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Public Record

Finance Docket No. 35964

**AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, AND THE
FERTILIZER INSTITUTE
– PETITION FOR DECLARATORY ORDER –
POSITIVE TRAIN CONTROL**

REPLY OF NORFOLK SOUTHERN RAILWAY COMPANY

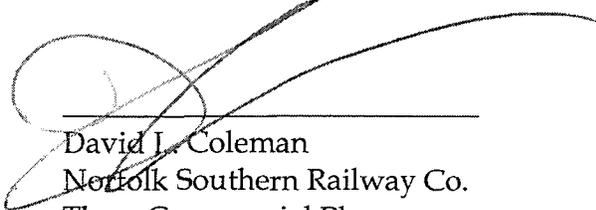
Norfolk Southern Railway Company (“Norfolk Southern”) respectfully submits this Reply to the Petition for Declaratory Order (“Petition”) filed on September 30, 2015, by the American Chemistry Council, The Chlorine Institute, and The Fertilizer Institute (collectively, “Petitioners”). Norfolk Southern joins and fully supports the Reply of the Association of American Railroads, filed today in this proceeding.

Petitioners ask the Board to declare that the freight railroads have a common carrier duty to continue to transport toxic-by-inhalation (“TIH”) materials after December 31, 2015, in direct violation of the Positive Train Control laws.¹ But the common carrier obligation “is not absolute, and the law exacts only what is reasonable of the railroads under the existing circumstances.” *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 325 (1981) (internal quotation omitted); *see also Midland Valley*

¹ Rail Safety Improvement Act, Pub. L. No. 110-432, 122 Stat. 4854 (Oct. 16, 2008); 49 C.F.R. Part 236, Appendix A (specifying violations for operations after December 31, 2015, including, for example, commencing revenue service prior to obtaining PTC System Certification (49 C.F.R. § 236.1005); operating a controlling locomotive in PTC territory without a required and operative PTC onboard apparatus (49 C.F.R. § 236.1006); and non-compliant operation of unequipped trains in PTC territory (49 C.F.R. § 236.1006)).

R.R. v. Barkley, 276 U.S. 482, 485 (1928) (“The law exacts only what is reasonable”). As the AAR details in its Reply, the common carrier obligation cannot require a railroad to accept traffic that cannot be transported in compliance with federal rail safety laws.² As of the date of this filing, those laws provide that it would be a violation to operate trains transporting TIH on non-compliant rail lines or in non-compliant trains after the current PTC implementation deadline of December 31, 2015. Accordingly, it would be unreasonable to request that a railroad and its employees transport TIH materials after that date. For these reasons and the reasons laid out in the AAR Reply, Norfolk Southern urges the Board to deny the Petition.

Respectfully submitted,



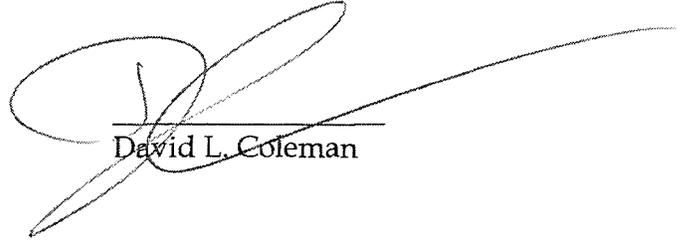
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² *Delta Air Lines, Inc. v. Civil Aeronautics Bd.*, 543 F.2d 247, 252 (D.C. Cir. 1976) (holding that the common carrier obligation “must fall within the outer perimeters of safety marked out by “the pertinent federal safety agency) (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October 2015, I served a copy of the foregoing Reply by first class mail or more expeditious means upon the parties of record in this proceeding.



David L. Coleman