

October 30, 2007

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

RE: Docket No. NOR 42100; *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 42100
		)	
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 Chlorine, STCC 2812815, from Niagara Falls, New York to New Johnsonville, Tennessee ("Niagara Falls Movement")
- b) The movement of Chlorine, STCC 2812815, from Natrium, West Virginia to New Johnsonville, Tennessee ("Natrium Movement")
- c) The movement of Chlorine, STCC 2812815, from Niagara Falls, New York to Carneys Point, New Jersey ("Carneys Point Movement")

4. 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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5. CSXT transports the listed commodities in private tank cars (URCS Code 15), owned or leased by DuPont. 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	Movement Type	Car Size
Niagara Falls	880.7	1	90	Single car	17,000 gal
Natrium	722.8	1	90	Single car	17,000 gal
Carneys Point	588.3	1	90	Single car	17,000 gal

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

- a) Niagara Falls Movement – 42 carloads
- b) Natrium Movement – 83 carloads
- c) Carneys Point Movement – 328 carloads

The Challenged Rates

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

Movement	Rate	Source
Niagara Falls	\$8997.03 per car	CSXT 41248.1
Natrium	\$64.99 per net ton	CSXT 41248.1
Carneys Point	\$4779 per car	CSXT 41248.1

9. Beginning June 16, 2007, CSXT also assessed a fuel surcharge calculated pursuant to CSXT 41248.1, on the date of each shipment, in addition to the rates listed in paragraph (8) 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
Niagara Falls	\$9173.17 per car
Natrium	\$5993.75 per car
Carneys Point	\$4896.66 per car

10. The rates (including the effect of the fuel surcharge) imposed by CSXT applicable to the movements that are the subject of this Complaint represented increases well over 40%, compared to the previous contract rates. In the case of the Niagara Falls Movement, the new common carrier rate imposed on DuPont (including the effect of the fuel surcharge) represented an increase of 105% compared to the previously-effective tariff rates. In the case of the Natrium Movement, the new common carrier rate imposed on DuPont (including the effect of the fuel surcharge) represented an increase of 41% compared to the previously-effective tariff rates.

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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).

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
Niagara Falls	\$2170.12 per car	423%
Natrium	\$1856.38 per car	323%
Carneys Point	\$1588.30 per car	308%

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 for 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.

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The Public Interest in the Safe Transportation of Chlorine

15. Although Chlorine is a hazardous material that is considered toxic-by-inhalation (“TIH”), it is essential to the public welfare and the national economy. Chlorine is a disinfectant that is widely used in water purification. Today, 98 percent of all U.S. public water supplies that are disinfected are made clean and safe with chlorine or chlorine-based compounds. Chlorine’s proven role in water disinfection is one of the most important public health advances of the 20th century. More than 93 percent of pharmaceuticals contain chlorine or are made using chlorine chemistry, including medicines that treat heart disease, cancer, AIDS, and malaria. Chlorine is critical to the manufacture of antibiotics such as Cipro® that are recommended by the U.S. Centers for Disease Control and Prevention for the treatment of anthrax. Chlorine is used in the manufacture of titanium dioxide pigments, which are used in a broad range of coatings, plastics and personal care products that protect against the harmful effects of sunlight. Chlorine chemistry also is critical to modern agriculture. Chlorine is a key building block in the production of over 95% of crop protection chemicals and is one of the few chemical options available to combat post-harvest disease in crops. Building and construction is dependant on chlorine enabling easy to maintain, long lasting, attractive and economical building materials. Nearly one-third of all chlorine is used to produce vinyl – for products such as wire and cable, pipe, floorings, siding, windows and doors. Over 25 percent of all medical plastics and over 70 percent of all disposable medical applications are made as the result of chlorine chemistry. This includes X-ray and mammography films as well as vinyl blood bags, tubing and valves, dialysis equipment, examination gloves, and inhalation masks to name just a few. In addition, chlorine is used in the manufacture of bullet-resistant vests, bullet-resistant glass, and fire-resistant clothing.

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Chlorine is so pervasive because it is the single material on which production of so many other chemicals depends.

16. The U.S. Department of Transportation has adopted strict standards to ensure the safe transportation of chlorine. In addition, the chemical and rail industries have worked in concert to develop and implement numerous programs to promote the safe transportation of hazardous chemicals, including chlorine, by rail. The overall rail transportation safety record for all hazardous materials has been exemplary and rail is considered to be the safest and most efficient mode for transporting large volumes of chlorine over land.

Stipulation to Small Case Relief Caps

17. 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.

18. Aggregation of these movements into a single stand-alone presentation is not appropriate, because the origins are widely dispersed from New York to West Virginia, resulting in only a limited sharing of facilities. The diversity of the issue movements would require stand-alone systems unique to each movement.

Requested Relief

19. CSXT's common carrier rates for the transportation of the chlorine covered by 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 maximum reasonable rates for each movement pursuant to 49 U.S.C. § 10704(a)(1).

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20. 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.

21. 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.

22. 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.

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 chlorine between the origins and destination 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.

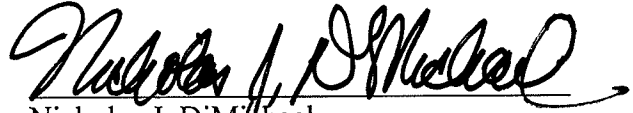
§§ 10704(a)(1) and 11701(a);

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(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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas J. DiMichael", written over a horizontal line.

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

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Exhibit A

**E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.
Docket NOR 42100**

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 following three lanes of chlorine movements: (1) Niagara Falls, NY to New Johnsonville, TN; (2) Niagara Falls, NY to Carneys Point, NJ; and (3) Natrium, WV to New Johnsonville, TN. CSXT possesses market dominance over each of these lanes because chlorine does not, and cannot, move by truck due to safety considerations and there are no other rail alternatives to CSXT.

Chlorine is is considered toxic-by-inhalation (“TIH”), which places it among the most highly hazardous materials. Rail is widely considered to be the safest land mode for transporting chlorine in bulk quantities. In contrast to tank trucks, rail tank cars can carry four times the volume, reducing the number of individual shipments. Furthermore, because trucks use the public highways, they are more susceptible to accidents and any chlorine release from those accidents is more likely to directly affect the public.

The Company’s long-standing policy on the transportation of chlorine is to use the lowest risk option available. All of DuPont’s U.S. facilities that use chlorine are designed to accept deliveries of chlorine only by rail, except for New Johnsonville, TN, which also can receive chlorine by barge. In fact, Taiwan is the only place in the entire world where DuPont receives chlorine by bulk truck, and then only over short distances inland from the seaports, due to the absence of a rail option.

Of the three chlorine lanes at issue in this Complaint, only the movement from Natrium to New Johnsonville has a barge option. Because DuPont considers barge to be a safer

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alternative than rail transportation, DuPont receives as much chlorine by barge over this lane as there is available barge capacity. In fact, at New Johnsonville, DuPont receives more than ten times the volume of chlorine by barge that it receives by rail from Natrium. All deliveries of chlorine over this lane are scheduled first to move by barge. Rail service is used only when shipments cannot be moved via barge either because the waterways do not permit enough barge traffic to be scheduled or due to water level variations or other conditions that do not permit shipments. Moreover, barge capacity is not adequate to handle all the required shipments. Specifically, waterway scheduling and barge inspection requirements limit the number of barges available for all the needed shipments, and there are only a limited number of barges available for chlorine transportation. Whatever volume barges cannot handle is tendered to CSXT. CSXT is fully aware that it is a secondary outlet for chlorine volumes that cannot move by barge. Thus, CSXT knows that barge is not a competitive alternative for the Company's rail shipments of chlorine from Natrium to New Johnsonville.

CSXT's market dominance over chlorine shipments to DuPont is manifest in the failed contract negotiations that took place prior to DuPont filing this complaint. Specifically, CSXT provided DuPont with rates that CSXT declared to be "non-negotiable." The rail industry has made no secret of its desire not to haul any TIH traffic at all. Although as a common carrier CSXT cannot refuse to haul TIH traffic, it can attempt to discourage TIH movement by demanding unreasonably high rates. This appears to be CSXT's strategy with rate increases over the previously effective contract rates of ■% from Niagara Falls to New Johnsonville; ■% from Natrium to New Johnsonville; and ■% from Niagara Falls to Carney's Point.

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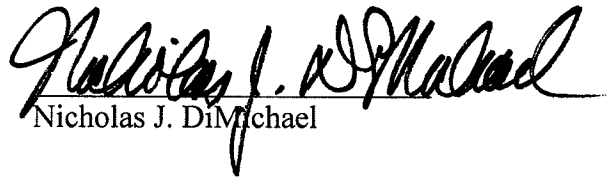
These factors constitute the essence of market dominance. Moreover, they have strong public policy implications for the safe transport of TIH commodities, such as chlorine, that are essential to our national economy.

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