



**AGRICULTURAL
RETAILERS
ASSOCIATION**

Suppliers to America's Farmers

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Surface Transportation Board

Attn: STB Ex Parte 677 *Sub 1*

395 E Street, SW

Washington, DC 20423-0001

**Public Hearing Regarding the
Common Carrier Obligation of the Railroads
July 22, 2008**

**Comments of Dan Weber
Vice President of Agronomy
Ceres Solutions, LLP
&
Chairman of the Board
Agricultural Retailers Association**

INTRODUCTION

I would like to thank Chairman Nottingham for holding this important hearing today. My name is Dan Weber, Vice President of Agronomy, with Ceres Solutions, LLP, a cooperative selling crop inputs and application services in the State of Indiana. I am also Chairman of the Board of Directors at the Agricultural Retailers Association (ARA), which represents a significant majority of the nation's retail dealers who provide essential agricultural pesticides, fertilizer, seed and other agronomic services to America's farmers. As the only national organization exclusively representing the interests of the agricultural retail and distribution industry, ARA is vitally interested in any federal laws or regulations related to the railroad transportation of agricultural inputs utilized in the nation's agricultural sector. As

such, I am here today to testify on behalf of ARA. I appreciate the opportunity to discuss this important issue before the STB.

Ceres Solutions is an agricultural cooperative operating 26 agronomy retail locations (some with rail service) serving 5,000 agricultural producers in 13 Western Indiana and surrounding counties with crop inputs and application services. Total agronomy sales exceed 150 million dollars annually. I began this role in the agronomy division of Ceres Solutions in February 2007, when the coop partnership between Growers, Westland and Agrokey cooperatives was formed. These three cooperatives have each been in business for at least 78 years, and they have worked with the railroads over many decades. Prior to partnership formation, I served as CEO of Growers Cooperative for 6 years. My background includes more than 34 years in agriculture retail sales and management, wholesale fertilizer, crop chemicals and seed distribution in the Midwest Region. In my position as Vice President of Agronomy, I oversee the procurement and receipt of over 125,000 tons of fertilizer with 40,000 tons of that being rail delivered to our facilities. I grew up on a farm in Snake Run Indiana. I graduated from Purdue University with a Bachelor's of Science in Agribusiness Management in 1970. In 1974, following my tour in the Navy, I began working in the agricultural retail industry as a retail agronomy plant manager.

IMPORTANCE OF FERTILIZER & OTHER CROP INPUT MATERIALS TO THE AGRICULTURAL INDUSTRY

Fertilizer use is essential to America's food security and economy. Fertilizer allows domestic farmers to feed and clothe the nation. For every additional dollar of income, consumers in Egypt, Indonesia, and Vietnam spend more than 25 cents on food, while consumers in the United States spend less than 10

cents.¹ We are the best at what we do when it comes to crop production due to newly adapted technology and better understanding and application of sound agronomic practices

The use of fertilizer is also needed in order to produce enough agricultural products for renewable energy. Renewable energy allows the U.S. to be less reliant on foreign sources of energy. The call went out to the farmers in the United States asking them to produce more corn in an effort to replace part of the dependence on imported oil. They responded by planting a record 92.9 million acres, an increase of 11 percent over the previous year.² The world demand for fertilizer to produce more crops for food or fuel is pushing our fertilizer production and distribution systems to their limits.

The three major fertilizer materials we provide our customers are nitrogen (N), phosphates (P₂O₅), and potassium (K₂O). Farmers are offered three choices of nitrogen in our market- urea, UAN, and anhydrous ammonia. Urea is a 46 percent nitrogen dry product that we blend with other fertilizer and apply on crops like corn and wheat which use nitrogen. The liquid form, called UAN, is formulated in a solution of 32 percent or 28 percent nitrogen, and anhydrous ammonia (NH₃) is 82 percent nitrogen. Anhydrous ammonia is a pressurized gas in liquid form that requires special handling. Anhydrous ammonia provides the lowest cost to the farmer on a per unit of nitrogen basis making it the preferred choice of nitrogen for many of our farmers. The savings can be \$30 to \$40 per acre for 175 units of nitrogen on a typical corn crop. Anhydrous ammonia is the most widely used form of nitrogen fertilizer in the Corn Belt.³ While U.S. corn production has increased, domestic ammonia production has actually

¹ "U.S. Trade Growth: A New Beginning or a Repeat of the Past?" *Amber Waves*, September 2007, available at <http://www.crs.usda.gov/AmberWaves/September07/Features/USTrade.htm>.

² "U.S. Farmers Plant Largest Corn Crop in 63 Years", National Agriculture Statistics Service, June 29, 2007, available at http://www.nass.usda.gov/Newsroom/2007/06_29_2007.asp

³ "Soil pH Effects on Nitrification of Fall-Applied Anhydrous Ammonia", *Soil Sci. Soc. Am. J.* 68:545-551 (2004), available at <http://soil.scijournals.org/cgi/content/full/68/2/545>

declined by 44 percent between 2000 and 2006. During the same period, the number of U S ammonia plants declined from 40 to 25 and domestic production capacity declined from 20 million tons to 13 million tons. This decline in production is partially due to rising natural gas prices in the U.S. As such, the market has responded with a 35 percent increase in imports- principally from the Trinidad and Tobago Republic, Ukraine, Russia and Canada.⁴ The imported anhydrous ammonia must travel across the country to the corn producing states.

As an agricultural retailer providing product and application service, our average tonnage moved through one of our retail operation is about 5000 tons of products. We turn our storage about four times in a typical year. In order to accomplish this efficiency, it requires continued timely receiving of products. Product is delivered through the fertilizer distribution network by truck (25 ton per truck) or train (100 tons per car), and both must be timely. Due to the nature of agriculture in Indiana, our crops are very seasonal and with a very narrow window of time for crop inputs to be applied. In the typical U.S. spring, the corn crop will be planted between April 15 and May 20. The typical corn crop in Indiana is planted in a period of two weeks or less due to the size of equipment the farmer has today. The agriculture industry continues to experience consolidations of fertilizer wholesale facilities providing fewer choices to source product and more distance and time required to transport from the terminal to the retail plant operation. The grower typically begins to see a yield decrease if planting is delayed past this window. During the fall season, phosphates and potassium are applied to crops. The window of time for application is a little broader in the fall, but the coming of winter weather makes it impossible to cross the fields; thus, making application urgent in the fall fertilizer season as well. This need for the farmer to have his nitrogen, phosphate, and potassium fertilizers on time is one reason that

⁴ "Will Anhydrous Ammonium Tip the Balance in the Battle for Acres?", *AgricultureOnline*, September 20, 2007, available at <http://www.agriculture.com/ag/story.jhtml?storyid=/templatedata/ag/story/data/1195585018809.xml>

it is so critical that product is in place at our facilities on time. Likewise, it is just as imperative that we receive timely distribution from the truck terminals or railroad service

COMMON CARRIER OBLIGATION

The railroads' "Common Carrier" obligation should be maintained and enforced by the STB for two main reasons. First, under the Staggers Act, the railroad is to function as a "Common Carrier" in exchange for the original subsidies, financial bailouts and protection. The common carrier obligation was a legislative directive issued by Congress, and it is Congress, not the STB, that has the authority to remove that obligation.

The second reason that the STB should maintain the common carrier obligation is that the railroads are attempting to use the statute's language of "reasonable request" to perform less than their obligation. As a common carrier, the railroads are responsible for carrying all of the nation's goods – not just the ones that make them the most money or are the easiest to service. The STB, in its responsibility to oversee this monopoly, cannot allow the railroads to use excuses, such as a smaller profit margin or slight inconvenience to justify their underperformance.

For example, the railroads argue that their "common carrier" obligation only goes as far as being a "reasonable" request. The railroads further argue that it would be reasonable to transport anhydrous ammonia using other means of transportation and that reasonable use would be using IST in the place of anhydrous ammonia. Agricultural retailers use the railroad to transport crop input materials because there is no practical or "reasonable" alternative available. The railroad is the safest, most secure, and most efficient way to move these chemicals. The rail service to our agricultural retail operations plays a

critical role in providing distribution due to the large volume of product, the distance it must travel to get to our agricultural retail location, and the restricted seasonal time frame this has to happen. Nearly all the regional fertilizer warehouses are filled by train or river barges. Railroads have claimed that they are at capacity; however, the railroad has failed to submit proof of its alleged capacity while outside studies suggest that the railroad is at capacity in only three percent of its rail area.

The challenge that we have in the truck distribution of these nitrogen, phosphate, and potassium products from the terminals is the narrow spring window to plant the corn crop. It would take four trucks to deliver the same amount of anhydrous ammonia that one rail car can deliver. There are not enough trucks or qualified drivers to distribute the tons currently moved by rail cars in the time required for it to be used in agriculture. The trucking industry already has strained capacity. According to the American Trucking Industry, the trucking industry is currently short 20,000 drivers and that deficiency is expected to increase to 80,000 drivers by 2011. Furthermore, with new Department of Transportation regulations in place, it is much more difficult to find trucks to haul anhydrous ammonia than it was 5 years ago. There are fewer drivers that have the required commercial driver's license with a HAZMAT endorsement than we had pulling anhydrous ammonia tanks prior to the new rules. Almost a third fewer qualified truck drivers to service our industry and more demand on their service as we lose rail delivered anhydrous ammonia service. Even if there were enough certified truck drivers to handle the additional freight, the idea of transporting the material by truck rather than rail flies in the face of the goal to lower carbon emissions that the U.S. is working hard to achieve. Every time we switch from using a rail car to trucking the same volume of material, we put four more semi tractors pulling 25 ton loads on our already crowded roads further distances. We use more fuel, create more lines at the truck terminals decreasing our efficiency and increasing costs as trucks sit in those lines and we expose the public to

four times the exposure as the truck go through our cities and small towns. There is also a greater security threat when the chemicals travel by truck rather than train.

Another means of shipping agricultural ammonia is pipeline use. However, existing pipelines are at capacity with two million tons being transported through it. Furthermore, pipelines are not a reasonable alternative to many of our rural markets because there is limited access to the pipeline. In addition, in our market area, the distribution of anhydrous ammonia through the pipeline system is taxed to the maximum in part due to the seasonal demand and also the decrease in anhydrous ammonia storage along the pipe. For example, at the Crawfordville Koch location, 64,000 tons of storage at the pipe terminal was scrapped due to concerns over the integrity of the storage tanks. The storage was not replaced, thus, putting more pressure on the anhydrous ammonia distribution system.

Furthermore, the railroads argue that the agriculture industry should use inherently safer technologies (IST), but for certain crops there is no affordable substitution for anhydrous ammonia. The cost per acre is prohibitive if mandatory IST were mandated as the railroad would prefer. Fertilizer supplies are extremely tight due to the strong global demand. Simply switching from one product to another is not feasible due to availability of product and equipment needed for application. There are no substitutes for nitrogen, phosphate, and potassium fertilizers to America's Farmers. These fertilizers must be applied annually to maximize yield production.

EXAMPLES OF COMMON CARRIER OBLIGATION AVOIDANCE

For the foregoing reasons, the railroads' common carrier obligation should be maintained. The cost of rail service to our agricultural retail operations has increased at a rate that forces us to look at alternatives but finding few. We

require a greater gross margin to cover these increased operational costs which pushes the farmers to need more for the crops they are providing for food. The following are examples of the railroads' behavior that I have experienced in their attempt to avoid their common carrier obligations:

- **48-Hour Department of Homeland Security (DHS) Rule:** The new DHS 48-hour rule prohibits rail cars carrying Toxic Inhalation Hazard (TIH) materials like anhydrous ammonia from sitting in one location for more than 48 hours. The railroad's enforcement of the rule is adding exorbitant costs and increased risk for rail accidents by forcing unnecessary movement of rail cars. The agricultural retailer's ability to receive prescheduled rail shipments is largely controlled by weather and the retailer's ability to apply product in the fields. The 48-hour rule forces rail cars sitting at a switch yard to be relocated thereby increasing the risk to the public by moving it multiple times further than it needs to go, and the extra movement increases cost to the agricultural retailer. For example, after two railcars sat on the track for 48 hours because of rain, Ceres Solutions was charged \$8,456 per car to move two rail cars of anhydrous ammonia ten miles to comply with the rule. After several phone calls protesting the rate, it was reduced to \$1,404 per car. Once room for the anhydrous ammonia was made in the original location, Ceres Solutions had to pay the railroad again to move the cars to the original delivery location. The additional cost of shuffling cars, exposure to the general public and hassle to find a place to relocate the cars before arriving at the intended point of delivery is not in the best interest of the public or our retail business.
- **Rate Increases.** The rail tariff rates have increased at a rapid pace. Rail tariffs for dry fertilizer from Florida to Indianapolis have increased 58 percent in the past three years. Rail shipments of anhydrous from Tampa, Florida to Rensselaer, Indiana have increased from \$22.79 per ton to \$163.55 per ton since 2000. In June 2008 single car rates increased ten percent, while 65 to 84 car units increased by six percent and 85

cars or more increased three percent. Railroads are trying to eliminate service to smaller rail users to maximize their profits at the expense of agricultural retailers and safety of the public. Fewer rail car shipments mean more trucks on the road and more exposure to the public. It takes four trucks to carry the same amount of product as one rail car. The truck for rail substitution results in increases of the following: highway traffic, public safety risk, cost of transportation, fuel consumption, and carbon emissions. Furthermore, truck substitution is not a practical alternative because there is a shortage of drivers. The trucking industry estimates that it is currently short 20,000 drivers, and that shortage is expected to increase to 111,000 drivers by 2014.

- **Rail Abandonment of Service.** Rail service to rural America and many of our agricultural retail locations continues to disappear; thus, increasing transportation costs to the retailer, grower and ultimately the consumer. As the agricultural industry adopted new fertilizer products during the 1960's, agricultural retail facilities were built on rail lines to make fertilizer available to farmers in rural America. Since then, these retailers have made significant capital investments in their facilities based on accessibility to the railroads in order to help the agricultural industry meet the global food and fiber demand. Without railroad service, these agricultural retail facilities lose their capital investment and rural America suffers.
- **Surcharges and Fees:** Fuel surcharges are difficult to understand and seem arbitrary, unreasonable and excessive. Other charges are hidden surcharges levied on agricultural retailers. One example of this is the "Seasonal Price Factor." In 2005, the factor was \$350 per car. In March of 2006, the factor was \$200 per car plus an "Equipment Surcharge" of \$550 per car was added only through the fall fertilizer season. In April of 2006, the fee was reduced to \$250 per car. There appears to be no oversight to these additional

arbitrarily levied fees. There is little transparency in the railroads charges and rates levied on smaller receivers, which makes it difficult to make wise business decisions

- Connector Fees: In 2006, we were served notice by the railroad that we would be charged an Annual Sidetrack Connection Charge of \$6,000 per year if we failed to receive minimum of 25 carloads of product
- Due to the nature and use of our products, many agricultural retailers cannot receive 25 cars annually. This additional fee makes it difficult for retailers to compete and adds more cost to be passed on to the farmer who is already facing record high input costs for fertilizer and fuel

RECOMMENDATIONS

ARA would like to submit two recommendations. First, the railroads' common carrier obligation should be maintained. Second, the STB should provide stronger oversight of the railroads in fulfilling this obligation. As a common carrier, the railroad is responsible for carrying all of the nation's goods – not just the ones that makes them the most money or are the easiest to service. The STB must not let the railroads hide behind the difficulty of servicing receivers of fewer than 25 cars a year as an “unreasonable” request for service. The STB, in its responsibility to oversee this monopoly, cannot allow the railroads to use the excuse of a smaller profit margin to justify charging agricultural retailers arbitrary and excessive fees and to justify reducing rail service to the retailer located in a small town.

CONCLUSION

ARA and our members strongly support a railroad system which is healthy financially, but we believe it is important to have a railroad infrastructure that is not needlessly sheltered from competition and left to operate without proper oversight. America's agricultural industry is currently faced with high fuel,

fertilizer and transportation costs. If the railroad is able to avoid its common carrier obligation, the agricultural industry may be stalled in its productive capacity, and the U S will continue to see food and energy prices soar. The current railroad regulatory environment may help further drive many within agriculture out of business and increase our dependence on foreign sources of food and fiber.

Thank you for considering ARA's views. We appreciate the Board's interest in this issue. We welcome the opportunity to provide further input to the STB on the issue of the rail transport of agricultural inputs.

TESTIMONY AFFIDAVIT

I, DANIEL R. WEBER, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on JUNE 30, 2008.


Signature