

October 30, 2007

The Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

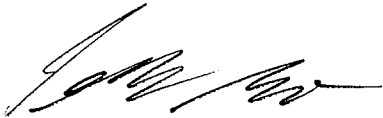
RE: Docket No. NOR 42099; *E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.*

Dear Secretary Williams:

Please find enclosed for filing in the above referenced matter, E.I. du Pont de Nemours and Company's First Amended Complaint - **PUBLIC VERSION**.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Nicholas J. DiMichael
Jeffrey O. Moreno
Karyn A. Booth

kab 192397.1

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

		)	
E.I. DUPONT DE NEMOURS AND COMPANY		)	
		)	
Complainant,		)	
		)	
v.		)	Docket No. NOR 42099
		)	
CSX TRANSPORTATION, INC.		)	
		)	
Defendant.		)	
		)	

FIRST AMENDED COMPLAINT

COMES NOW Complainant, E.I. du Pont de Nemours and Company ("DuPont"), 4417 Lancaster Pike, Wilmington, DE 19805, and files this First Amended Complaint against Defendant, CSX Transportation, Inc. ("CSXT"), 500 Water Street, Jacksonville, Florida 32202. DuPont brings this Complaint pursuant to 49 U.S.C. §§ 10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1111. DuPont requests that the Surface Transportation Board ("STB" or "Board") prescribe reasonable rates and service terms for CSXT's transportation of the movements set forth in this Complaint. DuPont asks the Board to award damages, plus interest, to the extent that DuPont has paid or will pay common carrier rates in excess of a reasonable maximum rate for such transportation, for a period of five years beginning on June 16, 2007. DuPont requests that the Board handle this Complaint under the Three-Benchmark approach, adopted pursuant to 49 U.S.C. §10701(d)(3), in Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007).

In support of this Complaint, DuPont states as follows:

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The Parties

1. DuPont is a corporation organized under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware. DuPont is a manufacturer of chemicals, additives, plastics, coatings and agricultural products, with numerous production facilities throughout the continental United States and around the globe. DuPont is a major user of rail service to transport commodities that it consumes and produces at its various facilities and that it sells to customers in the continental United States and around the world.

2. CSXT is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Jacksonville, Florida. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

Description of the Issue Movements

3. The movements that are the subject of this Complaint are as follows:

- a) The movement of Plastic, Syn Pwdr, STCC 2821163, from Amphill, Virginia to Wyandotte, Michigan (“Amphill – Wyandotte Movement”)
- b) The movement of Plasticizers, STCC 2818967, from Heyden, New Jersey to Duart, North Carolina (“Heyden – Duart Movement”)
- c) The movement of Plasticizers, STCC 2818967, from Heyden, New Jersey to Washington, West Virginia (“Heyden – Washington Movement”)

4. None of the commodities that are transported in the movements described in paragraph (3) of this Complaint is a "hazardous material" as that term is defined in 49 C.F.R. §171.8.

5. CSXT originates these shipments at the origins named in paragraph 3 of this Complaint, and transports them in single-line service to the destinations named in paragraph 3 of this Complaint.

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6. CSXT transports the listed commodities in equipment as noted below, owned or leased by DuPont or others. Other information called for in 49 C.F.R. § 1111.1(a) is as follows:

Movement	Loaded Miles	Average Cars Per Shipment	Average Tons per Car	Equipment Type	Movement Type	Car Size
Amphill - Wyandotte	772.1	1	80	Covered Hopper (URCS Code 06)	Single car	5,700 cu ft
Heyden - Duart	591.5	1	90	Tank car (URCS Code 16)	Single car	23,500 gal
Heyden - Washington	589.9	1	90	Tank car (URCS Code 16)	Single car	23,500 gal

7. In calendar year 2006, DuPont tendered the following number of carloads for each movement described in paragraph 3 of this Complaint:

- a) Amphill - Wyandotte Movement – 108 carloads
- b) Heyden – Duart Movement – 60 carloads
- c) Heyden – Washington Movement – 50 carloads

The Challenged Rates

8. On June 15, 2007, a contract between DuPont and CSXT covering the movements listed in paragraph 3 of this Complaint terminated by its terms. Even though the parties were still in negotiations over a new contract, CSXT refused a request by DuPont to extend the current contract for two weeks beyond the contract term to permit further negotiations.

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9. Effective June 16, 2007, CSXT published the following common carrier rates for the movements that are the subject of this Complaint:

Movement	Rate	Source
Ampthill - Wyandotte	\$6,272.00 per car	CSXT 97249
Heyden – Duarte	\$5,799.36 per car	CSXT 97249
Heyden – Washington	\$5,486.88 per car	CSXT 97249

10. Beginning June 16, 2007, CSXT also assessed a fuel surcharge calculated pursuant to CSXT 97249, on the date of each shipment, in addition to the rates listed in paragraph 9 of this Complaint. This fuel surcharge for the month of July is at the rate of \$0.20 per mile. The rate plus the applicable fuel surcharge is as follows:

Movement	Rate Including Fuel Surcharge
Ampthill - Wyandotte	\$6,426.42 per car
Heyden – Duarte	\$5,917.66 per car
Heyden – Washington	\$5,604.86 per car

Jurisdictional Allegations

11. CSXT possesses market dominance over the movements of the commodities named in this Complaint. Therefore, pursuant to 49 U.S.C. § 10707, the Board has jurisdiction over the rates and services provided by CSXT and challenged by DuPont as unreasonable.

12. The rates charged by CSXT and challenged by DuPont greatly exceed 180 percent of CSXT's variable cost for the service requested by DuPont, as determined in accordance with 49 U.S.C. § 10707(d)(1).

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13. The following table presents DuPont's preliminary estimate of the variable cost and the revenue to variable cost ratios for each movement that is the subject of this Complaint, using URCS Phase III procedures:

Movement	URCS Phase III Variable Cost	R/VC Ratio
Ampthill - Wyandotte	\$ 1,725.59 per car	372%
Heyden – Duarte	\$1,598.44 per car	370%
Heyden – Washington	\$1,594.46 per car	352%

In each case, DuPont believes that more accurate costing would result in a decrease in the estimated variable cost and an increase in the revenue to variable cost ratio.

14. There is a lack of effective competition from other rail carriers because CSXT is the only rail carrier that provides service at the origin and/or at the destination of the subject movements. There is a lack of effective competition from non-rail modes and transport by truck is not a viable option. As required by 49 C.F.R. § 1111.1(a)(10), Exhibit A to this Complaint contains a narrative addressing the absence of any feasible transportation alternatives to the challenged movements.

Stipulation to Small Case Relief Caps

15. By electing to bring this complaint under the Three-Benchmark approach adopted in Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007), DuPont stipulates that its relief, separately for each of the challenged movements, shall be capped at \$1 million for a five year period beginning on June 16, 2007.

16. Aggregation of these movements under a single rate relief cap is not appropriate because these movements are widely dispersed and would share only a modest amount of

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facilities in a stand-alone cost analysis. Because the origins and destinations of these movements are spread across New Jersey, Virginia, West Virginia, North Carolina and Michigan, with some routes running primarily north-south and others east-west, a stand-alone cost presentation would have to duplicate a significant portion of CSXT's current rail system, with only a modest amount of shared facilities between the issue movements. The diversity of the issue movements requires stand-alone systems unique to each movement.

Requested Relief

17. CSXT's common carrier rates for the transportation of the commodities and movements involved in this Complaint are unreasonable and violate 49 U.S.C. §§ 10701(d)(1) and 10702, which require CSXT to establish reasonable rates. The Board should order CSXT to cease these violations and it should prescribe a maximum reasonable rate pursuant to 49 U.S.C. § 10704(a)(1).

18. The Board should award reparations to DuPont, as provided under 49 U.S.C. § 11704(b). The reparations should compensate DuPont for any and all amounts paid in excess of the reasonable rates prescribed by the Board pursuant to this proceeding, plus interest.

19. The Board should prescribe a maximum reasonable rate and award reparations for a combined period of five years, beginning June 16, 2007, not to exceed a value of \$1 million per challenged movement, excluding interest.

20. This Complaint includes any and all adjustments to the challenged rates, including adjustments to the applicable fuel surcharges, and any new rates established by CSXT for the services described herein.

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WHEREFORE, Complainant, E.I. du Pont de Nemours and Company prays that the Board:

- (1) require Defendant, CSX Transportation, Inc., to answer the charges alleged herein;
- (2) assign this Complaint for hearing under 49 C.F.R. Part 1111 and the Three-Benchmark approach adopted in Ex Parte No. 646 (Sub-No. 2), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007), pursuant to 49 U.S.C. §10701(d)(3);
- (3) after due hearing and investigation, find that the CSXT's common carrier rates applicable to the transportation of the commodities and movements named in this Complaint are unreasonable;
- (4) prescribe just and reasonable rates and related rules and service terms for the future applicable to the rail transportation of DuPont's traffic, pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a);
- (5) award DuPont reparations, plus applicable interest, in accordance with 49 U.S.C. § 11704 for unlawful rates set by CSXT for the period beginning June 16, 2007 to the effective date of a decision by the Board prescribing just and reasonable rates; and
- (6) grant such other and further relief to DuPont as the Board may deem just and proper under the circumstances.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas J. DiMichael". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Nicholas J. DiMichael

Jeffrey O. Moreno

Karyn A. Booth

Laurence W. Prange

Thompson Hine LLP

1920 N Street, N.W., Suite 800

Washington, D.C. 20036

(202) 331-8800

October 30, 2007

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Exhibit A

**E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.
Docket NOR 42099**

Market Dominance Narrative

In this First Amended Complaint, E.I. du Pont de Nemours and Company (“DuPont” or the “Company”) has challenged the reasonableness of CSXT’s rail rates for the transportation of synthetic powder plastic from Amthill, VA to Wyandotte, MI; and for the transportation of plasticizers from Heyden, NJ to both Duart, NC and Washington Works, WV. DuPont alleges that CSXT possesses market dominance over each of these lanes because there are no rail alternatives to CSXT and because trucks are not a viable alternative from either an economic or customer service perspective.

A. Synthetic Powder Plastic Movement

CSXT transports synthetic powder plastic approximately 772 miles from Amthill (Richmond), VA to Wyandotte, MI. When DuPont has a choice between rail and truck, the overwhelming majority of this product is transported by rail. For example, in 2006, DuPont shipped 2249 rail cars and 6179 trucks of synthetic powder plastic across 162 origin-destination pairs in the continental United States. Of these 162 O-D pairs, however, only 22 had a rail option. Only 148 trucks moved between these 22 rail-served O-D pairs. Since a single rail car can haul the same volume of this product as 3.5 trucks, only 42 rail car equivalents were shipped by truck when rail was an option. This amounts to less than 2 % of the total volume of synthetic plastic powder shipped between these 22 O-D pairs.

In 2006, DuPont tendered 108 rail car loads of synthetic powder plastic to CSXT for transport from Amthill to Wyandotte. That same year, DuPont also tendered 59 loads for transportation by truck, or the equivalent of 17 rail cars. Thus, trucks handled approximately

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13% of the synthetic plastic powder moves from Amthill to Wyandotte in 2006. DuPont ships the overwhelming majority of this product by rail for multiple reasons.

First, rail is much less costly than truck. This remains true even after the significant rate increases CSXT recently imposed. CSXT's tariff rate, including the July 2007 fuel surcharge, is \$6426 per car. DuPont also incurs approximately \$[REDACTED] per month to lease and maintain each rail car. At an average of [REDACTED] turns annually, the average equipment cost per shipment of synthetic plastic powder is \$[REDACTED]. Thus, the Company's total rail transportation cost is \$[REDACTED] per rail car.

By comparison, DuPont incurs a cost of approximately \$[REDACTED] per truck (including the July 2007 fuel surcharge) to truck synthetic plastic powder from Amthill to Wyandotte, which is the equivalent of \$[REDACTED] per rail car. This is based upon a \$[REDACTED] linehaul charge in DuPont's contract with [REDACTED], plus approximately \$[REDACTED] in fuel surcharges, plus \$[REDACTED] in additional operating costs associated with extra loading time for trucks, plus \$[REDACTED] for vacuum and cleaning charges. DuPont's truck costs thus exceed its cost of hauling the same volume by rail by approximately 17%.

The DuPont customer at Wyandotte also prefers to receive synthetic plastic powder by rail. Unloading a single rail car instead of four trucks is less onerous, less costly, and causes less congestion within the customer's facility. Because the product has a very low melting point, it requires special unloading equipment and techniques. The unloading conditions must be tightly controlled in order to avoid product damage. The risk of product damage increases with the greater number of unloadings required for truck shipments.

The few truck shipments between Amthill and Wyandotte occurred only in special circumstances. Such shipments typically were made only when expedited delivery was necessary to avoid a shut down of the customer's facility. That is, bulk truck shipments of

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synthetic plastic powder from Amphill to Wyandotte were not the norm, but occurred only in emergency situations.

B. Plasticizer Movements

CSXT currently transports Plasticizers for DuPont from Heyden, NJ to Duart, NC and Washington Works, WV. None of this commodity moves by truck over these lanes.

Nevertheless, in an unsuccessful effort to persuade CSXT to reduce its rate increases in the recently failed contract negotiations, DuPont obtained and presented motor carrier rate quotes for these lanes. [REDACTED] quoted the most competitive rates, which were \$[REDACTED] per truck load to Duart and \$[REDACTED] per truck load to Washington Works. At four trucks per rail car, the rail equivalents of these rates are \$[REDACTED] and \$[REDACTED] for Duart and Washington Works, respectively. Although the Duart truck rate of \$[REDACTED] is only slightly higher than CSXT's recently increased tariff rate of \$5918, and the Washington Works truck rate of \$[REDACTED] is less than CSXT's increased tariff rate of \$5605, once all the additional costs of transporting by truck versus rail are considered, truck is not a competitive option.

In addition to CSXT's line haul rate of \$5918 from Heyden to Duart, DuPont incurs \$[REDACTED]/month in rail car lease and maintenance costs for each rail car. The Company's rail fleet averages [REDACTED] trips annually over this lane for a total per shipment cost of \$[REDACTED]. Thus, it costs DuPont a total of \$[REDACTED] per rail car to move plasticizer from Heyden to Duart.

Similarly, in addition to CSXT's line haul rate of \$5605 from Heyden to Washington Works, DuPont incurs \$[REDACTED]/month in rail car lease and maintenance costs for each rail car. DuPont's rail fleet averages [REDACTED] trips annually over this lane for a total per shipment cost of \$[REDACTED]. Thus, DuPont incurs a total rail cost of \$[REDACTED] per rail car to move plasticizer from Heyden to Washington Works.

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There also are additional truck costs that must be considered. For example, due to the greater number of shipments required to transport by truck compared to rail, DuPont would have to hire additional operators to unload trucks at an estimated cost of \$[REDACTED] annually at both Duart and Washington Works. Even if the Company's entire 2006 volume of 60 rail cars to Duart were converted to 240 truck hauls, this would add \$[REDACTED] per truck, or \$[REDACTED] per rail car equivalent, to the linehaul truck rate. Similarly, if the Company's entire 2006 volume of 50 rail cars to Washington Works were converted to 200 truck hauls, this would add \$[REDACTED] per truck, or \$[REDACTED] per rail car equivalent, to the linehaul truck rate. Thus, this single additional truck cost increases the rail car equivalent truck rates for Duart and Washington Works to \$[REDACTED] and \$[REDACTED], respectively, far above the Company's rail costs.

In addition, because trucks must be scheduled for available unloading times, whereas rail cars can be unloaded at the Company's convenience, DuPont is exposed to substantial detention and related charges on truck shipments above and beyond the transportation rate itself. If DuPont is unable to unload a truck when it arrives at the facility, it would be subject to detention charges. If the carrier dropped the trailer at the facility for later unloading, DuPont also would incur additional charges for trailer spotting and driver dispatch. DuPont estimates that these costs could be approximately \$[REDACTED] per truck, or \$[REDACTED] per equivalent rail shipment.

Furthermore, truck shipments increase the risk of product contamination, which is a very difficult cost to quantify. The finished product made from plasticizer is Butacite®, which is used almost exclusively in "visual" applications, such as automotive windshields and architectural windows. Because these products must be quality certified, contamination is a very serious concern for both DuPont and its customers. DuPont unloads plasticizers into large storage tanks at its facilities. If a contaminated product is unloaded into the storage tank, the entire tank is

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contaminated. Moreover, if the contaminated product enters the production process, the contaminants can adhere or accumulate at various points and further cross-contaminate other product batches. Moving plasticizers by truck increases the potential for product contamination fourfold compared to moving by rail.

Consequently, trucks must offer a significant cost savings over rail before DuPont would seriously consider switching. That is one reason why DuPont does not move any plasticizers by truck from Heyden to Duart or Washington Works. This remains true even after CSXT's significant tariff rate increases over the previously effective contract rates closed some of the pricing gap between truck and rail over these lanes. The business constraints discussed above are simply too significant to justify shifting this traffic to trucks.

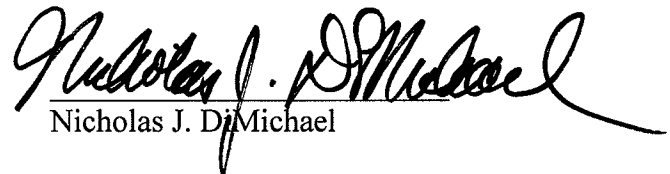
In fact, DuPont will be idling the production of Butacite® at its Washington Works, WV facility in January 2008 based on a combination of capacity and costs. CSXT's rate increases are a factor, since distribution costs constitute approximately ■% of total production costs.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2007, a copy of the foregoing First Amended Complaint was served by overnight courier and hand delivery in accordance with 49 C.F.R. 1111.3 upon the following:

Ellen M. Fitzsimmons
General Counsel
CSX Transportation, Inc.
Law Department
500 Water Street
Jacksonville, FL 32202

G. Paul Moates
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005


Nicholas J. DiMichael