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February 24, 2014

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

235519
ENTERED
Office of Proceedings
February 24, 2014
Part of
Public Record

Re: Docket No. AB 1095 (Sub-No. 1), Paulsboro Refining Company LLC—
Adverse Abandonment—SMS Rail Service, Inc. in Gloucester County, N.J.

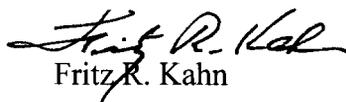
Dear Ms. Brown:

Attached for filing in the subject proceeding is the Protest of SMS Rail Service, Inc.

Copies of this letter and its attachment this day were served by me upon Paulsboro Refining Company LLC, Norfolk Southern Railway Company, CSX Transportation, Inc. and Consolidated Rail Corporation by e-mailing copies to their attorneys.

If you have any questions concerning this filing or of I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

Att.

Cc: Eric M. Hocky, Esq.
David L. Coleman, Esq.
Paul R. Hitchcock, Esq.
David C. Ziccardi, Esq.

SURFACE TRANSPORTATION BOARD

Docket No. AB 1095 (Sub-No. 1)

PAULSBORO REFINING COMPANY LLC
-- ADVERSE ABANDONMENT --
SMS RAIL SERVICE, INC. IN GLOUCESTER COUNTY, N.J.

PROTEST
OF
SMS RAIL SERVICE, INC.

Protestant, SMS Rail Service, Inc. (“SMS”), pursuant to 49 C.F.R. § 1125.25(c), protests the proposed adverse abandonment of its railroad lines sought by the Application for Adverse Abandonment filed on January 10, 2014, by Paulsboro Refining Company LLC (“PRC”) , and as grounds therefore states as follows:

I.

Background

A.

The Rail Line Service Agreement

SMS is a rail carrier subject to the Board’s jurisdiction. It is well into its 20th year of operation as a rail carrier, having received its authority as a rail carrier by decision of the Board’s predecessor, the Interstate Commerce Commission, in Docket No. FD 32494, SMS Rail Service Inc. – Lease and Operation Exemption –Pureland Association, Inc., served May 26, 1994. Pandrol USA, Chelten House Products, Inc., The Home Depot, Heritage Bag Company, Rastelli’s Foods Group, Central Ink Corporation and Royal Sugar LLC are just some of the shippers which SMS serves.

On August 31, 2000, SMS entered into a Rail Line Service Agreement with Valero Refining Company – New Jersey (“Valero”) to maintain and operate on the approximately 5.8-mile track within Valero’s 970-acre Paulsboro refinery (Application, Exh. B-1). The Rail Line Service Agreement detailed the obligations of each party and the remedies available for defaults. The Agreement, however, was not a rate agreement or contract. While section 4(a) specified the amount SMS needed to pay Valero for the use of its facilities in moving loaded cars to the interchange track,¹ neither the Agreement nor attached appendices specified the rates or charges which SMS would assess Valero for its portion of the line haul movements of the inbound or outbound freight shipments² or for switching cars within the refinery.

Based on that Rail Line Service Agreement, SMS on September 5, 2000, filed with the Board its Verified Notice of Exemption to become the rail carrier on that track, succeeding Consolidated Rail Corporation, the rail carrier which had performed the switching. The Board, by its Decision in Docket No. FD 33927, SMS Rail Service, Inc.—Acquisition and Operation Exemption—Valero Refining Company – New Jersey, served September 22, 2000, 65 Fed. Reg. 57425, September 22, 2000, granted SMS’ request and authorized it to become the rail carrier on Valero’s Paulsboro refinery track. As the Board declared in Docket No. FD 34483, SMS Rail Service, Inc.—Petition for Declaratory Order, served January 24, 2005, slip op. p. 1, “We find that SMS is

¹ The interchange track, maintained and operated by SMS, is across the street from the refinery in a yard owned by ExxonMobil Corporation.

² SMS prepares the waybills and bills of lading on the outbound freight shipments.

functioning as a rail common carrier at Paulsboro and that it must be considered and treated as such.”

The Rail Line Service Agreement was amended as of August 26, 2010, to allow its termination by Valero upon 90 days’ written notice to SMS to facilitate the refinery’s sale if imminent. Section 19 of the Rail Line Service agreement provided that all notices to SMS needed to be in writing and sent by registered mail, return receipt requested, postage prepaid, with a copy to its then attorney, Joseph J. Kalkbrenner, Jr., Esq.

In anticipation of its purchase, Valero’s Paulsboro refinery was renamed the Paulsboro Refining Company, and on December 17, 2010, the refinery was bought by PBF Energy Company (“PBF”). Deeming itself the successor in interest to Valero, PRC evidently felt no need to revise the Rail Line Service Agreement or negotiate a new agreement, for it continued – and has to this day continued – to have SMS render the services on the railroad lines within the refinery and to pay SMS its separately billed Rule 11-freight charges.

Less than a year later, however, by an e-mail, dated September 22, 2011, PBF’s Mr. James O’Malley sent an e-mail to SMS’ Mr. Ray Bucko to say that PRC was terminating the Rail Line Service Agreement and that it wanted to transition all rail activities within the Paulsboro refinery to the Savage Services Group by November 14, 2011 (Application, Exh. C).³ On October 27, 2011, PRC’s Mr. James Fedona sent a letter to SMS’ Mr. Jeffrey L. Sutch, stating that PRC was terminating the Rail Line

³ At page 5 of the Application, PRC incorrectly states that the e-mail gave SMS 90 days’ notice of the termination of the Rail Line Service Agreement. The e-mail said it wanted the transition to Savage Service Group to be completed by November 14, 2011, or within 53 days.

Service Agreement as of December 21, 2011⁴. Mr. Fedona, however, acknowledged that he understood that SMS could not cease fulfilling its common carrier service within the refinery until it received authority from the Board but went on to maintain that, under the terms of section 10 of the Rail Line Service Agreement, SMS was obligated promptly to seek the discontinuance authority from the Board (Application, Exh. C).

The Rail Line Service Agreement contains no provision obligating SMS to seek the Board's abandonment or discontinuance authority upon termination of the Agreement. At page 5 of its Application, PRC quotes the language of section 10 of the Rail Line Service Agreement upon which PRC relies in contending that the Agreement obliges SMS to apply to the Board for discontinuance authority upon PRC's termination of the Agreement. PRC, however, quotes only a portion of the section. The entire section reads, as follows:

“Operator agrees, at the expiration or earlier termination of the terms hereof, promptly to yield up, clean and neat, and in the same condition, order and repair in which it is required to be kept throughout the term hereof, the Rail Line and to remove the Operator's railcars and equipment. All equipment, rolling stock of Operator's fixtures, tools, supplies, buildings and improvements remaining in or on the Rail Line more than thirty (30) days after the expiration or earlier termination of the Term shall be deemed to have been abandoned by Operator.”

Clearly the section relates to the removal of SMS' equipment following the termination of the Agreement. Nothing in the section suggests that SMS is obligated to seek the Board's authorization to cease operating on the Paulsboro refinery railroad lines upon PRC's termination of the Agreement. Yet, at page 5 of its Application, PRC persists in contending, “In breach of the contract, SMS has so far failed and refused to do so, or to seek Board authority to do so.”

⁴ The letter was defective in that it failed to give the required 90 days' notice of the Agreement's termination but only gave SMS 55 days' notice.

B.

The Board and Court litigation.

Since SMS had no reason to seek the Board's authorization to discontinue operating as a rail carrier within the Paulsboro refinery, PRC undertook to secure the adverse abandonment of SMS. On January 10, 2012, PRC filed its Petition for Adverse Discontinuance of Service Exemption with the Board in Docket No. AB 1095X, Adverse Discontinuance of Service Exemption—Gloucester County, N.J. Following an exchange of letters by SMS and PRC filed with the Board, the Board by its Decision, served March 2, 2012, slip op. p. 3, declared, "Under the Board's long standing practice, parties are not permitted to use our exemption procedures in adverse discontinuance or abandonment matters [footnote omitted]." It dismissed PRC's Petition without prejudice to PRC's filing a formal adverse abandonment application if it sought to proceed with the adverse abandonment of SMS.

On April 2, 2012, SMS filed its Motion for Protective Order in Docket No. AB 1095 (Sub-No. 1), Paulsboro Refining Company, LLC – Adverse Abandonment – SMS Rail Service, Inc. PRC suggested revisions, which SMS opposed. The Board, by its Decision, served July 26, 2012, entered the Protective Order sought by SMS, with minor modifications.

On March 26, 2012, PRC petitioned the Board for the waiver of certain of the Board's regulations and exemptions from specified statutory provisions in filing its adverse abandonment application. SMS opposed a few in filings with the Board. By its Decision, served July 26, 2012, the Board granted substantially all of PRC's waiver and exemption requests.

On November 2, 2012, PRC sent a letter to the Board advising it that it “has decided not to file an adverse abandonment application in this docket at this time.”

Meanwhile, PRC, on April 3, 2012, brought an action against SMS in the Superior Court of New Jersey, Gloucester County, alleging SMS’ breach of the Rail Line Service Agreement. Among other things, the Complaint contended, “SMS’s failure to yield the Rail Line following termination of the Service Agreement, and the consequent delay in takeover of the maintenance and service of the Rail Line by a successor rail service provider chosen by PRC has also caused PRC to incur significant costs.” Included in the prayers for relief, PRC sought a State Court order that, among other things, would declare “that SMS’s refusal to seek authorization from the STB to abandon the Rail Line was a default under, and breach, of the Service Agreement.”

On May 11, 2012, SMS filed its Notice of Removal in the U.S. District Court for the District of New Jersey, together with its motion to refer the preempted abandonment issues to the Board and for a stay of the State Court proceedings pending issuance of the Board’s decision, together with a supporting memorandum of law, exhibits and draft order.⁵ On June 11, 2012, PRC filed its Motion to Remand and supporting Brief in which, among other things, PRC claimed that its suit was only for monetary damages for SMS’ breach of the Rail Line Service Agreement and not for the abandonment by SMS

⁵ Among other Board decisions, SMS’ memorandum quoted from the Board’s Decisions in Docket No. AB 290 (Sub-No. 286), Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN, served February 14, 2008, slip op. pp. 3-4, aff’d sub nom. City of South Bend v. S.T.B., 566 F.3d 1166 (D.C. Cir. 2009); Docket No. AB 862X, Twin State Railroad Company—Abandonment Exemption—in Caledonia and Essex Counties, VT, served November 18, 2005, slip op. pp. 1-2; and Docket No. AB 878, City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, served August 10, 2005, slip op. p. 6.

of the refinery rail lines. Accordingly PRC opposed SMS' request that the preempted abandonment issues be referred to the Board and that the District Court stay its proceedings pending issuance of the Board's decision in the instant proceeding.

Following further briefings by both SMS and PRC, the District Court, Chief Judge Jerome B. Simandle, heard oral argument on December 17, 2012, and filed his Opinion two days later on December 19, 2012, remanding the case to the State Court for lack of federal jurisdiction..

Back before the Superior Court of New Jersey, Gloucester County, SMS once again moved to have the preempted abandonment issues referred to the Board and the Court proceedings stayed pending issuance of the Board's decision. PRC opposed SMS' motion, arguing once again that its suit was merely to recover its damages for SMS' failure to observe the requirements of the Rail Line Service Agreement.

On June 21, 2012, the State Court, Judge Eugene J. McCaffrey, Jr., heard oral argument, and on July 17, 2013, Judge McCaffrey entered his Order, finding SMS' motion for stay to be "moot since discovery was ended," but ordering "that the question of whether SMS should abandon the railroad line within the Paulsboro Refinery shall be referred to and determined by the Surface Transportation Board upon the filing of appropriate pleadings in the matter already underway before the Surface Transportation Board, STB Docket No. AB-1095 (Sub-No. 1)." On August 7, 2013, PRC sought, and on October 11, 2013, obtained an Order of the State Court reopening discovery, and on December 18, 2013, PRC served upon SMS lengthy interrogatories and document production requests in the Stat Court suit. PRC, however, failed to serve SMS with a copy of the State Court's Order reopening discovery, as required by the State Court rule,

and SMS was unaware of the Order or that discovery was reopened. Upon learning of the Order, on February 10, 2014, SMS filed a motion for stay of the State Court suit pending issuance of the Board's decision in the instant proceeding. SMS' motion for stay is pending.

Meanwhile, it took PRC nearly half a year, until January 10, 2014, to comply with the State Court's referral Order and to file its Application for Adverse Abandonment.

II.

PRC's Application for Adverse Abandonment should be denied.

PRC premises its entire case on the theory that, since it has terminated the Rail Line Service Agreement with SMS, it is entitled to have SMS vacate the railroad lines within its Paulsboro refinery. At page 2 of its Application, PRC succinctly but accurately states, "The reason for the proposed adverse abandonment is that Applicant, as owner of the Refinery, has terminated SMS's operating agreement in accordance with its terms."

That the owner's termination of an operating agreement with a rail carrier does not allow it to evict the rail carrier from its railroad lines has been the law for more than half a century. In Thompson v. Texas Mexican Ry. Co., 328 U.S. 134 (1946), the Texas Mexican Railway Company had entered into a written contract with The St. Louis, Brownsville and Mexico Railway Co. allowing it to operate on a segment of its tracks for a term of 50 years. The contract was terminable upon twelve months' notice. Following the Brownsville's bankruptcy, Tex-Mex gave the Brownsville's Trustee twelve months' notice of the termination of the trackage contract. The Supreme Court, however, held that Tex-Mex by its termination of the trackage contract could not deny Brownsville the

right to operate on Tex-Mex's railroad line. At 328 U.S 145, the Supreme Court declared, "Though the contract were [sic] terminated pursuant to its terms, a certificate would still be required under 1(18) [now 49 U.S.C. § 10903]."

As the Board succinctly stated in Docket No. NOR 42133, Sierra Railroad Company and Sierra Northern Railway v. Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento, served April 23, 2012, slip op. p.4, "[I]f an owner of a line wishes to remove any doubt about a common carrier operator's right to remain a presence on a line, it has a readily available remedy: an adverse discontinuance."

Of course, if neither the railroad line's owner nor the rail carrier is interested and offers any objection, the Board will grant the adverse abandonment application. See Docket No. AB 290 (Sub-No. 286), Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, Ind., served April 17, 2012; Docket No. AB 884, MT Properties, Inc.—Adverse Abandonment—In Ramsey County, Minn., served July 16, 2008.

An adverse abandonment also may be granted by the Board if the community which owns the railroad line seeks to develop the right-of-way for a public purpose, such as a highway or a park and the rail carrier operating on the line has handled little or no traffic and has no realistic prospect of gaining traffic. See Docket No. AB-884, MT Properties—Adverse Abandonment—In Ramsey County, MN, *supra*, served July 16, 2008, Docket No. AB 1014, Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—In Mineral County, Colo., served May 23, 2008.

If, however, the rail carrier has every intention of remaining on the line to render service on it and vigorously objects to its proposed abandonment, the Board more likely will deny the adverse abandonment application. The Board in Docket AB 290 (Sub-No. 286), Norfolk Southern Railway Company—Adverse Abandonment—St Joseph County, Ind., served April 17, 2012, supra, slip op. p. 4, put it in these terms, “We have exclusive and plenary jurisdiction over rail abandonments in order to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available railroad service. Accordingly, we typically preserve and promote continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic [citation omitted].” Accord, Docket AB 600, Yakima Interurban Lines Association—Adverse Abandonment—In Yakima County, Wash., served November 19, 2004 (“[W]e preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic [citations omitted].”); Docket AB-400 (Sub-No.4), Seminole Gulf Railway, L.P.—Adverse Abandonment—In Lee County FL., served November 18, 2004 (“[W]e preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic.”); Docket AB 124 (Sub-No. 2), Waterloo Railway Company—Adverse Abandonment—Lines of Bangor and Aroostock Railroad Company and Van Buren Bridge Company in Aroostock County, Maine, served May 3, 2004 (“The function of the Board’s regulatory authority with respect to abandonments or discontinuance of rail service is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service [citation omitted].”); Docket AB 33

(Sub-No. 183), Salt Lake City Corporation—Adverse Abandonment—In Salt Lake City, UT, served March 8, 2002 (“As the agency has frequently stated, the function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service [citation omitted].”). The adverse abandonment application was denied by the Board in each of the foregoing proceedings.

SMS unquestionably wants to continue to maintain and operate on the railroad lines within the Paulsboro refinery. Not even PRC contends the contrary. SMS, however, is constrained in soliciting additional traffic to serve on the railroad lines within the Paulsboro refinery, for the only industries which can locate there are those which PRC allows on its premises. As PRC acknowledges, at page 4 of its Application, as recently as 2005, SMS, in addition to Valero, served the facilities of Air Products and Chemicals, Inc., ExxonMobil Corporation and Oxbow Carbon & Minerals, Inc. Now, however, only ExxonMobil Corporation’s facility remains.

SMS, however, is a hustler for additional business. Just within the last year or two it picked up Seashore Fruit & Produce Co., World Fuel Services Corp., American Steel Processing Co. and VP Racing Fuels as new shippers served at its other locations.

The Board, however, has not been all that insistent that the rail carrier opposed to its proposed adverse abandonment handle any traffic or have a reasonable prospect for gaining any traffic, and yet has denied the adverse abandonment application. See Docket No. AB 290 (Sub-No. 286), Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, Ind., *supra*, served April 17, 2012; Docket No. AB 400 (Sub-No. 4), Seminole Gulf Railway, L.P.—Adverse Abandonment—In Lee County,

Fla., served November 18, 2004. As the Supreme Court said in Tap Line Cases, 234 U.S. 1, 24 (1914), “It is the right of the public to use the road’s facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character.”

There have been several adverse abandonment applications which have been approved by the Board, because the owner of the railroad line was dissatisfied with the service being rendered by the rail carrier and desired to replace it with another rail carrier. See Docket No. AB 878, City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, served August 10, 2005; Docket No. AB 549, City of Rochelle, Illinois—Adverse Discontinuance—Rochelle Railroad Company, served May 27, 1999; Docket No. AB 548, Tacoma Eastern Railway Company—Adverse Discontinuance of Operations Application—A Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, Wash., served October 16, 1998.

Neither Valero nor PRC ever expressed dissatisfaction with the service being rendered by SMS on the railroad lines within the Paulsboro refinery. Neither one at any time filed an informal or formal complaint with the Board.

In its Application PRC did not cite --- and it cannot cite – a single Board decision in which the agency approved an adverse abandonment application in which the owner of the railroad line sought to replace the authorized rail carrier with a non-carrier contract switcher. At page 16 of the Application, PRC rationalizes, “The shippers [PRC & ExxonMobil Corporation] no longer need or desire common carrier service by SMS to be performed within the Refinery, or to or from PRC’s tracks, and after abandonment service will continue in the same manner as before SMS began common carrier

operations, without any adverse effect on shippers.” That simply is not the case. The September 22, 2011, e-mail which Mr. O’Malley sent to Mr. Bucko identified Savage Services Group as the non-carrier contract switcher that PRC proposes to use if it were successful in evicting SMS from the refinery’s railroad lines. A copy of Savage’s brochure is attached as Exhibit A. Savage purports to do a lot of things for a lot of industries, but interlining freight shipments with line haul railroads is not among them.

As a rail carrier, SMS operates Federal Railroad Administration (“FRA”) inspected locomotives, operated by FRA certified engineers and conductors. Savage does not. SMS is a superbly safe operator. It has not had a reportable accident in more than eight years’ time. Savage, not being subject to FRA regulation, need not and does not report its accidents and, therefore, its safety record is unknown.

Under 49 U.S.C. § 10903(d), the Board has a greater responsibility than simply considering the interests of the owner of the railroad line. “[T]he Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.” Without identifying them in violation of the Protective Order, it is no secret that hazardous materials move by rail to and from PRC’s Paulsboro refinery. Attached as Exhibit B are copies of news stories of the November 30, 2012, derailment of a train in Paulsboro, not a mile from PRC’s refinery. The leak of hazardous vinyl chloride from an overturned tank car sent 70 people to the hospital, and residents in 150 homes in Paulsboro and the nearby towns of Greenwich and West Deptford were ordered evacuated for three nights. SMS now has had 13 years’ experience handling the hazardous materials shipped by or consigned to the Paulsboro refinery. Whether Savage has the knowledge and personnel to handle hazardous materials in compliance with the

regulations of the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation is unknown. To allege, as PRC does at page 15 of its Application, that entrusting the switching of hazardous materials to Savage will have “no adverse impact on rural or community development” is unfounded.

WHEREFORE, SMS Rail Service, Inc. respectfully requests that the Application for Adverse Abandonment filed by Paulsboro Refining Company LLC be denied.

Respectfully submitted,

SMS RAIL SERVICE, INC

By its attorney,


Fritz R. Kahn

Fritz R. Kahn, P.C.

1919 M Street, NW (7th fl.)

Washington, DC 20036

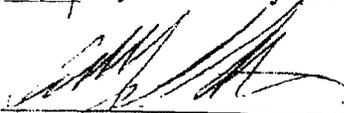
Tel.: (202) 263-4152

Dated: February 24, 2014

VERIFICATION

I, Jeffrey L Sutch, Director, President and CEO of SMS Rail Service, Inc., declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Protest of SMS Rail Service, Inc. and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of SMS Rail Service, Inc.. I know that willful misstatements or omission of material fact constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Bridgeport, NJ this 19~~th~~ day of February 2014.



Jeffrey L. Sutch

EXHIBIT A
Savage Brochure

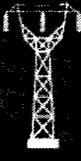


SAVAGE[®]

INNOVATIVE SUPPLY CHAIN SOLUTIONS



Mining



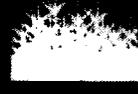
Utilities



Transportation



Manufacturing



Agriculture



Energy

WHO IS SAVAGE?

Savage is an innovative supply chain solutions company.

We create value for customers by moving and managing critical materials and improving operational efficiency with worry-free consistency. With over 150 locations, we serve many industries including electric power generation, coal production, oil and gas, refining, agriculture, chemical, mining and manufacturing. Our services span transportation, asset management and maintenance, and material handling and processing.

Savage is a privately held company founded in 1946 with a single truck hauling coal and timber in Utah. Today we handle more than 100 million tons of our customers' materials annually. We have continued to grow by working together with our customers to offer services that exceed your expectations.



HOW CAN WE HELP YOU?

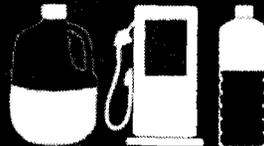
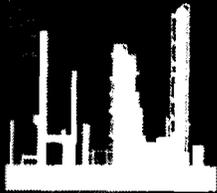
Getting products from source to market is no small task. Your focus is on producing and delivering the best product on the market. And our focus is on the logistics, transportation and handling systems required to get your product where you want it, when you want it and how you need it.

Supply chain challenges can be complex. We use the right combination of people, processes, and technology to simplify and streamline those challenges. That's why we offer a wide range of services across key supply chain disciplines: transportation services, facility operations and maintenance, materials handling and logistics management. All leveraging the latest technologies to deliver a complete solution.

Our team takes care of the critical components of your supply chain so your team can focus on your core competencies. By choosing Savage to handle the complexities of getting your material to its destination, you'll reduce costs, improve visibility and increase overall productivity.

"We don't have a contract with Savage – we have a relationship. And relationships don't expire."

Large Energy Company



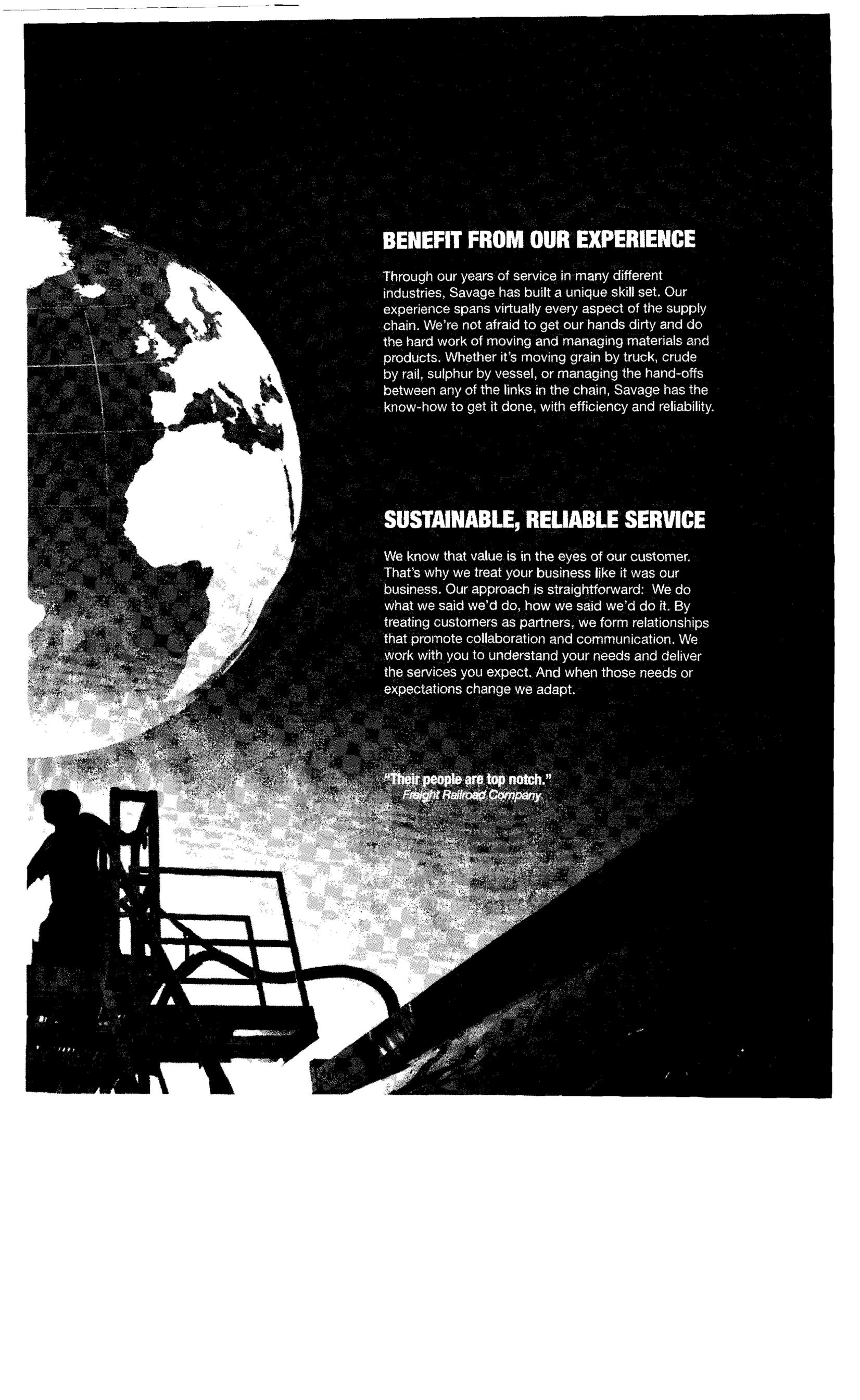
SAVAGE

ACROSS THE GLOBE

From Utah's Uintah Basin, to Luleå, Sweden. From Galveston, Texas to Jakarta, Indonesia. From Montreal, Canada to Rio de Janeiro, Brazil. Savage does business on five continents and has over 150 operations that serve customers around the world.

Understanding the implications of geographic location and capabilities of production facilities, stocking points, sourcing points and destinations is the natural first step in creating an effective supply chain. Those locations create the paths for your products' movement to your final customers. We can go anywhere you need us, to optimize the flow of your product with positive impact on your revenue, cost, and level of service. This "can do" attitude fostered at Savage stems from our passion for providing unparalleled service to our customers.





BENEFIT FROM OUR EXPERIENCE

Through our years of service in many different industries, Savage has built a unique skill set. Our experience spans virtually every aspect of the supply chain. We're not afraid to get our hands dirty and do the hard work of moving and managing materials and products. Whether it's moving grain by truck, crude by rail, sulphur by vessel, or managing the hand-offs between any of the links in the chain, Savage has the know-how to get it done, with efficiency and reliability.

SUSTAINABLE, RELIABLE SERVICE

We know that value is in the eyes of our customer. That's why we treat your business like it was our business. Our approach is straightforward: We do what we said we'd do, how we said we'd do it. By treating customers as partners, we form relationships that promote collaboration and communication. We work with you to understand your needs and deliver the services you expect. And when those needs or expectations change we adapt.

"Their people are top notch."
Freight Railroad Company

SAVAGE SUPPLY CHAIN SOLUTIONS



Material Source

We provide materials and logistics support at the point of origin to support your timely and efficient output. Savage provides on-site logistics management, operation and maintenance within your production facility. Our team becomes your team right at the beginning of a product's journey to market.



Truck Transport

Savage moves millions of tons of materials by truck every year. We tailor our fleet of late model, fuel efficient trucks to work either as your single mode of material transport or as a part of your intermodal transportation strategy. We can adjust load capacity and frequency to your rate of output.



Material Handling

We design, construct and operate the systems and processes critical to handling liquids and dry bulk products. Our team has the experience and discipline to ensure your materials, waste or by-products are handled safely, efficiently and in compliance with regulatory requirements.



Rail Services

Savage owns or operates over 55 train terminals and railcar storage yards across North America. Our services for class one railroads include operations, switching, infrastructure engineering, construction, operation planning, fueling, track and railcar inspection and maintenance, training and technology. We move over 40 million tons of materials in our +1600 railcars annually.



Savage logistics management and information technology provide

Savage provides specialized services for our customers at virtually every link of the supply chain. We are constantly growing and expanding our services to meet the unique needs of our customers and their industries. Our commitment to keeping team members safe and preserving the environment complements the services we deliver as your product travels to market. Here's a quick overview of the types of solutions we can provide for you.

"They grasp the issue at hand and know what needs to be done."
Large Chemical Company



Transload

We provide expert service to load your product from one mode of transportation to another, or into storage. Our transload services are aimed at making sure the hand-offs between the truck, rail, and marine systems are seamless.



Storage

Timing is essential to a successful supply chain. Sometimes that includes wait time. That's why Savage builds and operates liquid and dry bulk storage facilities at or near critical transfer points.



Processing

Savage process engineers provide the expertise needed to convert your raw materials to finished products along the journey to market. Our chemical tolling and dry bulk sizing, blending, prilling and consolidation services help reduce your manufacturing and transportation costs and also minimize your environmental impact.



Marine Transport

Our experience, processes and technology for marine operations allow you to leverage this highly efficient method of transport. Savage marine services include logistics, barge and vessel operation, loading, unloading, towing, maintenance and marine terminal operations.



Market

Every year, we move more than 100 million tons of materials for our customers. The materials we manage directly benefit end consumers around the world. From food to fuel, we get your product where it needs to go, safely, efficiently and reliably.

metrics, reporting and accountability for integrated supply chain management.



INDUSTRIES WE SERVE

Our supply chain solutions span a broad range of industries and markets across North America and around the world:

- Energy
- Chemicals
- Refineries
- Power Generation
- Mining
- Transportation
- Oil & Gas
- Sulphur
- Coal
- Petroleum Coke
- Manufacturing
- Agriculture

But no matter which industry your business is in, we focus on your unique needs and challenges. We incorporate best practices from our collective supply chain services, regardless of industry, and bring the appropriate elements of our experience to all our customers.

While you focus on your customers, production, and development, we focus on moving and managing your materials - so you have one less thing to worry about. While you work to make your numbers, we work to help you make your numbers bigger and better. We put our people, equipment and technology to work on your toughest logistics and supply chain needs. Our team becomes your team - with a shared dedication to your business. We work shoulder-to-shoulder with your people on key performance indicators. By leveraging Savage's cross-industry insight, we consistently provide sustainable solutions and worry-free service.

"Their dedication and commitment is unequalled."

Natural Gas Producer

THE SAVAGE CUSTOMER VALUE PROPOSITION IS BASED ON FOUR KEY COMPONENTS:

- Innovation
- Creating Value
- Collaboration
- Reliability

NOTHING TRUMPS SAFETY AT SAVAGE

A critical part of the peace of mind we deliver to our customers is our shared commitment to safety. Safety is woven into the fabric of the Savage culture. We believe that safety is the responsibility of every employee. Savage provides extensive training and tools to support the safety awareness and education of all team members. Our full-time safety professionals serve as resources to our managers and employees regarding the technical requirements of OSHA, MSHA, FRA, DOT and other government agencies.

In recognition of our commitment to safety, Savage was named as one of *America's Safest Companies* in 2011. And our operations have been awarded many safety awards and recognition by our customers and various industry organizations such as OSHA.

Alongside the safety of our people, Savage is dedicated to the preservation of our environment. We regularly evaluate our equipment and processes for environmental impact. Savage is a member of Responsible Care® and participates with other conservation agencies.



THE SAVAGE TEAM

Our people really do make the difference. We work with our eyes and ears open. We look for opportunities to improve our service, we listen to customer needs, and we anticipate industry trends. One of our founders, Neal Savage, tells us, "There is a better way. Find it." This principle guides how we do business and how we deliver value to our customers – by working as a team looking for ways to improve. Together we explore new concepts, analyze problems, challenge conventional thinking and generate new ideas. We find the better way to create new value for you on an ongoing basis.

THE SAVAGE CULTURE

The company was founded by the three Savage brothers in 1946 with a single truck hauling coal and timber in Utah. The brothers became known and respected for their integrity, innovation, and ability to deliver results. These values remain the foundation of everything we do.

Throughout the company's growth the Savage family and the company leadership has ensured that the company has maintained our core value of providing high quality, worry-free service to our customers. We are committed to continued growth, innovation and integrity.

The **SAVAGE** System

ELEVATE

DELIVER

CREATE

CREATING VALUE FOR OUR CUSTOMERS THROUGH INNOVATIVE SUPPLY-CHAIN SOLUTIONS

WHY CHOOSE SAVAGE?

We will develop a solution uniquely suited for you. At Savage we listen first and talk second. We want to understand your needs, challenges and expectations. Once we know your requirements, we'll put our people, processes and technology to work, solving your toughest supply chain challenges. When the solution is created and delivered, we'll continue to work with you to find new ways to deliver value.

SAVAGE[®]

We'd love to work with you to develop a solution that meets your unique supply chain challenge.

To learn more about Savage and some of the services we provide contact us:

www.savageservices.com • info@savageservices.com • 800-827-4439

EXHIBIT B

Associated Press November 30, 2012

CBS News November 30, 2012

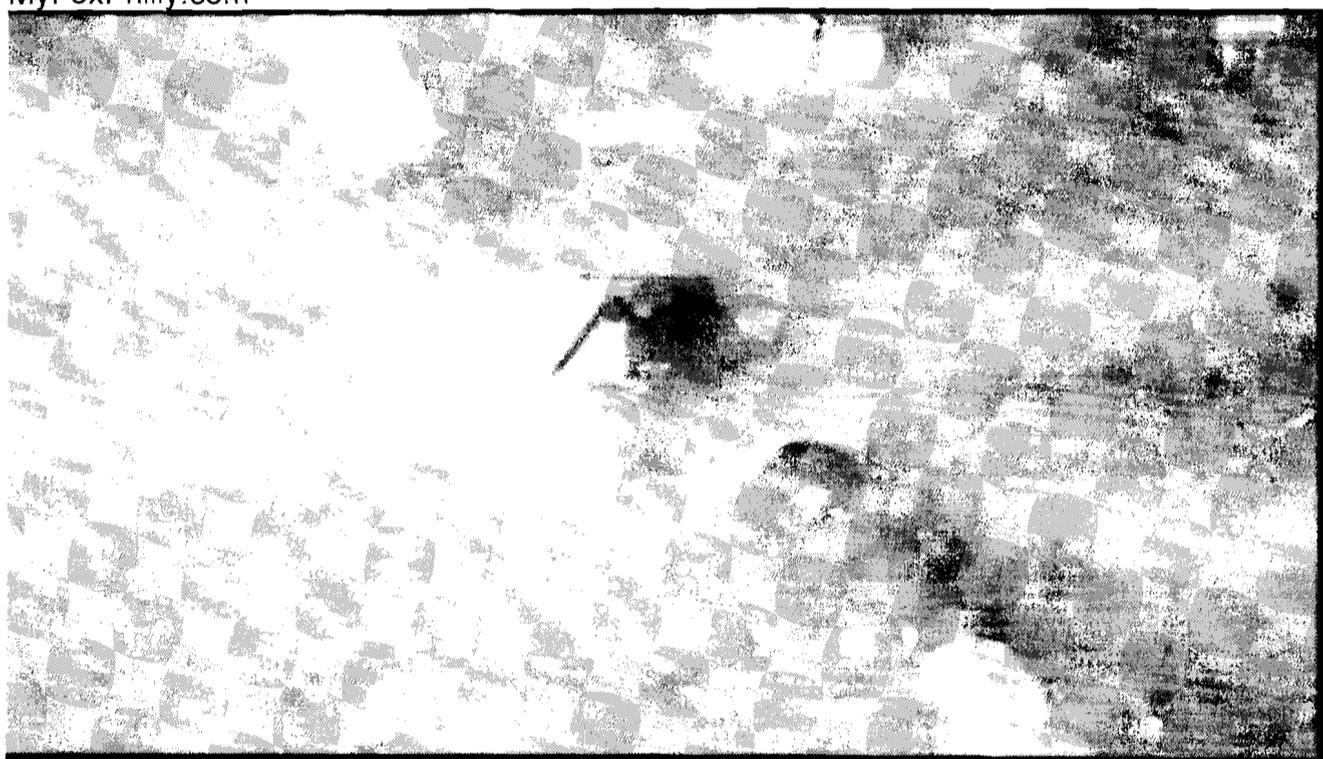
Courier-Post December 5, 2012

Train derailment sends chemical tank cars into New Jersey creek

Published November 30, 2012
Associated Press



MyFoxPhilly.com



Nov. 30, 2012: This photo shows the scene of the accident. (MyFoxNY.com)



Nov. 30, 2012: This aerial shot shows the scene of the accident. (MyFoxPhilly.com)
Next Slide Previous Slide

PAULSBORO, N.J. — A freight train derailed Friday on an old southern New Jersey railroad bridge that has had problems before, toppling two tanker cars partially into a creek and causing a leak of hazardous gas that was blamed for sickening dozens of people, authorities said.

Members of the National Transportation Safety Board came to New Jersey to investigate, including trying to determine whether it was a problem with the bridge that caused the derailment or the derailment that caused the partial collapse of the bridge.

A delicate operation lies ahead, as a huge crane was being brought from New York Harbor to pick up tanker cars precariously dangling from the bridge.

The accident happened just after 7 a.m. when a train with two locomotives, 82 freight cars and a caboose made its way from Camden to the industrial town of Paulsboro, just across the Delaware River from Philadelphia International Airport.

Cars went off the rails on a swing-style bridge, owned by Conrail, over Mantua Creek.

One tanker containing 25,000 gallons of vinyl chloride was sliced open in the accident and some of the gas spewed into the air, while the rest turned into a solid and settled into the bottom of the tanker.

People who live nearby said the air was smoky and had a sweet chemical smell for part of the morning.

Breathing the chemical, which is used to make polyvinyl chloride (PVC), a material used to manufacture a variety of plastic and vinyl products including pipes, wire and cable coatings and packaging materials, can make people dizzy or sleepy. Breathing very high levels can cause you to pass out, and breathing extremely high levels can cause death. Most of the vinyl chloride is gone from your body a day after you breathe it.

More than 40 people were being treated Underwood-Memorial Hospital, most having complained of breathing problems, said spokeswoman Karen Urbaniak. She said 11 arrived by ambulance and 31 walked in. All those seen by late morning were listed in stable condition.

Residents of Paulsboro, West Deptford and East Greenwich Township were told to remain indoors early Friday before an all-clear was given. One resident walked through town Friday morning wearing a gas mask.

By late morning, state Department of Environmental Protection spokesman Larry Hajna said that sensors were not measuring any amounts of the chemical at the site.

Tom Butts, the director of emergency management for Gloucester County, said it would take at least a day to get the large crane to the site from New York Harbor to pick up the damaged cars. The recovery work was expected to take place only during daylight hours and it was not clear how long it would take.

The bridge usually supports at least three major trains each day serving refineries and other customers in this industrial area. It was rebuilt after it buckled in 2009.

State Senate President Stephen Sweeney, whose district includes Paulsboro, said he had been told that complaints had been made in recent weeks about noise coming from the bridge and that Conrail was looking into it. But he said he didn't have any details.

At a news conference, Conrail spokesman John Enright said that the company is concerned with safety and cooperating with authorities, but he would not take any questions.

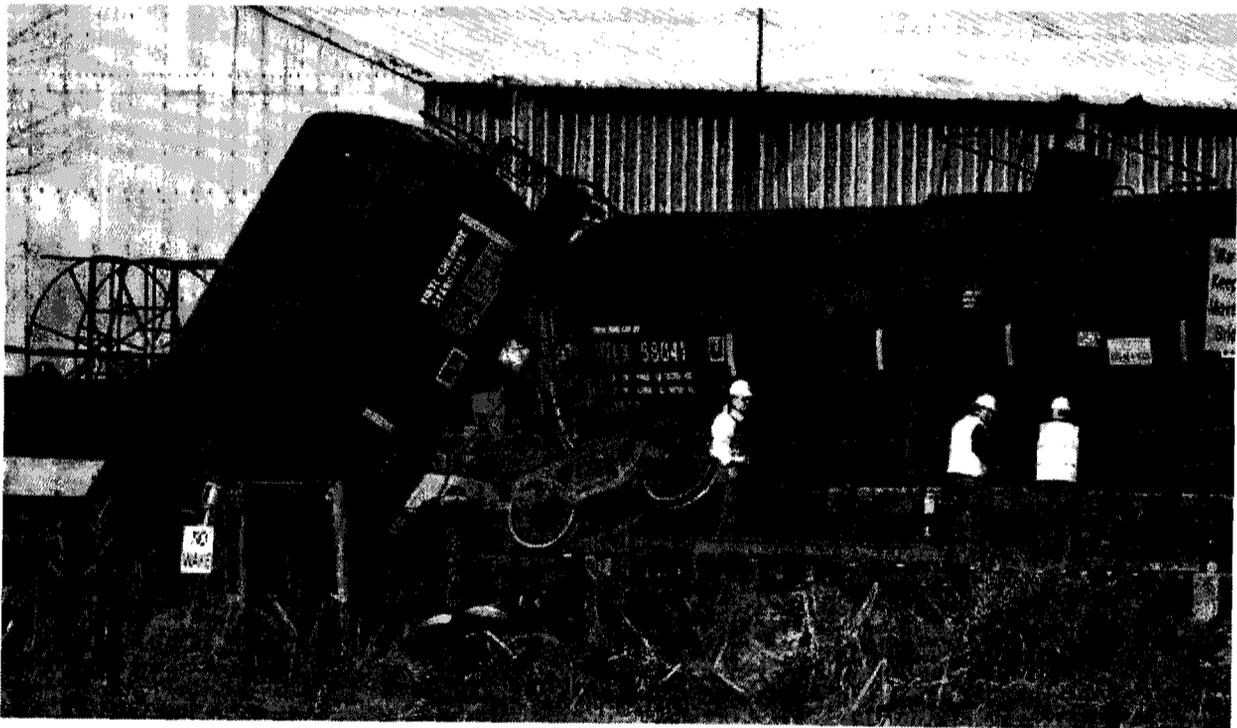
Early in the day, State Assemblyman John Burzichelli, a former mayor of Paulsboro who was serving as spokesman for the town, said he believed that it was a problem with the bridge that caused the accident. But he later backed off that, saying he did not know the cause.

The Federal Railroad Administration last inspected the bridge in January 2010 and found no defects. Railroads are required by law to conduct their own inspections. The FRA does not know when Conrail last did one.

Nine cars on a coal train derailed at the moveable bridge on Aug. 23, 2009, in an accident that was attributed to a bridge misalignment.

CBS/AP / November 30, 2012, 6: 11 PM /

More than 70 sickened from poisonous fumes from N.J. train derailment



Officials work the scene of derailed freight train tank cars in Paulsboro, N.J., on Nov. 30, 2012. Several tanker cars carrying hazardous materials toppled from a bridge and into a creek. At least one tanker car contained vinyl chloride, according to authorities. / AP PHOTO/MEL EVANS

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PAULSBORO, N.J. | A southern New Jersey hospital said that 71 patients were hospitalized complaining of breathing problems, burning eyes or scratchy throats on Friday after a poisonous gas was released in the area during a train derailment.

The Conrail train incident occurred around 7 a.m. on Friday in Paulsboro, derailing four cars and sending at least two cars into Mantua Creek. One of the cars leaked a hazardous gas known as vinyl chloride, used to make plastics, into the environment.

New Jersey authorities have blamed the incident on an old-style swing rail bridge that had previously buckled and been rebuilt. The National Transportation Safety Board's investigation is ongoing.

The train with two locomotives, 82 freight cars and a caboose was making its way from Camden to the industrial town of Paulsboro, just across the Delaware River from Philadelphia International Airport. Cars went off the rails when passing over a swing-style bridge. One tanker containing 25,000 gallons of vinyl chloride was sliced open in the accident and some of the gas spewed into the air, while the rest turned into a solid and settled into the bottom of the tanker.

People who live nearby said the air was smoky and had a sweet chemical smell for part of the morning. More than 70 people were hospitalized, most complaining of breathing problems after the accident. Eleven people were transported to Underwood-Memorial Hospital, and many more arrived on their own accord, according to spokeswoman Karen Urbaniak. Sixty-three patients have been discharged, and the eight that remain are in stable condition. Paulsboro, East Greenwich, and West Deptford residents were told to stay in their homes after the accident.

Inhaling vinyl chloride can cause eye and respiratory tract irritation, according to the Environmental Protection Agency. At high levels, it can cause loss of consciousness, lung and kidney irritation, prevention of blood clotting in humans, cardiac arrhythmias in animals and other effects on the central nervous system, including dizziness, sleepiness and giddiness. Vinyl chloride has also been shown to increase the risk of a rare form of liver cancer and, in a few studies, to affect male sexual performance.

By late morning, state Department of Environmental Protection spokesman Larry Hajna said that sensors were not measuring any amounts of the chemical at the site.

Tom Butts, the director of emergency management for Gloucester County, said it would take at least a day to get the large crane to the site to pick up the damaged cars. The recovery work was expected to take place only during daylight hours and it was not clear how long it would take.

The bridge usually supports at least three major trains each day serving refineries and other customers in an industrial area along the Delaware River. It was rebuilt in 2010 after it buckled in 2009.

State Senate President Stephen Sweeney, whose district includes Paulsboro, said he had been told that complaints had been made in recent weeks about noise coming from the bridge and that Conrail was looking into it. But he said he didn't have any details.

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Nine cars on a coal train derailed at the moveable bridge on Aug. 23, 2009, in an accident that was attributed to a bridge misalignment.

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"Affluenza" slammed as defense for wealthy Texas teen's fatal DWI wreck



Woman pleads guilty in newlywed murder case

Wider evacuation area declared in Paulsboro

Move ends intermittent orders to stay indoors

By George Mast and Phil Dunn
Courier-Post Staff

PAULSBORO — Authorities on Tuesday expanded an evacuation zone near the site of a freight-train derailment here, and said residents will be displaced until at least Sunday as a precaution against dangerous fumes.

Meanwhile, a South Jersey congressman

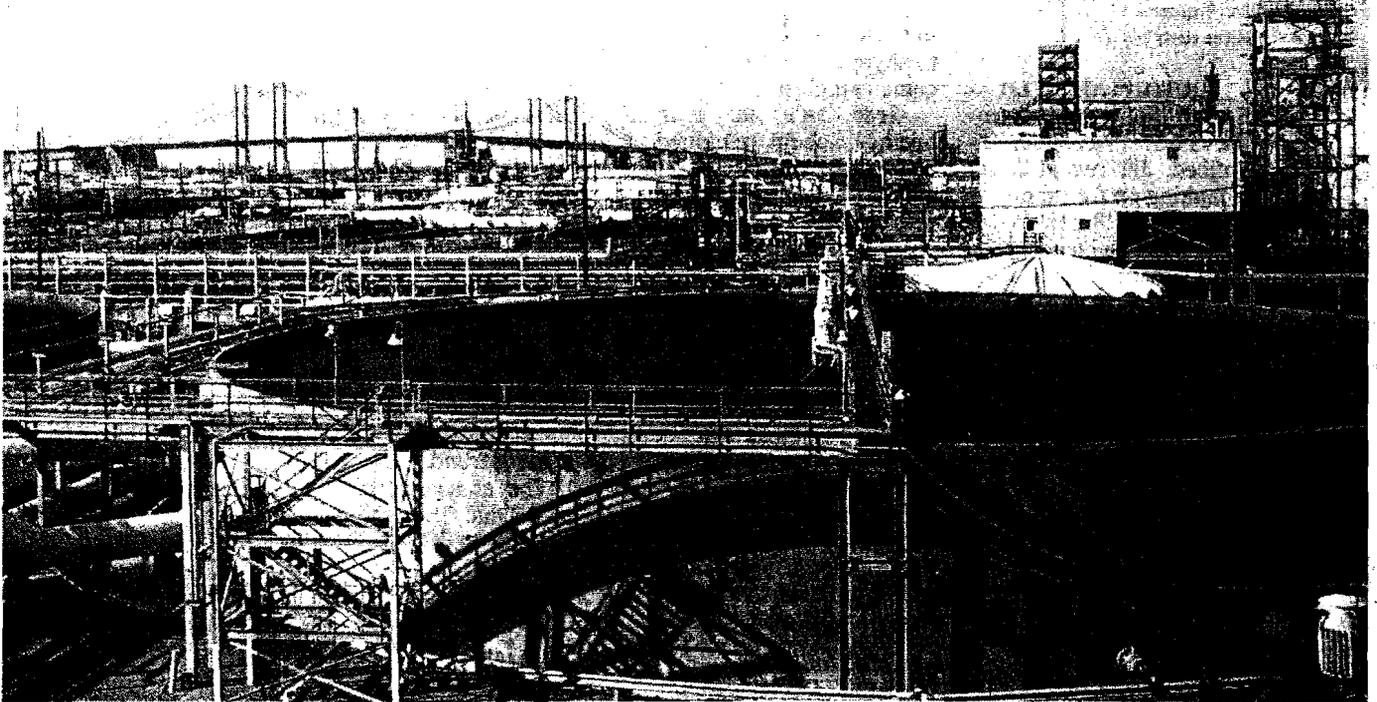
said cleanup activities have been too slow in the wake of Friday morning's accident.

"I'm not satisfied with the pace of this cleanup and I'm willing to take this as high as it needs to go," said Rep. Rob Andrews, a Haddon Heights Democrat.

Coast Guard Capt. Kathy Moore responded at a press conference later Tuesday by

See CLEANUP, Page 9A

EVACUATION AREA » The Coast Guard has declared an evacuation in Paulsboro for an area extending from Broad to Spruce streets, from Spruce to the railroad tracks, from the railroad tracks to North Delaware Street, from North Delaware Street to 7th Street, and 7th Street to Mantua Creek.



The disruption in rail service has been a headache for producers including DuPont Chambers Works in Deepwater, Salem County. The derailed train left four tanker cars destined for Deepwater on the north side of the bridge. PHOTO PROVIDED

Cleanup

Continued from Page 1A

saying: "We are moving as swiftly as we can, considering the very complicated situation before us. We are doing the right things and we are doing them in the right order."

Officials said they've encountered difficulty in emptying a breached tanker car that initially held 180,000 pounds of vinyl chloride, a chemical with short- and long-term health effects. That task might not be completed until Sunday, Moore said.

That car was one of seven to derail shortly after 7 a.m. Friday as a freight train tried to cross a bridge between West Deptford and Paulsboro. A leak of vinyl chloride sent more than 60 people to a hospital on Friday morning, most with respiratory complaints.

The Coast Guard, which initially declared the evacuation of about 50 homes on Friday evening, called for residents to leave an additional 100 homes on Tuesday afternoon.

Officials also said the evacuation would last one day longer than previously thought.

The expanded evacuation is intended for the convenience of residents elsewhere in the borough, said Moore.

Officials previously have been telling all borough residents to stay indoors — or shelter in place — whenever tests found elevated levels of vinyl chloride in the air. The expanded evacuation zone includes the areas where pollution spikes have occurred, and the Coast Guard said that should end the need for residents in other neighborhoods to stay indoors.

The elevated levels of vinyl chloride are still far below those deemed to be toxic.

Those residents evacuated from their homes Tuesday night were granted hotel and food vouchers for the next three days. Most were sent to hotels in Gloucester City, Runnemede or Carneys Point.

A shelter also is operating at Kingsway Regional High School in Woolwich.

"I'm glad we are out and safe, but what makes me nervous is the lack of information," said Chante Scott, who left her West Jefferson Street home. "I live just on the other side of the first evacuation line, so was I in harm's way before today?"

Dawn and Richard Wright said they worried more about looters than toxic fumes.

"People have Christmas presents at their homes," said Richard Wright. "We all have to leave, but the rest of the town is still there."

A 7 p.m. curfew has been issued for the evacuation area to deter theft.

"Local police will be on active patrol in the evacuation zone to ensure homes are protected," said Paulsboro Police Chief Chris

Wachter.

In line with the evacuations, public schools in Paulsboro remain closed until further notice.

The Coast Guard also canceled a community meeting and borough council session that had been planned for Tuesday night, describing that as a precautionary measure.

Authorities said weather conditions aren't helping. With higher temperatures and low winds, the chemical does not dissipate as quickly.

The cleanup effort has also delayed investigators with the National Transportation Safety Board from reaching the scene and beginning their physical investigation into the rail cars and bridge structure.

A 150-ton crane on a sea-going barge is expected to pluck the rail cars from the stream, but authorities have not said when that operation might begin.

Moore said workers have faced a challenge in removing 600 to 800 gallons of vinyl chloride that remain in the ruptured car, which is lying on an angle.

"What we are going to do is pump a new liquid in that will dissolve the vinyl chloride and we will then pump that liquid back out," she said. "We hope to be completed by Sunday."

Reach George Mast at
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Off the rails, firms suffer

Disruption highlights reliance on S.J. freight tracks

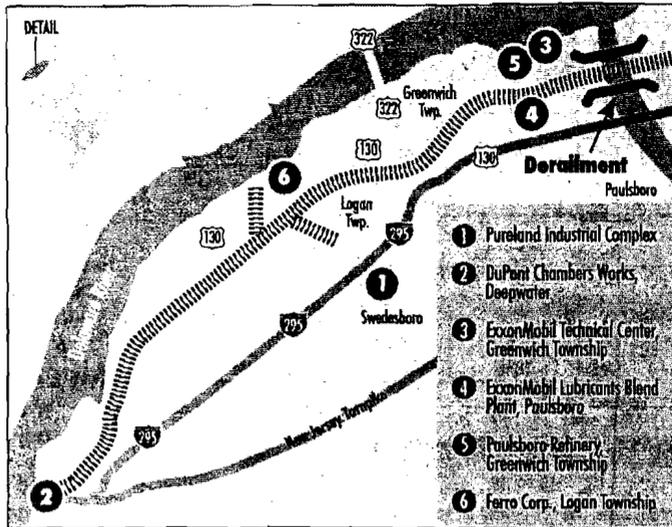
By Kim Mulford
Courier-Post Staff

Since Friday's freight train derailment, Conrail's customers down the line from Paulsboro to Deepwater have been scrambling to get raw materials brought in and their finished products shipped out.

The Penns Grove Secondary rail line handles coal, plastic pellets, lumber, vinyl chloride and other hazardous materials used in oil refining and chemical manufacturing.

The disruption in rail service has been a major headache for producers in Gloucester and Salem counties, including DuPont Chambers Works in Deepwa-

See **FREIGHT**, Page 9A



INSIDE

» Police called to evacuation motel; 22 arrested, some on drug charges.
Page 9A

ON THE WEB

» View more photos at cpsj.com

ADAM MONACELLI
COURIER-POST

Freight

Continued from Page 1A

ter and several companies within Logan's Pureland Industrial Complex.

That's where SMS Rail Lines President Jeffrey Sutch has been working the phone, trying to find transportation alternatives for his customers. His company operates 6½ miles of track throughout Pureland, and has been forced to cut workers' hours since the railroad went silent Friday.

"I want it over yesterday," said Sutch. "This is something none of us need."

As their inventories are depleted, most of the affected companies will turn to trucks or barges until Conrail gets the rail line back in service. One rail car carries the equivalent of three to five tractor trailer loads. That means an increase in traffic along Interstate 295 and an increase in costs to Conrail's affected customers.

It's a complex issue for DuPont Chambers Works in Deepwater, which makes more than 500 specialty chemical products, said Public Affairs Manager Meredith Avakian-Hardaway. The derailed train left four tanker cars destined for Deepwater on the north side of the bridge.

Each of the products

brought into the plant are regulated differently; without rail, some materials must be brought in by barge and others must be trucked over land.

The Paulsboro Refinery in Greenwich also uses the rail line, but company officials could not comment about the derailment's impact on its oil refining operations.

The company is set to go public within the next several weeks and is under a "quiet period," as mandated by the Securities and Exchange Commission. The plant employs around 435 people and can produce 180,000 barrels of gas, home heating oil and jet fuel a day.

On Friday, ExxonMobil temporarily shut down its technical center and its lubricants manufacturing site in Paulsboro, but reopened for business Monday. Fuel and finished lubricant products are shipped out via rail, and the raw materials to make them are shipped in. About 400 people work at the two sites.

"We have a business continuity plan in place and are in the process of deploying it," said ExxonMobil spokeswoman Claire Hassett. "It will involve greater utilization of trucks and potentially the fulfillment of orders from alternate locations, if necessary."

Companies along Route 130 in Logan and Oldmans

Township also use the line to bring in raw materials, including chemical manufacturers PolyOne and Ferro Corp. Ferro officials said there was no immediate effect to its production, but that the long-term impact is unknown.

At least a half dozen companies are affected at the Pureland Industrial Complex, said its president, Carl Helwig, including Home Depot, a paper products company and a plant that produces plastic drainage pipes.

"There's pretty heavy usage of rail in Pureland," Helwig said. "However, a lot of these products can be delivered by truck. It costs more ... but I haven't heard of any company that hasn't come up with alternatives."

"It's not a desirable option, but it's a viable option in the short run."

The damaged rail line has also affected construction of the Paulsboro Marine Terminal.

At this time the South Jersey Port Corporation is

still vetting bids for work there, said deputy executive director Jay Jones. However, the accident has temporarily halted work on a Gloucester County-run project to build a new Mantua Creek overpass and railway related to the terminal.

Still, Jones said the derailment "shouldn't have too much impact on us. ... We're in between contracts for the construction right now."

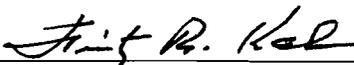
Conrail officials would not estimate how long it will take to investigate the accident, pull the rail cars out of the water and rebuild the bridge. A company spokesman also would not say how many of its customers are affected, nor how many rail cars are shipped on the line in a given week.

Staff writer Christina Mitchell contributed to this report. Reach Kim Mulford at kmulford@gannett.com. Follow her @CP_KimMulford

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Protest on the Paulsboro Refining Company, Norfolk Southern Railway Company, CSX Transportation, Inc. and Consolidated Rail Corporation by e-mailing copies to their attorneys, Eric M. Hockey, Esq., at ehocky@clarkhill.com, David L. Coleman, Esq., at david.coleman@nscorp.com, Paul R. Hitchcock, Esq. at Paul_Hitchcock@CSX.com, and David C. Ziccardi, Esq. at David.Ziccardi@Conrail.com.

Dated at Washington, DC, this 24th day of February 2014.



Fritz R. Kahn