

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket Number 35157

**PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER**

**REPLY OF THE CITY OF ALEXANDRIA, VIRGINIA, TO
NORFOLK SOUTHERN'S RESPONSE TO PETITION FOR DECLARATORY ORDER
AND MOTION TO STRIKE EXTRANEIOUS MATERIAL**

Dated: July 11, 2008

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ATTORNEYS FOR THE CITY OF
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The City of Alexandria (the "City") hereby replies to the Response of Norfolk Southern Railway Company's Response to the City's Petition for a Declaratory Order and moves to strike extraneous material from Norfolk Southern's Response. The City is today filing a Petition for Leave to File a Reply to a Reply, and is tendering this reply in anticipation of a favorable ruling on that Petition.

In its Petition for a Declaratory Order, the City seeks the Board's determination of a clear legal question: whether the City may regulate an ethanol transloading operation at the Van Dorn Street Yard (the "Facility") in the City that appears to be operated exclusively by a non-railroad entity, RSI Leasing, Inc. ("RSI"), located on right-of-way owned by Norfolk Southern Railway Company ("Norfolk Southern"). The City has a strong interest in regulating the transloading operation because it involves ethanol, a Class 3 flammable liquid, in close proximity to homes, a school and a park. This proceeding is similar to that in the Board's recent decision in Finance Docket No. 35057, *Town of Babylon and Pinelawn Cemetery – Petition for Declaratory Order*, (Service Date February 1, 2008). As the Board held in *Town of Babylon*, this kind of inquiry is fact-intensive because it turns on the nature of the relationship between the railroad and the non-

railroad, specifically who controls the transloading operation. In order to answer this question, the City and the Board must review documents and information in Norfolk Southern's possession which the City may only obtain through a discovery order issued by the Board.

In its Response to the City's Petition for a Declaratory Order, Norfolk Southern attempts to cut off this factual inquiry by presenting a misleading picture of the facts. First, Norfolk Southern argues that the City is motivated by some political animus directed at Norfolk Southern. Response of Norfolk Southern Railway Company to Petition for Declaratory Order, STB Finance Docket No. 35157 (Service Date July 7, 2008) ("NS Response"), 2-3, 4-10, 23. In support of this argument, Norfolk Southern goes to great lengths to create the impression that the City is "anti-Norfolk Southern," including statements from City officials, print-outs of a City web page regarding the ethanol transloading facility, a copy of a lawsuit filed by Norfolk Southern against the City and other extraneous material. *See* NS Response at 4-10.

Norfolk Southern's argument is both false and irrelevant. Norfolk Southern has operated in the City for many years, and the City has not had any substantial issues with those operations, including operations at the Van Dorn Yard. With the introduction of an ethanol transloading facility into an area in close proximity to homes, a school, a park and several major transportation facilities that could operate on a 24/7 basis, however, the City is presented with a serious health and safety issue. The City seeks to address that issue through appropriate legal means, including seeking declaratory relief from this Board. The strongly expressed views of City officials who desire to regulate that facility does not in any way mean that the City's Petition lacks merit or is in any way improper. To the contrary, the City has instituted this proceeding to pursue an entirely lawful and orderly process to affirm its regulatory authority.

Norfolk Southern's cries of political animus are red herrings that have no place in these proceedings.

As Norfolk Southern states, the only issue in this proceeding is the relationship between Norfolk Southern and RSI and who controls the transloading operation. *See* NS Response at 19. The City's position on the desirability of locating the ethanol transloading operation near neighborhoods and other residential land uses are simply irrelevant to that issue. Norfolk Southern's heated rhetoric and attempts to clutter the record with documents related to the City's position on the ethanol transloading facility are entirely extraneous to the question of control over the transloading operation and should be stricken from the Response and disregarded. Specifically, pages 2-3, 4-10, 23 of the NS Response and Exhibits A, C-O, Q & R should be stricken and otherwise disregarded as irrelevant.

Second, Norfolk Southern offers conclusory statements about selected documents which purport to establish its relationship with RSI, the operator of the Facility, in the hope that the Board will forego more detailed scrutiny of the actual ethanol transloading operation. NS Response at 2, 13. In particular, Norfolk Southern relies heavily on the assertion that its relationship with RSI is defined by a contract, not a lease. Under *Town of Babylon*, however, such conclusory statements and reliance on matters of form are not dispositive. *Town of Babylon* at 4. In fact, the agreement between Norfolk Southern and RSI (the "RSI Agreement") attached to the NS Response raises more questions than it answers as to crucial issues concerning control and operation of the Facility. For example, the RSI Agreement requires RSI (1) "to perform all activities required to transload [ethanol] from rail tank cars" (RSI Agreement Sec. 1.A(ii)), (2) to maintain insurance in favor of Norfolk Southern (RSI Agreement Sec. 3.C(i)(c)) and (3) to indemnify Norfolk Southern for all claims and liability arising out of RSI's use of the Facilities

(RSI Agreement Secs. 3.A and 3.B). The RSI Agreement also, like a description of the demised premises in a lease, includes a plat establishing the geographic limits of the area to which the Agreement applies.

Moreover, the RSI Agreement, page 2 and page 9, expressly incorporates bulk “Tariff 9328-C, or any successor or replacement thereof.” On April 17, 2008, Norfolk Southern canceled Tariff 9328-C and replaced it with Tariff 9328-D, which, for the first time, expressly applies to the Alexandria facility. Tariff 9328-D, a copy of which is attached as Exhibit 1, provides that the listed terminals

are operated by an independent terminal operator (the “Terminal Operator”). The purpose of this tariff is to advise NS shippers of the services they may expect when utilizing a [terminal] and the services of a Terminal Operator, but arrangements for service at a [terminal] should be made between the shipper and the Terminal Operator.

Ex. 1, Tariff 9328-D, page 4. The tariff further provides that “Charges for unloading of railcars to trucks and unloading trucks to railcars at a [terminal] *will be determined on an individual basis by the Terminal Operator . . .*” (emphasis added) subject to maximum charges set forth in the tariff. *Id.* at 7. These unloading charges, as determined by the independent operator, “will be billed to the shipper or beneficial owner by the Terminal Operator. . . ,” not the railroad. *Id.* at 8.

Under *Town of Babylon*, these multiple indicia of independent operational control by RSI, including control over pricing for its services, suggest that RSI, not Norfolk Southern, controls the Facility. Indeed, RSI itself has publicly acknowledged that it is the operator of the facility. Clearly, reliance on Norfolk Southern’s self-serving characterizations of its arrangement with RSI is not dispositive. Accordingly, discovery is necessary to fully explore and determine the relevant facts as to whether Norfolk Southern or RSI controls the Facility and whether, as a result, the Facility is subject to STB jurisdiction.

Finally, Norfolk Southern attempts to further deflect the need for discovery by arguing that the City's citation to 49 C.F.R. § 174.304, which prohibits rail transportation of Class 3 hazardous materials except under certain specific circumstances relating to ownership and control of the material at trackside, is not the controlling regulation. On its face, Section 174.304 does apply and prohibits precisely the kind of activity Norfolk Southern purports to be engaged in, unless RSI or some other party is a consignee and the transloading takes place on a private track (*i.e.*, track not owned or controlled by a railroad). That is the point of the City's citation to the regulation – to demonstrate that the ethanol transloading operation is not a railroad operation. Norfolk Southern's arguments about the definition of "transloading" are simply irrelevant because the operative language of Section 174.304 relates to the nature of the receiving party as a consignee with a private track or permanent storage tanks. The word "transloading" does not appear in the regulation and is irrelevant to the applicability of the regulation.

Moreover, the regulation cited by Norfolk Southern, 49 C.F.R. § 174.67, is general and sets forth generic requirements related to hazardous materials. In contrast, Section 174.304 is precise and applies specifically to "Class 3 (flammable liquid) materials in tank cars." Because ethanol is a Class 3 hazardous material arriving at the Facility in tank cars, Section 174.304 plainly applies. It is axiomatic that a general provision cannot override a specific provision, as Norfolk Southern argues. Further, 49 CFR 174.304 is part of Subtitle B of Title 49, to which the definitions set forth in 49 CFR 171.8 apply. That section provides the following definitions relevant to interpreting 49 CFR 174.304:

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has: (1) A maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid;
(2) A maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or
(3) A water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in §173.115 of this subchapter.

Transport vehicle means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semi trailer, tank car or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, rail car, etc.) is a separate transport vehicle.

Unloading incidental to movement means removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated by Department of Homeland Security Delegation No. 0170.1 at 2(103).) **Unloading incidental to movement includes transloading. (Emphasis added.)**

Transloading means the transfer of a hazardous material by any person from one bulk packaging to another bulk packaging, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packaging for the purpose of continuing the movement of the hazardous material in commerce.

Accordingly, it is clear the definition of *unloading* includes *transloading*, contrary to Norfolk Southern's rather tortured assertions. Since both the RSI Agreement and Tariff 9328-D acknowledge that hazardous material unloading and transloading are subject to 49 CFR Part 105, *et seq.*, it is equally clear that the railroad itself cannot lawfully offer the services actually provided at the Facility, unless it has relinquished all responsibility and control over those

services to a private party, which is not a rail carrier and whose operation is not subject to federal preemption.

In any event, even the regulatory material cited by Norfolk Southern underscores the critical point that an ethanol transloading operation, even if permitted, may be carried out by a railroad *or* a non-railroad and that regulation of transloading operations involving hazardous materials may be beyond the jurisdiction of the STB. That is the issue the City is asking the Board to decide in this proceeding. Accordingly, the Petition should be granted and discovery permitted.

Conclusion

For the foregoing reasons, the City of Alexandria respectfully requests the Board to grant its Petition, allow the City to take discovery in this matter and strike the extraneous material from Norfolk Southern's Response.

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corporation of Virginia
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Exhibit 1

Attached hereto:

Norfolk Southern Railway Company
Thoroughbred Bulk Transfer
Freight Tariff NS 9328-D
Cancels
Freight Tariff NS 9328-C

NS 9328-D
CANCELS
NS 9328-C

**NORFOLK SOUTHERN RAILWAY COMPANY
THOROUGHbred BULK TRANSFER**

**FREIGHT TARIFF NS 9328-D
CANCELS
FREIGHT TARIFF NS 9328-C**



**BULK TRANSFER TARIFF
PROVIDING SERVICE
ON
DRY AND LIQUID COMMODITIES
AT STATIONS NAMED IN ITEM 110**

BULK RAIL -TRUCK TARIFF

Governed by the Uniform Freight Classification UFC Series, See Item 5

ISSUED: April, 17 2008

EFFECTIVE: June 1, 2008

**Issued By
C. J. Orndorff – Director Marketing Services
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110 Franklin Road, S. E.
Roanoke, VA 24042-0047**

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

PARTICIPATING CARRIER

ABBREVIATION	NAME OF CARRIER
NS	NORFOLK SOUTHERN RAILWAY COMPANY

ITEM 5

GOVERNING CLASSIFICATION AND EXCEPTIONS

Governed by the provisions of UFC 6000 Series, Uniform Classification Committee, Agent, and NS Conditions of Carriage No. 1. (When shipments are made in Tank Cars, they will be subject to Rule 35 of the UFC except as to minimum weight, which will be shown in individual rate items.)

ITEM 15

EXPLOSIVES, DANGEROUS ARTICLES

For rules and regulations governing the transportation of Explosives and other Dangerous Articles by freight, also specifications for shipper's containers and restrictions governing the acceptance and transportation of Explosives and other Dangerous Articles, see Bureau of Explosives Tariff BOE 6000 Series.

ITEM 20

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC.

(A) Where reference is made in this tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

(B) Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic.

ITEM 60

NATIONAL SERVICE ORDER

This Tariff is subject to provisions of various Surface Transportation Board Service Orders and General Permits as shown in National Service Order Tariff NSO 6100 Series.

ITEM 75

METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445 and Item 365-B cancels Item 365-A in a prior supplement, which in turn cancelled Item 365.

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 100

METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS

Matter brought forward without change from one supplement to another will not be designated as "Reissued" by a reference mark. To determine its original effective date, consult the supplement in which the reissued matter first became effective.

ITEM 110

APPLICATION

The provisions of this tariff will apply on Dry and Liquid commodities, in bulk, at designated Thoroughbred Bulk Transfer (TBT) facilities at the following locations:

Delaware	Edgemoor
Florida	Jacksonville Miami
Georgia	Atlanta (Doraville) Augusta Dalton
Illinois	Chicago
Kentucky	Louisville Somerset
Maryland	Baltimore
Michigan	Detroit (Willis) Grand Rapids
New Jersey	Elizabeth Paterson
New York	Buffalo
North Carolina	Charlotte (Pineville) Winston-Salem

(Continued on next page)

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 110 (Concluded)

Ohio	Cincinnati (Clare) Cincinnati (Norwood) Cleveland (Euclid) Columbus (Fisher Road) Columbus (Frebis Avenue)
Pennsylvania	Pittsburgh (Crafton)
South Carolina	Spartanburg
Tennessee	Chattanooga
Virginia	Richmond (Petersburg) Alexandria

Each TBT listed above is operated by an independent terminal operator (the "Terminal Operator"). The purpose of this tariff is to advise NS shippers of the services they may expect when utilizing a TBT and the services of a Terminal Operator, but arrangements for service at a TBT should be made between the shipper and the Terminal Operator.

Upon request of the shipper, the terminal services named herein will be performed on carload shipments in bulk as described herein (See Note 1), which move in NS line haul service to or from the above terminals, subject to the charges, rules and regulations published herein.

To arrange for terminal services specified in Item 115 at locations specified above, Shipper will notify terminal before actual shipment of product is made, advising the terminal of the commodity and the car number to be shipped.

NOTE 1: TBT facilities will handle Dry and Liquid Commodities in bulk when appropriate infrastructure and equipment for handling such Commodities are available. The Terminals will require shipper to provide Material Safety Data Sheets (MSDS) and will keep same on file at the terminal; product Handling Protocol for hazardous materials and such other information as may be required, including the need for special transfer equipment, personal protective equipment (PPE), pollution control, etc., prior to shipment of the commodity. NS reserves the right to refuse any commodity at its TBT facilities.

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 112

MOTOR CARRIER ACCESS

A shipper may retain a motor carrier to load or unload Commodity at TBT. In order to load or unload Commodity at a TBT, a motor carrier must execute an indemnity agreement among the motor carrier, NS and the Terminal Operator, covering the motor carrier's activities while at the TBT. When this agreement is fully executed, a motor carrier is "pre-approved". Carriers and their employees operating at TBT site are required to conform to all such rules and procedures. A separate indemnity agreement must be executed at each location that the Operator is different.

All pre-approved motor carriers may deliver to or pull loads from a Thoroughbred Bulk Transfer Terminal. Motor carriers may be required to assist in the connection and loading or unloading of the trailer. The motor carrier will be responsible for its equipment at all times and the driver must remain with the vehicle while loading or unloading. The motor carrier will comply with all required safety procedures, which will include the removal of vehicle keys while loading Hazmat products. Authorized terminal personnel will load or unload all hazardous materials.

A motor carrier that is not pre-approved will not be allowed to enter a TBT, and the motor carrier driver must have a valid CDL (Commercial Driver's License) in his/her possession while conducting activities at the TBT. Motor Carrier driver must have a DOT hazardous materials endorsement if transporting hazardous materials.

Concerning self-loading, an administration charge of \$75 per trailer will be assessed to the shipper, if the motor carrier is not the Terminal Operator. This charge applies to the self-loading of dry and non-hazardous liquid products. (See Note 1) The motor carrier should only charge the shipper a transfer fee only with no administration charges.

NOTE 1: For the purposes stated herein, "self loading" shall be defined as a motor carrier using equipment affixed to its equipment to perform the physical transfer of Commodity. Self-loaders must also supply all hoses, fittings, etc. in addition to appropriate spill containment for the transfer of Commodity.

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 115

A. BASIC SERVICES INCLUDED IN A TRANSFER

Unless otherwise agreed upon by the Terminal Operator and the customer, a transfer conducted at a TBT will include the following at no additional cost:

1. Weigh empty trailer.
2. Inspection of terminal transfer equipment for cleanliness. This does not include self-load equipment.
3. Verification of motor carrier's shipment documentation.
4. Sample contents of one compartment of non-hazardous rail car. Samples are to be taken from the bottom of the railcar. (Unless agreed upon by the shipper and terminal operator).
5. Perform non-self load transfer at negotiated charge.
6. Sample contents of inbound loaded non-hazardous trailer.
7. Seal loaded trailer and railcar from which product was removed.
8. Weigh loaded trailer.
9. Provide driver with scale ticket and product sample only if requested by the shipper or beneficial owner.

The Shipper and the Terminal Operator may agree upon the performance of services in addition to those listed above, at rates to be negotiated by the parties.

B. APPLICATION OF TERMINAL SERVICES

1. Prior to acquiring terminal services at a Thoroughbred Bulk Transfer facility listed in Item 110, shipper or beneficial owner must provide said terminal and NS a MSDS covering the commodity to be handled, and, for hazardous materials, a Handling Protocol outlining hazards and procedures for safe handling. All hazardous materials require pre-authorization by the terminal operator prior to billing any shipments to the terminal.
2. Norfolk Southern, through an Independent Contractor, will perform the services named herein on carload shipments of Commodity in bulk, subject to charges, rules and regulations published herein. Norfolk Southern reserves the right to refuse to handle any Commodity at its sole discretion.
3. All commodities must have MSDS sheet and on file at the terminal prior to arriving for terminal services. For shipments of hazardous materials a Handling Protocol must be on file at the terminal prior to arriving for terminal services. Commodity(s) arriving at a terminal before receipt of an MSDS and Handling Protocol (as applicable) will be held subject to Track Occupancy Charges as specified in Item 140 and no transfers will be accomplished until this information arrives.
4. Commodity(s) that Norfolk Southern declines to handle under the charges, rules and regulations published herein may, at Norfolk Southern's sole discretion, be handled under a separately negotiated contract.
5. Terminal services are restricted to carloads received or forwarded in Norfolk Southern line haul service, none of the facilities listed in Item 110 are open to any type of switching.

(Continued on next page)

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 115 (Continued)**C. UNLOADING OF RAIL CARS**

Charges for unloading of railcars to trucks and unloading trucks to railcars at a TBT will be determined on an individual basis by the Terminal Operator, but will not exceed the rates set forth in Item 115 section D.

The handling characteristics of the commodity, manpower requirements and the transfer equipment required will determine the charges. Any truck detention charges incurred during the loading or unloading process and any overtime charges (Item 150) will be the responsibility of the shipper. However, charges for the services listed below shall be no greater than that set forth below. Further, any shipper may at any time communicate with NS or the Terminal Operator if it believes the transfer charges to be non-competitive based on market conditions.

For safety reasons, TBT procedures require that at least two (2) terminal operator people be present during the transfer of any non-self load products. A truck driver on site qualifies as one of these people only if the product is a non-hazardous product. For self-load products only one (1) terminal operator employee, or one (1) qualified truck driver, will satisfy the safety requirement.

Transfer rates may not be bundled with any assessorial or capital improvement requirements associated with the transfer.

D. MAXIMUM TRANSFER CHARGES

Applicable on shipments transferred **from rail car to truck** at the facilities listed in Item 110.

On commodities transferred in bulk, the following charges, subject to a minimum weight of 45,000 pounds per truckload per transfer, will be assessed for transfer at all Thoroughbred Bulk Transfer facilities.

DRY BULK

	<u>Per 100 pounds</u>
Mechanical Conveyor or Auger Transfers	\$0.35
Plastics (STCC 28-211-XX)Transfers	\$0.33
Pressure Differential Transfers	\$0.33
Other dry Bulk Products	\$0.40
Hazardous Solids (Other than flammables)	\$0.47
Self- Loading [Non-hazardous products only]	\$75.00 per trailer

LIQUID BULK

	<u>Per 100 pounds</u>
Non-hazardous Liquids	\$0.33
Hazardous Liquids (Other than flammables)	\$0.47
Flammables	(Individually Priced)

(Continued on next page)

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 115 (Concluded)

SPECIAL SERVICES

Additional scale weights	\$25.00 per weight
*first set of weights (inbound/outbound) included in transfer	
Tank Car Heating Charge	(Individually Priced)
Recirculation Charge	\$35.00 per hour
Inert Gas supplied by shipper or beneficial owner	\$30.00 per hour
Packaging	(Individually Priced)

NOTE 1: The 49 Code of Federal Regulations, Table 172.101 (Hazardous Material Table), as may be revised from time to time, will be used to determine if a product is hazardous. NS reserves the right to refuse to handle ANY commodity at a TBT. Only authorized Terminal Operator personnel may transfer hazardous commodities. No preloaded tank trailers of hazardous materials are allowed on TBT property while the facility is closed, unless authorized by Operator and NS. In writing.

NOTE 2: Multiple commodities may be loaded in a compartmentalized trailer for a charge of \$60.00 for each additional commodity or compartment loaded.

E. BILLING OF CHARGES

Unless arrangements to the contrary are made prior to shipment, charges for terminal services described herein will be billed to the shipper or beneficial owner by the Terminal Operator, except that Track Occupancy Charges (Item 140) will be charged, established and billed by NS through its third party billing agents.

If credit privileges are granted (a determination made on an individual basis), terms for the payment of Track Occupancy Charges will be 15 days from the invoice date.

ITEM 125

TERMINAL SERVICES

I. COMMODITY SAMPLING and INSPECTION

Transfer charges in Item 115 include the visual inspection of the exterior of the railcar, and the exterior of the trailer.

NS and/or the Terminal Operator reserves the right to take samples of any commodity transferred at TBT facilities for its own purposes.

Top sampling of railcars must be agreed upon in advance by Shipper and Terminal Operator. Sample containers must be provided by Shipper at no cost to Terminal Operator. If a sample is requested, it must be taken at time of transfer; any samples that are requested to be taken at another time will be performed at a charge of \$50 per car.

II. SPECIAL SERVICES

Services beyond the scope of those customarily provided by a terminal will be priced on an individual basis.

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 130

TERMINAL LIABILITY

I. LOSS OF WEIGHT

Allowable transfer losses will be one percent (1%) of the weight of the commodity on a six-month (January-June, and July-December) cumulative basis per shipper, per TBT, and such loss will be considered standard operating loss not assessable against NS or the Terminal Operator (See note)

NOTE 1: Greater loss allowances may be required as a condition of acceptance for specific products when handling characteristics preclude complete unloading of the trailer or the railcar.

II. LIABILITY LIMITS

The liability of NS and/or the Terminal Operator with respect to activities in which each is engaged at TBTs shall be limited to the negligence of NS and the Terminal Operator in the performance of the services described in this tariff. Furthermore, neither NS nor the Terminal Operator shall be liable for consequential, indirect, special or punitive damages, interest, attorneys fees, or any amount in excess of product or car owner's actual loss concerning the commodity shipped or the equipment utilized.

III. CLAIMS

Only one claim for loss, damage and/or injury may be filed for each rail car handled under this tariff. No claim will be paid which is filed more than nine (9) months after product delivery or release of car from the terminal.

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 140

TRACK OCCUPANCY CHARGES, DEMURRAGE, AND RELATED CHARGES

A. PRIVATE CAR TRACK OCCUPANCY CHARGES

To the extent applicable, this item will apply on private cars (See Notes 1 and 2) constructively placed or actually placed at a TBT in lieu of demurrage provisions in Tariff NS 6004-Series. Track occupancy charges will be billed to shipper or beneficial owner of the Commodity on behalf of NS by or through its third party billing agent.

Once a rail car is constructively or actually placed (See Note 2), "free time" (Including Saturdays, Sundays and Holidays) will be allowed as follows:

<u>Car Type</u>	<u>Free Days</u>	<u>Days 11 through 40</u>	<u>All Subsequent Days</u>
Covered Hopper Cars	10	\$40 per day	\$90 per day
Tank Cars	10	\$40 per day	\$90 per day

B. RAILROAD CAR DEMURRAGE

All railroad owned or controlled cars (See Notes 1 and 2) will be subject to demurrage under the provisions of Tariff NS 6004-A. Demurrage charges will be billed to the shipper or beneficial owner of the Commodity.

C. NOTES AND OTHER CHARGES

- NOTE 1:** A private car is a railcar bearing other than railroad reporting marks
- NOTE 2:** Constructive placement is the date the railcar is available to be switched into the TBT Terminal. Actual placement is the date the railcar was physically placed in the TBT Terminal.
- NOTE 3:** When a railcar is constructively or actually placed at a TBT and subsequently reshipped without any transfers having been made, a facility charge of \$500 will be assessed to the party issuing the reshipping instructions, in addition to all other applicable charges.
- NOTE 4:** At any time following actual placement of a railcar on a TBT facility, if 30 consecutive days pass without product being removed from a railcar, NS reserves the right to remove such car(s) from the TBT. The shipper of the railcar shall pay a charge of \$500 for this removal. This charge will be assessed each time a railcar sits for 30 consecutive days without product being removed and it becomes necessary to move the railcar. Track Occupancy Charges per this item will continue to accrue until such time as the car released empty.
-

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 150

HOURS OF SERVICE & OVERTIME CHARGES

Normal working hours at the TBT Terminals are from 7:00 A.M. to 6:00 P.M., exclusive of Saturdays, Sundays and Holidays (See Item 185).

All loading, unloading, & service must be ordered before 5 p.m. the day prior to the day that loading, unloading, & service is needed. Every attempt will be made to accommodate emergencies and requested times, but loading spots and other circumstances may require occasional modifications of requested times.

When service is required prior to 7:00 A.M. or after 6:00 P.M., arrangements must be made with the Terminal Operator in advance. When loading, unloading, & services are to begin after 5 p.m., written authorization for overtime to complete the process (if required) must be submitted before the process begins. The charge for services before or after normal working hours will be at a rate of \$60 per person per hour or fraction thereof, in addition to all other applicable charges (See Exception).

When service is requested at the TBT on Saturdays, Sundays or Holidays (See Item 185), or when terminal personnel are required to make an extra trip to the terminal rather than performing continuous service, arrangements must be made in advance with the Terminal Operator. The charge for this service will be \$60 per hour per person subject to a four (4) hour minimum per person, in addition to all other applicable charges for service provided.

Authorization for overtime must be received in writing from the party responsible for paying terminal service charges.

EXCEPTION: No additional charges will be assessed if the motor carrier is at the TBT and ready for loading before 4:30 P.M., and the delay causing the overtime is the fault of the Terminal Operator.

ITEM 160

ORDER PLACING

The shipper or beneficial owner will be responsible for providing TBT with the name of the motor carrier authorized to transport the product, along with product transfer instructions. Such instructions may be initiated verbally but must be confirmed via facsimile, written communication, or through electronic means. Neither NS nor the Terminal Operator will be responsible for any problems concerning the shipment and performance of terminal services when the Terminal Operator has not received facsimile confirmation, or electronic communication covering each separate trailer from or to which Commodity is transferred.

TARIFF NS 9328-D

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 165

RAIL CAR ARRIVING AT TERMINAL WITHOUT FULL WRITTEN DESCRIPTION OF LADING

Any railcar arriving at a TBT without full written description of lading will be held at shipper's expense awaiting adequate and proper description or further instructions on disposition of lading. If such written description shows that the commodity is not one approved for transfer, that railcar will be released to shipper for disposition, subject to all applicable terminal charges, along with any other charges to which NS might be entitled.

ITEM 185

HOLIDAYS

Wherever in this tariff reference is made to "Holidays" it means the following:

New Years Day	Thanksgiving Day
President's Day	Thanksgiving Friday
Good Friday	Christmas Eve
Memorial Day	Christmas Day
Independence Day	New Years Eve
Labor Day	

(See Note)

NOTE: In the event one of the above Holidays occurs on a Sunday, the following Monday will be considered as the Holiday for the purpose of this tariff.

ITEM 190

EXPLANATION OF ABBREATIONS

<u>ABBREVIATION</u>	<u>EXPLANATION</u>
BOE	Bureau of Explosives
CDL	Commercial Driver's License
MSDS	Material Safety Data Sheet
NS	Norfolk Southern Railway Company
NSO	National Service Order
PPE	Personal Protective Equipment
RER	Railway Equipment Register
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
TBT	Thoroughbred Bulk Transfer
UFC	Uniform Freight Classification Committee, Agent

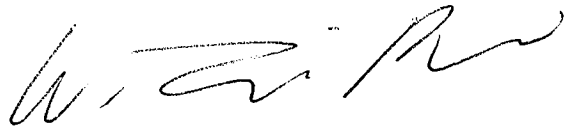
THE END

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2008, a copy of the foregoing Reply of the City of Alexandria, Virginia, to Norfolk Southern's Response to Petition for Declaratory Order and Motion to Strike Extraneous Material was served by first class mail, postage prepaid, upon the following:

John V. Edwards
Senior General Attorney
Norfolk Southern Corporation
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A handwritten signature in black ink, appearing to read 'W. Eric Pilsk', is written over a horizontal line.

W. Eric Pilsk