on the EA. Only Alcoa did so. NS's Response/Motion seeks leave to file, out of time, a "Response" (actually, under Board parlance, a "Reply") to Alcoa's July 12, 2006 environmental Comments. For a variety of reasons, leave should be denied.

ARGUMENT

Alcoa would not normally object to the filing of such a Reply, to the extent that NS seeks leave to submit facts for the record that could not have been submitted previously. However, here, in addition to being untimely in a proceeding that is expedited because of the procedure Petitioners invoked, Alcoa has four other objections to NS's Response/Motion.

First, NS argues that the environmental matters Alcoa raised are not within the STB's jurisdiction to remedy (e.g., NS's Response/Motion at 14, 16, 18-19) or are not matters that are ordinarily the subject of STB-adopted conditions (*id.* at 14-15). Accordingly, NS should not simultaneously be allowed

² In its Reply and Protest filed June 5, 2006, Alcoa asserted that the leases are not subject to the jurisdiction of the Board. We will not repeat those arguments here.

to submit additional facts that Alcoa has had no opportunity to contest, and that NS could if it had wished placed in the record with its Petition for Exemption, while arguing that the matter to which its alleged facts pertain is not within the Board's jurisdiction. Such a tactic seeks to prejudice the trier of fact with material the presenter considers irrelevant.³

Second, NS improperly interjected numerous arguments in reply to Alcoa's June 12, 2006 Reply and Protest (e.g., NS's Response/Motion at 4 n.2, 11 n.10, 12-13), in violation of the Board's rule that "[a] reply to a reply is not permitted." 49 C.F.R. § 1104.13(c). NS was the architect of the procedure being followed here, i.e., the attempted invocation of the exemption process, under which the Board does not permit replies to the Reply to the Petition, because there is a statutory deadline of 120 days to decide the matter (and thus a deadline for the Board's decision in this proceeding of August 11, 2006, unless stayed to resolve the environmental matters at issue). 49 U.S.C. § 10904(c); *Central Railroad Company of Indiana - Abandonment Exemption - In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*, Docket No. AB--459 (Sub--No. 2X) (served Apr. 1, 1998) (applying 49 U.S.C. § 10904(c) to abandonment exemption proceeding).

Third, NS's filing contains unnecessary and we believe unwarranted attacks on Mr. Tom O'Connor, Alcoa's expert. Mr. O'Connor explained his expertise, which centers on railroad transportation, the source of his information

³ Alcoa felt it incumbent on it to provide the STB with the information that it has about the contamination that NS caused along the Line, including at the place where NS stores its locomotives, as well as facts that make it overwhelmingly likely that such contamination exists elsewhere along the Line. It was incumbent on NS to report clear evidence of contamination to the STB, not incumbent on Alcoa to have to investigate the entire Line and do soil and groundwater samples so as to be able to comment as requested by the STB.

(personal observations, pictures, and statements of Alcoa employees to him recounting their knowledge of locomotive-fluid leaks and the efforts that they made to bring those leaks to NS's attention and their efforts to get NS to remedy the leaks over a substantial period of time and NS's responses to those requests). Mr. O'Connor's expertise in railroad transportation and railroad operations is unchallenged; he made no claim to have expertise in the other areas which NS criticizes him for not having. He observed the environmental contamination while doing an on-site inspection to support his verified statement submitted on behalf of Alcoa on June 5, 2006. There is no reason to attack an expert for things he did not say or qualifications he did not claim.

It further ill-behooves NS to attack Mr. O'Connor for his visual inspection, pictures, and oral report of ongoing contamination with locomotive fluids, through the testimony of another expert who relies on nothing more than visual inspection and pictures. NS cannot know if the contamination it has caused has resulted in more than surface soil or groundwater contamination without having performed analysis of samples. Mr. O'Connor, in contrast, presented testimony that the NS contamination occurred at other locations, based on the oral statements made to him by Alcoa employees. Alcoa has thus made a *prima facie* case for ongoing, current contamination⁴ both at the location where the NS locomotive is parked

⁴ The fact that the contamination is current and ongoing, even causing NS to state that it would install a mat under the location where its locomotive is stored, distinguishes this dispute from other environmental disputes cited by NS in which the only issue was contamination from long ago. But in any event, Alcoa believes NS and the other Petitioners have a duty, under statute and under the leases applicable here, to remedy the contamination they have caused. Alcoa also believes that the STB has a duty to require that NS and the other Petitioners accept responsibility for that contamination if the STB asserts authority over the leases at issue, because otherwise the Petitioners may argue that STB relief means that they have no further obligation to Alcoa under those leases.

and all along the Line. The contamination was described by Mr. O'Connor as likely to occur at other locomotive storage sites and at locations where the locomotive was idling. Indeed, the locomotive fluid leaks were sufficient to begin accumulating at any site where the locomotive remained for any appreciable period of time. Although NS claims that "Alcoa has identified no other sites on the Line ..." (NS's Response/Motion at 8), Mr. O'Connor urged further investigation of the other potential contamination sites and noted that Halls Ferry and Gold Hill were believed to be alternate locomotive storage sites. SK Environmental Analysis at 8. NS's denials, based only on visual inspection and pictures of the surface of the Line, could not disprove Alcoa's *prima facie* case, and amount to less evidence than Alcoa presented.

Obviously, NS is not pleased at having the Board be made aware that its EA was incomplete to the extent that the Board relied on NS's Petition for Exemption for its factual assertions. But that is no reason to permit NS's filing.

Fourth, in any event, NS could have presented the pictures and testimony with its Petition for Exemption,⁵ or in Comments filed by July 12, 2006, especially because NS admits that the undersigned brought this matter to the attention of NS's counsel on July 5, 2006.⁶ NS Response/Motion at 8-9. There are thus ample grounds to deny leave altogether to file NS's Response/Motion.

⁵ The Board's rules required all relevant information in the possession of the Petitioners be filed with the Petition. 49 C.F.R. § 1105.7(e).

⁶ Clearly, NS employees knew of the contamination long ago, given the extent of it at the location where the locomotive is parked near the building NS employees use at Badin, from the fact that the locomotive was leaking (obviously requiring additional fluids to be added), and from the fact that Alcoa employees brought the leaks to NS's employees' attention on numerous occasions. July 12, 2006 Alcoa Comments, SK Environmental Analysis at 15.

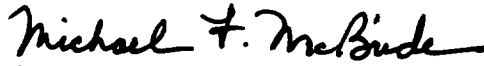
However, if the Board were to deny leave to file NS's Response/Motion except for leave to file NS's expert testimony and pictures (which could have been generated before July 12, 2006, but were not), the Board would still have the benefit of NS's evidence without the untimely, procedurally improper, and inappropriate arguments and attacks that make NS's Response/Motion objectionable.

Finally, if the Board does accept NS's evidence, it should conclude that the Board need not be rushed in deciding this matter by August 11, 2006, which is otherwise the deadline for its decision. When the Petitioners seek leave to file additional evidence out of time, Alcoa contends that they effectively have no objection if the Board requires additional time to consider what they have belatedly filed.

CONCLUSION

For all of the reasons stated above, NS's Response/Motion should be rejected altogether as untimely and improper. In the alternative, the Board may wish to admit only the evidence NS offered, through expert testimony and pictures, to determine the facts about the contamination that Petitioners have caused along the Lines, if it believes that evidence is useful to it, but if it does so, the Board should not consider itself obliged to decide this matter by August 11, 2006.

Respectfully submitted,



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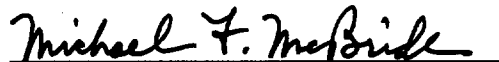
Facsimile: (202)986-8102

Attorneys for Alcoa Inc.

July 20, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have served, this 20th day of July, 2006, the foregoing document on James R. Paschall, Esq., Senior General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510, by First-Class mail and by electronic means.



Michael F. McBride

Attorney for Alcoa Inc.