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November 26, 2008

Via E-Filing

PUBLIC VERSION

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Petition for Declaratory Order
Finance Docket No. 35157.

Dear Ms. Quinlan:

I attach the Response of Norfolk Southern Railway Company to Decision Served November 6, 2008 in this Proceeding. I have today submitted, by first class U.S. Mail, the original signatures to the attached verified statements and affidavits.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be 'J. Edwards'.

John V. Edwards

PUBLIC VERSION

Before The
Surface Transportation Board

Finance Docket No. 35157

PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER

**RESPONSE OF NORFOLK SOUTHERN RAILWAY COMPANY TO
DECISION SERVED NOVEMBER 6, 2008 IN THIS PROCEEDING**

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November 26, 2008

PUBLIC VERSION

Before The
Surface Transportation Board

Finance Docket No. 35157

PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER

**RESPONSE OF NORFOLK SOUTHERN RAILWAY COMPANY TO
DECISION SERVED NOVEMBER 6, 2008 IN THIS PROCEEDING**

On June 17, 2008, the City of Alexandria, Virginia (the “City”) filed with the Surface Transportation Board (“STB” or “Board”) a petition for declaratory order seeking a Board determination whether the operation of an ethanol transloading facility (the “Facility”) within the city of Alexandria is covered by the preemption provision of 49 U.S.C. Section 10501(b). The City alleged that RSI Leasing, LLC (“RSI”) independently operates the facility and thus the transloading operation does not constitute “transportation by a rail carrier.” On November 6, 2008, the Board served a decision (the “November 6 Decision”) in which it, among other things, instituted a declaratory order proceeding. The Board further directed Norfolk Southern to submit certain information, in the form of verified statements, for the record.

Specifically, the Board directed Norfolk Southern to answer the following questions:¹

- (a) With whom do shippers communicate to arrange transloading at the Facility?²
- (b) Who schedules the transloading, and who collects the fees for the transloading?
- (c) What is the extent of the involvement of RSI and its affiliates in the ownership and construction of the Facility, delivery of the ethanol to the tank cars, the unloading activities that take place at the Facility, and redelivery of the ethanol to blending facilities?
- (d) What specific measures does NS take to control, monitor, and supervise the operation of the Facility?

Norfolk Southern summarizes its answers to each of these questions below. These answers are supported by the attached verified statements or affidavits of: David Lawson, Vice President of Industrial Products for Norfolk Southern; William Thomas Landrum, National Accounts Manager for Norfolk Southern; James Reiner, Norfolk Southern Trainmaster for the Van Dorn Yard; Kelley Minnehan, a partner in RSI Logistics, parent company to RSI Leasing, LLC; and Anthony Rosenthal, RSI terminal manager for the Facility.

¹ The Board also suggested that the City seek a ruling from PHMSA stating whether 49 CFR 174.304 prohibits a railroad from operating a facility for the transloading of ethanol. Norfolk Southern had already done so, and on November 11, 2008, supplied the response received. That response essentially stated that 49 CFR 174.304 did not apply to a rail to truck ethanol transload facility such as the one at issue in this proceeding.

² The Board's November 6 Decision used the word "facilities." In order to remove ambiguity, Norfolk Southern interprets this question to related to the ethanol transloading facility located in Alexandria, VA, the subject of this proceeding, as opposed to generic "facilities" that may be located at other points on its railroad system. Further, as described below, Norfolk Southern refers to a "shipper" as the party arranging transportation to the Facility, whether that shipper is an ethanol producer, an ethanol receiver, or a broker. For clarification, neither RSI nor any of its affiliates is an ethanol

Further, the Board requested copy of any additional agreements Norfolk Southern has with RSI or any RSI affiliate that relate to the Facility or the transportation of ethanol to the Facility. Norfolk Southern does not provide any additional agreements, because there are none. (Lawson V.S. at 1; Minnehan V.S. at 1.)

The Board requested a copy of Tariff 9238-E and any successor tariff. That tariff is attached. There has been no successor tariff published. (Lawson V.S. at 1.)

The Board requested a list of the shippers, not affiliated with RSI, that have used the Facility since it has opened. The shippers that have used the Facility since it has opened are: [[

]] (Landrum Aff. at 1.) None of the companies are affiliated with RSI or any of its affiliates. Neither RSI nor any party with whom it is affiliated has shipped, or arranged for any shipment of, ethanol to the Facility. (Minnehan V.S. at 1.)

(a) With whom do shippers communicate to arrange transloading at the Facility?

Norfolk Southern is the responsible party for the movement of ethanol into, and the transloading of ethanol at, the Facility, in that Norfolk Southern is the sole party entitled to market the movement of ethanol to, and transloading at, the Facility. Norfolk

producer, an ethanol receiver, or a broker as it relates to the Facility. (Landrum Aff. at 1.)

Southern is the sole party able to set and receive a fee for the transloading of ethanol at the Facility, if any fee is separately assessed for that service.³ (Lawson V.S. at 1-2.)

If the rail transportation service is provided jointly with another rail carrier, and the other rail carrier is responsible for the assessing and collecting of the transportation services, then Norfolk Southern will provide its factor for the movement of the ethanol into, and transloading of ethanol at, the Facility.⁴ Otherwise, Norfolk Southern will do so. (Landrum Aff. at 2-3.)

No other party has the ability to set or assess on a customer a fee for the provision of ethanol transloading services provided at the Facility. No other party invoices for, collects or receives such a fee. (Lawson V.S. at 2.) RSI does not invoice for, collect, or receive any fee for any transloading service provided at the Facility, other than the compensation it receives pursuant to the Norfolk Southern – RSI agreement previously submitted to the Board. (Minnehan V.S. at 1.)

No shipper, or any other party other than Norfolk Southern, may utilize – or ever has utilized – the Facility for ethanol transloading operations except as part of a transportation agreement reached with Norfolk Southern. (Lawson V.S. at 2.)

Norfolk Southern has transportation contracts and public pricing from various gateways and production origins. Shippers communicate with Norfolk Southern to take

³ As explained below, the transloading service is an integral part of the transportation service to the Facility. A customer cannot ship ethanol to the Facility without it being transloaded, and ethanol may only be transloaded by Norfolk Southern through its contractor. Therefore, compensation for the transloading service is generally bundled into the overall cost of the rail transportation and not separately stated. Norfolk Southern believes, after reasonable inquiry, that, although a few rail cars were moved pursuant to one of these quotes, Norfolk Southern did not separately charge the customer. (Landrum Aff. at 2.)

⁴ Nothing herein is intended to imply that RSI holds itself out as a rail carrier at the Facility. It does not. (Minnehan V.S. at 1.)

advantage of the public pricing documents or to negotiate agreements for the transportation to the transloading facility. (Landrum Aff. at 3.) Necessarily bundled within those transportation arrangements (regardless of whether it is separately identified in a contract or public pricing document) is any transloading services.⁵ (Landrum Aff. at 3.)

RSI, as Norfolk Southern's contractor for the provision of ethanol transloading services at the Facility, has access to computerized transportation information concerning anticipated deliveries of tank cars to the Facility. As such, RSI will receive communications that tell it when to expect tank cars that will have to be transloaded, and the railroad customer for whom that ethanol will be transloaded. Further, receivers of the ethanol, or their trucking contractors, will communicate with RSI as to when to expect the arrival of trucks for ethanol. (Rosenthal V.S. at 1.)

RSI does not, and does not have the right to, market the facility. (Minnehan V.S. at 2.) As described below, RSI performs many of the paperwork functions for Norfolk Southern as an interface between Norfolk Southern and the receiver. This only makes sense because RSI is the contractor on the ground greeting the receiver's truckers as they arrive to receive the transloading services, and as they leave to move the product to a location designated by the receiver. (Rosenthal V.S. at 2.)

⁵ Receivers of ethanol either purchase ethanol directly from producers or through brokers. Receivers can purchase the ethanol either as produced (that is, without transportation included) or on a delivered basis (that is, with transportation included). In any event, one of the three categories of companies – producers, brokers or receivers – communicates with Norfolk Southern to negotiate agreements for the transportation of the ethanol to the Facility. At the Facility, however, the contracts so far generally have been with the producers. (Landrum Aff. at 3.)

(b)(i) Who schedules the transloading?

Transloading services are part of a bundled transportation service package. Arrival of the ethanol laden rail cars at the Facility is dependent upon several factors including: (a) when a shipper places the tank car into the national rail system; (b) the rail operations between the origin of the tank car and the Facility; and (c) space availability at the Facility. (Reiner V.S. at 1.) As explained below, the receiver, informed of the pending or actual arrival of tank cars at the Facility, will send trucks to receive the product. RSI, as an interface with the receiver, often will work with the receiver or the receiver's trucking contractors to ensure a smooth transloading process. (Rosenthal V.S. at 2-3.)

(b)(ii) Who collects the fees for the transloading?

Generally, there are no separate fees assessed for the transloading services provided to customers at the Facility – instead, compensation for the transloading services generally are bundled into transportation contracts.⁶ Norfolk Southern determines, assesses, and collects compensation from shippers for the full rail transportation package.⁷ (Landrum Aff. at 3.) RSI has no role in determining, assessing, or collecting a fee for transloading services at the Facility, other than the compensation

⁶ As described above in footnote 3, there have been a few quotes that failed to list the transloading as a service subsumed within the transportation rate, and, although a few shipments seem to have been made under one of those quotes, it does not appear that Norfolk Southern invoiced the customer separately for any transloading operations. (Landrum Aff. at 2.) Of course, no party other than Norfolk Southern may charge shippers for the performance of those transloading operations. (Lawson V.S. at 2.)

⁷ As described above, in certain joint line service, another rail carrier will be responsible for assessing and collecting rail transportation charges.

set forth in the Norfolk Southern – RSI agreement previously submitted to the Board.

(Minnehan V.S. at 2.)

There is one charge that, pursuant to the Norfolk Southern – RSI agreement previously provided to the Board, RSI is tasked with collecting for Norfolk Southern, a track occupancy charge (“TOC”). This charge is not a fee for transloading services. Instead, it is a charge is based on the number of days following delivery of the tank car to the Facility that the tank cars sits before unloading. RSI is required, on behalf of Norfolk Southern, to calculate and collect the charge, and remit the charge to Norfolk Southern.⁸

(Minnehan V.S. at 2.)

(c) What is the extent of the involvement of RSI and its affiliates in the ownership and construction of the Facility, delivery of the ethanol to the tank cars, the unloading activities that take place at the Facility, and redelivery of the ethanol to blending facilities?

Norfolk Southern owns the Facility. RSI does not. Norfolk Southern constructed the Facility, directly and through the use of other contractors other than RSI. (Lawson V.S. at 2.)⁹ RSI has been hired by Norfolk Southern to perform the physical ethanol transloading operations at the Facility. RSI, as a contractor, supplies the portable

⁸ As compensation for keeping track of cars on which TOCs may become due, and invoicing Norfolk Southern customers for TOCs that become due, RSI is permitted to keep [[]] of the TOCs collected, and must remit the remaining [[]] to Norfolk Southern. The billing of TOCs is a rare event. Since the Facility opened, only one customer has been invoiced for TOC charges, and that customer has not yet paid. (Minnehan V.S. at 2.)

⁹ Many aspects of railroad operations are, and have been, performed by contractors rather than railroad employees. These include construction or operation of facilities that are beyond the capabilities of the railroad, because of the requirement for specialized equipment or personnel, derailment response, and transloading of containers and automobiles at intermodal and automotive facilities. (Lawson V.S. at 2-3.)

specialized equipment necessary for the transloading process – the pump systems, the hoses, the connections, the clothing and the office equipment. (Minnehan V.S. at 2.)

RSI does not have any involvement whatsoever with the delivery of the ethanol to the tank cars. RSI has no involvement in the movement of the ethanol from the Facility to the various destination blending facilities other than performance of the operations attendant with the transloading. (Minnehan V.S. at 2.)

RSI does not have any contract associated with the Facility with any of the trucking companies that arrive to pick up ethanol, the customers that send ethanol to the Facility, or the receivers that receive product from the Facility. (Minnehan V.S. at 2; Rosenthal V.S. at 2-3.)

RSI is provided railroad bills of lading and other information to know what inbound railcars are destined for the Facility and approximately when those railcars will arrive, so that RSI can prepare to fulfill its transloading obligations. (Minnehan V.S. at 2.) The receiver or its trucking company contractor will contact RSI to tell RSI how many trucks it – the receiver – is sending to the Facility for transloading on any particular business day, and an order number associated with each truck. RSI uses this order number to ensure that the truck driver arriving at the Facility is on legitimate business. At the end of the day, RSI will inform the receiver what trucks were transloaded that day. At the request of receivers, RSI may provide other information concerning the shipments transloaded on any given day. (Rosenthal V.S. at 3.)

On behalf of Norfolk Southern and with instructions RSI receives from the receiver, RSI will check paperwork from truckers arriving to pick up loads, generate truck bills of lading for the truckers, and will provide paperwork (including volume

information) to the truckers after the transload. The truck bills of lading will often list the party and the location to whom the truck is bound, the name of the receiver's trucking company, a description of the product, the temperature of the product at transloading time, and other required information. RSI does this on behalf of Norfolk Southern as part of the transloading process. (Rosenthal V.S. at 2.)

RSI may also be listed as the party who performed the transloading, often set forth on the waybill or truck bill of lading as a "c/o party". A reference to RSI as a "c/o party" on the waybill or truck bill of lading may be confusing, because it could be misrepresented as implying that there exists a relationship between RSI and the trucking company, the receiver or the shipper as it relates to the commodity moving under that waybill and/or bill of lading. (Rosenthal V.S. at 2.) In this case, it does not, because RSI and its affiliates do not have any contractual, financial, or other relationship with any of those parties as it relates to the commodity moving under that bill of lading. This is just a movement related reference to ensure that the commodity moves to, and is picked up from, the location it needs to be. In fact, there is no relationship – financial or otherwise – with any of those parties as it relates to any shipments moving through the Facility. (Minnehan V.S. at 2-3.)

If the truckers fail to properly placard their trucks for the ethanol, RSI will offer placards. RSI provides seals to the truck drivers. (Rosenthal V.S. at 3.)

RSI will seal the transloaded railcar, and record seal numbers. (Rosenthal V.S. at 3-4.)

(d) What specific measures does NS take to control, monitor, and supervise the operation of the Facility?

Norfolk Southern is ultimately responsible to control, monitor and supervise the operation of the Facility. Although Norfolk Southern operates the Facility through a contractor, it is responsible for the oversight of that contractor. Primarily through Norfolk Southern's Distribution Services Group, which reports to Mr. Lawson, Norfolk Southern directs RSI regarding changes required in the Facility and its operations, including services, safety measures, security measures and other operational and facility matters that are to be changed or enhanced. (Lawson V.S. at 3.) Both Norfolk Southern and RSI provide RSI employees security training. (Rosenthal V.S. at 3.)

RSI often receives requests to visit the Facility. Because it is a Norfolk Southern facility, RSI informs Norfolk Southern of these requests, and it is Norfolk Southern that consents, conditions, or refuses those requests. (Rosenthal V.S. at 3.)

RSI informs Norfolk Southern about, and Norfolk Southern investigates and reports on, any incident that may even remotely be referred to as a "spill" or an escape of ethanol at the Facility. RSI cooperates with this process. (Rosenthal V.S. at 3.)

David Lawson speaks to one example of the detail of the Norfolk Southern control over the transloading operations in his verified statement. He states that one time when he was on a routine inspection of the Facility, he asked about some basic procedures that were occurring – in this case whether truck drivers coming into the Facility got out of their trucks, but left their keys in the truck's ignition. He made sure that RSI implemented a new procedure requiring all truck drivers remove the keys from the truck's ignition during the transloading process. (Lawson V.S. at 3.)

Kelley Minnehan, one of the owners of RSI, speaks to another example. When it came to clearing brush at the Facility, RSI had to consult with Norfolk Southern on how

the project would be done. Norfolk Southern instructed RSI to obtain, on Norfolk Southern's behalf, bids from local outside companies seeking to perform the work. Those bids were turned over to Norfolk Southern. Norfolk Southern chose the contractor to perform that work. RSI did not pay for that work. (Minnehan V.S. at 3.) Norfolk Southern arranged for the work to be done, and will pay for that work when completed. (Lawson V.S. at 3.)

Another example cited by Tony Rosenthal, the RSI facility manager. When cracks developed in a concrete curbing, RSI had to consult with Norfolk Southern on what was to be done, and by what contractor. Because he was on the ground at the Facility, Rosenthal was the point person with the contractor chosen to perform the repairs (chosen by Norfolk Southern), but the repairs were paid for by Norfolk Southern pursuant to a contract between Norfolk Southern and the repair contractor. (Lawson V.S. at 3-4; Rosenthal V.S. at 3.)

Norfolk Southern hereby complies with the mandates of the November 6 Decision.

Respectfully submitted,

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November 26, 2008



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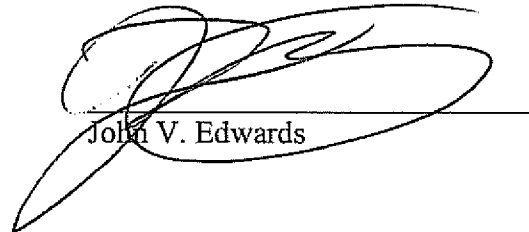
Certificate of Service

I hereby certify that on this twenty-sixth day of November, 2008, I have caused to be served, by U.S. Mail, postage prepaid, or more expeditious means, to the persons listed below, a copy of the Response of Norfolk Southern Railway Company to Decision Served November 6, 2008 in this Proceeding.

Ignacio B. Pessoa
Christopher P. Spera
Office of the City Attorney
301 King Street
Suite 1300
Alexandria, VA 22314
703-838-4433

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
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1001 Connecticut Avenue, N.W.
Suite 905
Washington, D.C. 20036
202-955-5600

Dated: November 26, 2008



John V. Edwards

VERIFIED STATEMENT OF DAVID T. LAWSON

My name is David T. Lawson. I am Vice President of Industrial Products for Norfolk Southern Corporation. Norfolk Southern Railway Company is Norfolk Southern Corporation's railroad operating subsidiary, and when I refer to "Norfolk Southern" in this verified statement, I am referring to that railroad operating subsidiary.

I am responsible for the marketing for four of seven of Norfolk Southern's business units. Those business units are: (1) agriculture and consumer products (including ethanol), (2) chemicals, (3) metals and construction, and (4) paper, clay and forest products. I have been asked to submit this affidavit in support of Norfolk Southern's response to the Surface Transportation Board's November 6, 2008 decision in Finance Docket No. 35157, Petition of the City of Alexandria, Virginia for Declaratory Order concerning Norfolk Southern's Van Dorn Yard in Alexandria, Virginia (the "Yard") and Norfolk Southern's ethanol transloading facility located within the Yard (the "Facility"). I have personal knowledge of the materials set forth herein.

Norfolk Southern does not have any agreements with RSI or any of its affiliates that relate to the Facility or the transportation of ethanol to the Facility other than the one previously submitted to the Board on July 1, 2008 in this proceeding. The Board requested a copy of Tariff 9238-E and any successor tariff. That tariff is attached. There has been no successor tariff published.

Norfolk Southern is the responsible party for the movement of ethanol into, and the transloading of ethanol at, the Facility, in that Norfolk Southern is the sole party entitled to market the movement of ethanol to, and transloading at, the Facility. Shippers communicate with

Norfolk Southern to arrange transportation to, and transloading at, the Facility.

Norfolk Southern is the sole party able to set and receive a fee for the transloading of ethanol at the Facility, if any fee is separately assessed for that service. I know that Tom Landrum explains in his affidavit that, even though compensation for the transloading service is generally bundled into the overall cost of the rail transportation and not separately stated, there have been a few cases in which a quote was made that inadvertently did not include a specific reference to the transloading service. Although a few railcars may have moved pursuant to one of these quotes, Norfolk Southern did not separately assess an actual transloading fee for those loads.

No other party has the ability to set or assess on a customer a fee for the provision of ethanol transloading services provided at the Facility. No other party invoices for, collects or receives such a fee. No shipper, or any other party other than Norfolk Southern, may utilize – or ever has utilized – the Facility for ethanol transloading operations except as a bundled part of a transportation agreement reached with Norfolk Southern.

This all makes sense, given that Norfolk Southern owns the Facility. RSI does not own or lease the Facility. Norfolk Southern constructed the Facility, directly and through the use of other contractors other than RSI and Norfolk Southern bore the cost of construction. Norfolk Southern's use of a contractor for the physical ethanol transloading service – one with the specialized knowledge, expertise and skill that Norfolk Southern does not possess within its employee pool – is consistent with railroad practice. Many aspects of railroad operations are, and have been, performed by contractors rather than railroad employees. These include construction or operation of facilities that are beyond the capabilities of the railroad, because of the requirement for specialized equipment or personnel, derailment response, and transloading of containers and automobiles at intermodal and automotive facilities.

As the owner, Norfolk Southern is ultimately responsible to control, monitor and supervise the operation of the Facility. NSRC inspects and maintains all transportation equipment within the Facility, including the maintenance and repair of tracks, ballasts, cross ties, switches and the like as well as the fixed infrastructure other than that provided by RSI. Although Norfolk Southern operates the Facility through a contractor, it is responsible for the oversight of that contractor. Primarily through Norfolk Southern's Distribution Services Group, which reports to me, Norfolk Southern directs RSI regarding changes required in the Facility and its operations, including services, safety measures, environmental measures, security measures and other operational and facility matters that are to be changed or enhanced.

I recall one example of this control, monitoring and supervision over the transloading operations. We often make routine inspections of the Facility. When I was on one of these inspections, I asked about some basic procedures that seemed to be occurring at the Facility where truck drivers coming into the Facility got out of their trucks, but left their keys in the truck's ignition. I made sure that RSI implemented a new procedure requiring all truck drivers remove the keys from the truck's ignition during the transloading process.

I know that Kelley Minnehan, one of the owners of RSI, will provide another example of Norfolk Southern's control, monitoring and supervision over the transloading operation – this one concerning the need to clear brush at the Facility. Once Norfolk Southern decided who to contract with to get the work done (and it was not RSI), Norfolk Southern arranged for the work to be done, and will pay for that work when it is done. This is similar to another example cited by Tony Rosenthal, the RSI facility manager, in his verified statement. When cracks developed in a concrete berm, RSI had to consult with Norfolk Southern on what was to be done, and by what contractor. Because he was on the ground at the Facility, Rosenthal was the natural point person with the contractor chosen to perform the repairs (chosen by Norfolk Southern), but the

repairs were paid for by Norfolk Southern pursuant to an agreement between Norfolk Southern and the repair contractor.

VERIFICATION

I, David T. Lawson, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

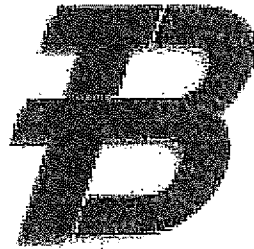
November 26, 2008.


David T. Lawson

NS 9328-E
CANCELS
NS 9328-D

**NORFOLK SOUTHERN RAILWAY COMPANY
THOROUGHbred BULK TRANSFER**

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



**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: July, 14 2008

EFFECTIVE: June 1, 2008

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

TARIFF NS 9328-E

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

PARTICIPATING CARRIER

ABBREVIATION
NS

NAME OF CARRIER
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-E

**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)

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)

**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.

**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-E

**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.
-

**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.

**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

AFFIDAVIT OF WILLIAM THOMAS LANDRUM

This day personally appeared before me, William Thomas Landrum, who made oath and stated that the following facts are true:

My name is William Thomas (Tom) Landrum. I am a National Accounts Manager for Norfolk Southern Corporation. Norfolk Southern Railway Company is Norfolk Southern Corporation's railroad operating subsidiary, and when I refer to "Norfolk Southern" in this affidavit, I am referring to that railroad operating subsidiary.

I manage Norfolk Southern's pricing and marketing strategies for ethanol and sweetener commodities. I have been asked to submit this affidavit in support of Norfolk Southern's response to the Surface Transportation Board's November 6, 2008 decision by the Surface Transportation Board (the "STB" or the "Board") in Finance Docket No. 35157, Petition of the City of Alexandria, Virginia for Declaratory Order concerning Norfolk Southern's Van Dorn Yard in Alexandria, Virginia (the "Yard") and Norfolk Southern's ethanol transloading facility located within the Yard (the "Facility"). I have personal knowledge of the materials set forth herein.

The Board has requested a list of the shippers, not affiliated with RSI, that have used the Facility since it has opened. The shippers that have used the Facility since it has opened are: [[

]] Neither RSI nor any of its affiliates is an ethanol producer, an ethanol receiver, or a broker as it relates to the Facility.

I am aware the David Lawson, in his affidavit, explains the fact that Norfolk Southern is the sole party entitled to market the movement of ethanol to, and transloading at, the Facility. In that statement, Mr. Lawson notes that Norfolk Southern is the sole party able to set and receive a fee for the transloading of ethanol at the Facility, if any fee is separately assessed for that service. That certainly is true, but generally the transloading service is an integral part of the transportation service to the Facility, and so a separate fee generally is not assessed for the ethanol transloading portion of the transportation provided by Norfolk Southern.

A customer cannot ship ethanol to the Facility without it being transloaded at the Facility, and ethanol may only be transloaded at the Facility by Norfolk Southern through its contractor. Indeed, rail transportation of ethanol to Norfolk Southern's Van Dorn Street Yard would be useless to the rail transportation customer without the provision of the transloading services, because otherwise there would be no way of getting the ethanol from the railroad to the blending facility destinations. Therefore, compensation for the transloading service is generally bundled into the overall cost of the rail transportation and not separately stated.

There were a few cases in which a quote was made that did not include a specific reference to the transloading service. I believe that a few cars moved pursuant to one of those quotes, but after inquiry I have not found that Norfolk Southern assessed a separate charge for the transloading service. In any event, that quote has been updated, and the transloading operation is now explicitly within the bundled transportation charge.

Further, there are times that rail transportation services are provided jointly with another rail carrier, and the other rail carrier is responsible for the assessing and collecting of the

transportation services. In that case, Norfolk Southern will provide its factor for the movement of the ethanol into, and transloading of ethanol at, the Facility.

Norfolk Southern has transportation contracts and public pricing from various gateways and production origins. Shippers communicate with Norfolk Southern to take advantage of the public pricing documents or to negotiate agreements for the transportation to the transloading facility.

As I have explained above, necessarily bundled within those transportation arrangements (regardless of whether it is separately identified in a contract or public pricing document) is any transloading services. Generally, there are no separate fees assessed for the transloading services provided to customers at the Facility. Unless assessed and collected by another rail carrier pursuant to a joint line rate as described above, Norfolk Southern determines, assesses, and collects compensation from shippers for the full rail transportation package.

Receivers of ethanol either purchase ethanol directly from producers or through brokers. Receivers can purchase the ethanol either as produced (that is, without transportation included) or on a delivered basis (that is, with transportation included). In any event, one of the three categories of companies – producers, brokers or receivers communicates with Norfolk Southern to negotiate agreements for the transportation of the ethanol to the Facility. At the Facility, however, the contracts so far generally have been with the producers.

And further the affiant sayeth not.

Woh L

[Name]

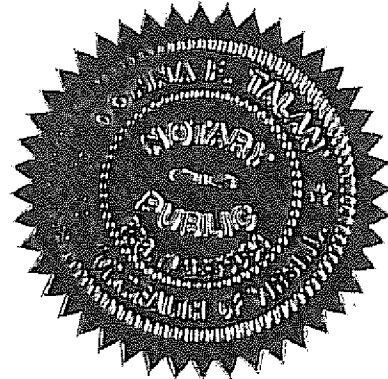
William
The foregoing Affidavit was acknowledged before me this 21st day of November, 2008, by Thomas Landrum, an individual known unto me or who has produced sufficient and appropriate identification.

Donna J. Salani

Notary Public # 338984

My Commission expires: April 30, 2011

My Registration No.: 338984



VERIFIED STATEMENT OF JAMES REINER

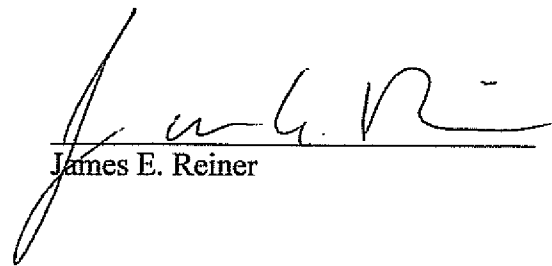
My name is James Reiner. I am a trainmaster for Norfolk Southern Railway Company. My territory includes the Norfolk Southern Van Dorn Yard located in Alexandria, Virginia (the "Yard") and the ethanol transloading facility located in the Yard (the "Facility"). I have been asked by Norfolk Southern Railway Company ("NSRC") to submit this affidavit in support of Norfolk Southern's response to the Surface Transportation Board's November 6, 2008 decision. I have personal knowledge of the information contained herein.

Arrival of the ethanol laden rail cars at the Facility is dependent upon several factors including: (a) when a shipper places the tank car into the national rail system; (b) the rail operations between the origin of the tank car and the Facility; and (c) space availability at the Facility.

VERIFICATION

I, James E. Reiner, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

November 26, 2008.



James E. Reiner

VERIFIED STATEMENT OF KELLEY MINNEHAN

My name is Kelley Minnehan. I am a partner in RSI Logistics, parent company to RSI Leasing, LLC. RSI Leasing, LLC ("RSI") is a contractor to Norfolk Southern Railway Company ("NSRC") tasked with providing Norfolk Southern with ethanol transloading services at the Norfolk Southern Van Dorn Yard in Alexandria, Virginia (the "Facility"). I have been asked to provide this verified statement in support of support of Norfolk Southern's response to the Surface Transportation Board's November 6, 2008 decision by the Surface Transportation Board (the "STB" or the "Board") in Finance Docket No. 35157, Petition of the City of Alexandria, Virginia for Declaratory Order concerning Norfolk Southern's Van Dorn Yard in Alexandria, Virginia (the "Yard") and Norfolk Southern's ethanol transloading facility located within the Yard (the "Facility"). I have personal knowledge of the materials set forth herein.

I understand that on July 1, 2008, Norfolk Southern submitted to the Board a copy of the contract between RSI and NSRC as it related to the Facility. Neither RSI nor any of its affiliates has any other agreement with NSRC that relate to the Facility or the transportation of ethanol to the Facility other than the contract.

Neither RSI nor any party with whom it is affiliated has shipped, or arranged for any shipment of, ethanol to the Facility. RSI does not invoice for, collect, or receive any fee for any transloading service provided at the Facility, other than the compensation it receives pursuant to the contract. RSI does not holds itself out as a rail carrier at the Facility and so would not be in a position of assessing and collecting from the shipper compensation for the provision of ethanol transloading services.

There is one charge that, pursuant to the contract, RSI is tasked with collecting for NSRC, a track occupancy charge ("TOC"). This charge is not a fee for transloading services.

Instead, it is a charge is based on the number of days following delivery of the tank car to the Facility that the tank car sits before unloading. RSI is required, on behalf of NSRC, to calculate and collect the charge, and remit the charge to NSRC. As compensation for keeping track of cars on which TOCs may become due, and invoicing NSRC customers for TOCs that become due, RSI is permitted to keep a small percentage of the TOCs collected, and must remit the remaining amount, by far the most significant percentage, to NSRC. The billing of TOCs is a rare event. Since the Facility opened, only one customer has been invoiced for TOC charges, and that customer has not yet paid.

RSI does not own the Facility. RSI does not, and does not have the right to, market the Facility.

Instead, because RSI has gained a special expertise in performing the physical ethanol transloading operations at other locations across the country, RSI has been hired by NSRC to perform the physical ethanol transloading operations for NSRC at the Facility. We have much of the portable specialized equipment necessary for the transloading process – the pump systems, the hoses, the connections, the clothing and the office equipment – and pursuant to our agreement with NSRC we supply that equipment as one element necessary to get done the job we were hired to perform.

RSI does not have any involvement whatsoever with the delivery of the ethanol to the tank cars. RSI has no involvement in the movement of the ethanol from the Facility to the various destination blending facilities other than performance of the operations attendant with the transloading.

RSI does not have any contract associated with the Facility with any of the trucking companies that arrive to pick up ethanol, the customers that send ethanol to the Facility, or the receivers that receive product from the Facility. Neither RSI nor its affiliates has any

contractual, financial, or other relationship with any of the receivers or other bill of lading party. In fact, there is no relationship – financial or otherwise – with any party other than NSRC as it relates to any shipments moving through the Facility.

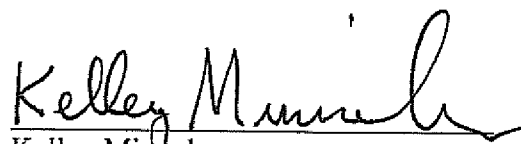
RSI is provided railroad bills of lading and other information to know what inbound railcars are destined for the Facility and approximately when those railcars will arrive, so that RSI can prepare to fulfill its transloading obligations.

NSRC is ultimately responsible to control, monitor and supervise the operation of the Facility. An example of NSRC's oversight and control of the Facility occurred recently when we needed to clear brush around the Facility. We contacted NSRC to determine whether NSRC wanted to clear the brush in-house or whether they wanted to secure a third party contractor to clear the brush. While I do not know how the matter was handled internally at NSRC, our contact at NSRC directed that we secure bids to clear the brush. Once we secured the bids, we turned them over to NSRC to make the ultimate determination with regard to who would clear the brush. NSRC determined the contractor, and will pay the contractor to clear the brush. This is just one of many examples of NSRC's oversight of the Facility.

VERIFICATION

I, Kelley Minnehan, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

November 26, 2008.


Kelley Minnehan

VERIFIED STATEMENT OF ANTHONY ROSENTHAL

My name is Anthony Rosenthal. I am the facility manager for RSI with regard to the services we provide to Norfolk Southern at the Norfolk Southern ethanol transloading facility located in Van Dorn Yard in Alexandria, Virginia (the "Facility"). I have been asked to submit this affidavit in Support of Norfolk Southern's Response to the November 6, 2008 Decision by the Surface Transportation Board. I have personal knowledge of the information contained herein

RSI, as Norfolk Southern's contractor for the provision of ethanol transloading services at the Facility, has access to computerized transportation information concerning anticipated deliveries of tank cars to the Facility. As such, RSI will receive communications that tell it when to expect tank cars that will have to be transloaded, and the railroad customer for whom that ethanol will be transloaded. Further, receivers of the ethanol, or their trucking contractors, will communicate with RSI as to when to expect the arrival of trucks for ethanol.

I know that Kelley Minnehan, in his affidavit, states that RSI does not, and does not have the right to, market the Facility. That is true. Because we are NSRC's contractor, though, that does not mean that RSI has no contact whatsoever with the receivers of the ethanol transloaded at the Facility. RSI performs many of the paperwork functions for NSRC as an interface between NSRC and the receiver. This only makes sense because RSI is the contractor on the ground greeting the receiver's truckers as they arrive to receive the transloading services, and as they leave to move the product to a location designated by the receiver. The receiver, informed of the pending or actual arrival of tank cars at the Facility, will send trucks to receive the product. RSI, as an interface with the receiver, often will work with the receiver or the receiver's trucking contractors to ensure a smooth transloading

process.

Further, the receiver or its trucking company contractor generally will contact RSI to tell RSI how many trucks it – the receiver – is sending to the Facility for transloading on any particular business day, and an order number associated with each truck. RSI uses this order number to ensure that the truck driver arriving at the Facility is on legitimate business. At the end of the day, RSI will inform the receiver what trucks were transloaded that day. At the request of receivers, RSI may provide other information concerning the shipments transloaded on any given day.

On behalf of NSRC and with instructions RSI receives from the receiver, RSI will check paperwork from truckers arriving to pick up loads, generate truck bills of lading for the truckers, and will provide paperwork (including volume information) to the truckers after the transload. The truck bills of lading will often list the party and the location to whom the truck is bound, the name of the receiver's trucking company, a description of the product, the temperature of the product at transloading time, and other required information. RSI does this on behalf of NSRC as part of the transloading process.

I note that RSI may also be listed as the party who performed the transloading, often set forth on the waybill or the truck bill of lading as a "c/o party." A reference to RSI as a "c/o party" on the waybill or the truck bill of lading may be confusing, because it could be misrepresented as implying that there exists a relationship between RSI and the trucking company, the receiver or the shipper as it relates to the commodity moving under that bill of lading. There is not.

RSI does not have any contract associated with the Facility with any of the trucking

companies that arrive to pick up ethanol, the customers that send ethanol to the Facility, or the receivers that receiver product from the Facility.

NSRC controls the Facility. Both NSRC and RSI provide RSI employees security training. RSI often receives requests to visit the Facility. Because it is a NSRC facility, RSI informs NSRC of these requests, and it is NSRC that consents, conditions, or refuses those requests. RSI informs NSRC about, and NSRC investigates and reports on, any incident that may even remotely be referred to as a “spill” or an escape of ethanol at the Facility. RSI cooperates with this process.

I know that David Lawson speaks to one example of the detail of the Norfolk Southern control over the transloading operations in his verified statement. He states that one time when he was on a routine inspection of the Facility, he asked about some basic procedures that were occurring – in this case whether truck drivers coming into the Facility got out of their trucks, but left their keys in the truck’s ignition. He told me to implement a new procedure requiring all truck drivers remove the keys from the truck’s ignition during the transloading process, and we did so.

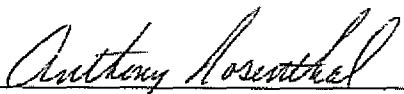
I have another example. When cracks developed in a concrete curbing, RSI had to consult with Norfolk Southern on what was to be done, and by what contractor. Because I was on the ground at the Facility, I was the point person with the contractor chosen to perform the repairs (chosen by Norfolk Southern), but the repairs were paid for by Norfolk Southern pursuant to a contract between Norfolk Southern and the repair contractor.

If the truckers fail to properly placard their trucks for the ethanol, RSI will offer placards. RSI provides seals to the truck drivers. RSI will seal the transloaded railcar, and record seal numbers.

VERIFICATION

I, Anthony Rosenthal, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

November 26, 2008.



Anthony Rosenthal