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May 5, 2011

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

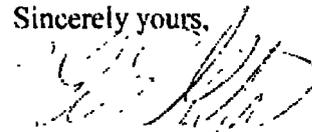
RE: Docket No. 42129, *American Chemistry Council, The Chlorine Institute, Inc., The Fertilizer Institute, and PPG Industries, Inc v. Alabama Gulf Coast Railway LLC and RailAmerica, Inc.*

Dear Ms. Brown:

Enclosed for e-filing is an Answer to the Complaint by Alabama Gulf Coast Railway LLC and RailAmerica, Inc.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for Alabama Gulf Coast Railway  
LLC and RailAmerica, Inc.

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42129

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AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, INC., THE  
FERTILIZER INSTITUTE, AND PPG INDUSTRIES, INC.

v.

ALABAMA GULF COAST RAILWAY LLC AND RAILAMERICA, INC.

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ANSWER OF ALABAMA GULF COAST RAILWAY LLC AND RAILAMERICA, INC. TO  
COMPLAINT

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Dated: May 5, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Pursuant to 49 C.F.R. § 1111.4, Alabama Gulf Coast Railway LLC (“AGR”) and RailAmerica, Inc. (“RA” and with AGR, jointly referred to as “Defendants”) answer the Complaint (the “Complaint”) filed on April 15, 2011 by American Chemistry Council, The Chlorine Institute, Inc., The Fertilizer Institute, and PPG Industries, Inc. (collectively “Complainants”).<sup>1</sup> As a preliminary matter, Defendants point out that handling Toxic Inhalation Hazards and Poison Inhalation Hazards (“TIH/PIH”) is extremely dangerous and that AGR is merely seeking to implement methods and means of reducing the danger in handling such chemicals.

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<sup>1</sup> RA is not a rail carrier. RA is answering the Complaint in an abundance of caution so that its silence can not be taken as admitting the averments made in the Complaint under 49 C.F.R. 1111.4(e). RA is concurrently filing a Motion to Dismiss the Complaint as to RA since RA is not a rail carrier.

AGR and RA deny all allegations made by Complainants that Defendants have violated 49 U.S.C. §§ 10702 and 11101 and deny that Complainants have met the criteria for the issuance of an injunction under 49 U.S.C. §721(b)(4).

**To the extent that Defendants do not specifically admit an allegation made in the Complaint, that allegation is denied.**

With respect to the numbered paragraphs of the Complaint, Defendants respond as follows:

1. Defendants are without sufficient information to admit or deny the allegations of Paragraph 1. To the extent response is required, Defendants deny the allegations of Paragraph 1.

2. Defendants are without sufficient information to admit or deny the allegations of Paragraph 2. To the extent response is required, Defendants deny the allegations of Paragraph 2.

3. Defendants are without sufficient information to admit or deny the allegations of Paragraph 3. To the extent response is required, Defendants deny the allegations of Paragraph 3.

4. Defendants are without sufficient information to admit or deny the allegations of Paragraph 4. AGR admits that PPG currently ships chlorine to a customer that receives chlorine via the AGR. AGR further admits that it is a subsidiary of RA. To the extent a response is required to the remainder of Paragraph 4, Defendants deny the allegations of Paragraph 4.

5. AGR admits the allegations of Paragraph 5.

6. RA admits the allegations in the first sentence of Paragraph 6. RA denies that it is subject to the Interstate Commerce Commission Termination Act of 1995 and to the jurisdiction of the Board with respect to the Complaint.

7. AGR admits the allegations of Paragraph 7; however, AGR Tariff 0900 was canceled on April 29, 2011, and AGR Tariff 0900-1 was adopted on April 29, 2011.

8. With respect to the allegations in Paragraph 8, AGR states that AGR Tariff 0900 spoke for itself before it was canceled on April 29, 2011. AGR further states that Complainants misstate AGR Tariff 0900 when they state that "all TIH movements will be handled only by special permit." The special permit that is identified in AGR Tariff 0900 is merely for notification purposes so that AGR can comply with the requirements of 49 C.F.R. §174.14(a).

9. AGR admits the allegations of Paragraph 9.

10. With respect to the allegations in paragraph 10, AGR and RA state that the "TIH/PIH Standard Operating Practice (SOP)" document referred to speaks for itself (referred to as the "SOP" for consistency with Complainants and ease of use). AGR and RA further state that the SOP is a PowerPoint presentation that was shared with PPG, among others, as a "proposal to modify...policies and procedures for handling TIH/PIH commodities." Consequently, the SOP cited by Complainants was simply a document intended to propose, address and resolve issues of safety in order to open a dialogue between AGR and affiliated railroads and shippers of TIH/PIH. AGR hoped that these discussions would lead to enhanced safety for the movement of Complainants' TIH/PIH, which would benefit all stakeholders, including the employees of AGR and its affiliated railroads and the citizens in the communities through which AGR and its affiliated railroads transport Complainants' TIH/PIH (see Exhibit A to this Answer containing the SOP). The "SOP" referred to in the complaint, only "recommended" "dedicated train service at no more than 10 MPH," and does not have the binding force and effect of a tariff.

11. With respect to the allegations in paragraph 11, AGR and RA adopt and incorporate by reference the answer in Paragraph 10. AGR and RA further state that the SOP only **"recommended"** "a qualified mechanical employee inspect every TIH/PIH car before pulling the car from the interchange track" in full conformity with the requirement of 49 C.F.R. §174.9(a), and does not have the binding force and effect of a tariff.

12. With respect to the allegations in paragraph 12, AGR and RA adopt and incorporate by reference the answer in Paragraph 10. AGR and RA further state that the SOP only **"recommended"** "employees accompany the shipment at all times," and does not have the binding force and effect of a tariff.

13. With respect to the allegations in paragraph 13, AGR and RA adopt and incorporate by reference the answer in Paragraph 10. AGR and RA further state that the SOP only **"recommended"** "a permitting process be implemented **to manage** the movement of each TIH/PIH shipment," and does not have the binding force and effect of a tariff. AGR and RA deny the allegation that the SOP requires a "party seeking to tender a TIH shipment...to submit a specific form...requesting transportation".

14. Paragraph 14 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 15.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 17.

18. Defendants deny the allegations made in Paragraph 18.

19. Defendants deny the allegations made in Paragraph 19.

20. Paragraph 20 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 20.

21. Paragraph 21 states a legal conclusion to which no response is required. To the extent a response is required, RA denies the allegations made in Paragraph 21. RA is not a rail carrier and is therefore not subject to the jurisdiction of the Board. AGR admits that it is a rail carrier and is subject to the jurisdiction of the Board.

22. Paragraph 22 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 22.

23. Paragraph 23 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 23 and RA specifically states that it is not a rail carrier subject to the Board's jurisdiction.

24. Paragraph 24 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations made in Paragraph 24.

The unnumbered final paragraph of the Complaint (on page 8) states legal conclusions and requests for relief, to which no response is required. To the extent a response may be deemed necessary, Defendants deny the allegations, conclusions, and requests for relief in that final paragraph, including clauses numbered 1 through 6. Defendants deny that Complainants are entitled to any of the relief that they seek in this proceeding or to any other relief.

## **AFFIRMATIVE DEFENSES**

1. The tariffs that are the subject of the Complaint have been canceled and therefore there is no case or controversy raised by the Complaint.
2. The SOP is not a tariff and does not have the binding effect of a tariff. The SOP is a marketing document used by AGR. In meeting with PPG, AGR hoped to use the SOP as a means of addressing and resolving safety concerns in the movement of TIH/PIH. AGR used the SOP to initiate a dialogue with PPG to jointly determine the safest manner for AGR to move TIH/PIH for PPG.
3. AGR's practices with regard to TIH/PIH are reasonable and not in violation of 49 U.S.C. §§10702 or 11101 or 49 C.F.R. Part 174.
4. Complainants have failed to demonstrate that: (1) there is a strong likelihood that they will prevail on the merits of the challenge; (2) they will suffer irreparable harm in the absence of an injunction; (3) other interested parties will not be substantially harmed; and (4) the public interest supports the granting of the injunction.
5. RA is not a rail carrier subject to the jurisdiction of the Board.

**PRAYER**

For the foregoing reasons, (1) RA respectfully requests the Board to dismiss the Complaint with respect to RA; (2) Defendants respectfully request the Board to dismiss the Complaint because the tariffs complained of have been canceled; and (3) AGR respectfully requests the Board to: (a) conclude that AGR has not violated any provision of 49 U.S.C. §§ 10702 or 11101 or the provisions of 49 C.F.R. Part 174; (b) dismiss the complaint; (c) discontinue this proceeding; and (d) award AGR such other relief to which it is entitled.

Respectfully submitted,



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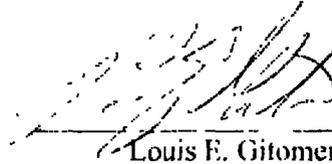
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(904) 538-6329

Attorneys for: Alabama Gulf Coast Railway LLC  
and RailAmerica, Inc.

Dated: May 5, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing document to be served upon counsel for all parties of record electronically or by first class mail postage pre-paid.



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Louis E. Gitomer  
May 5, 2011

**EXHIBIT A-SOP**

# TIH/PIH Standard Operating Practice (SOP)

## Implementation Proposal

A proposal to modify RailAmerica's policies and procedures for handling TIH/PIH commodities.

RailAmerica

A cross functional team of RailAmerica employees was charged with developing operating practices that go beyond "industry standards" in order to further reduce the risk of moving TIH/PIH commodities.

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## SOP Recommendations

The team recommended that railroads owned by RailAmerica move all TIH/PIH shipments in dedicated train service at no more than 10 MPH.

The team recommended that a qualified mechanical employee inspect every TIH/PIH car before pulling the car from the interchange track.

The team recommended that employees accompany the shipment at all times, even if outside of a High Threat Urban Area (HTUA), as long as the shipment is on RailAmerica property and until the receiving entity acknowledges receipt of the shipment.

The team recommended that a permitting process be implemented to manage the movement of each TIH/PIH shipment.

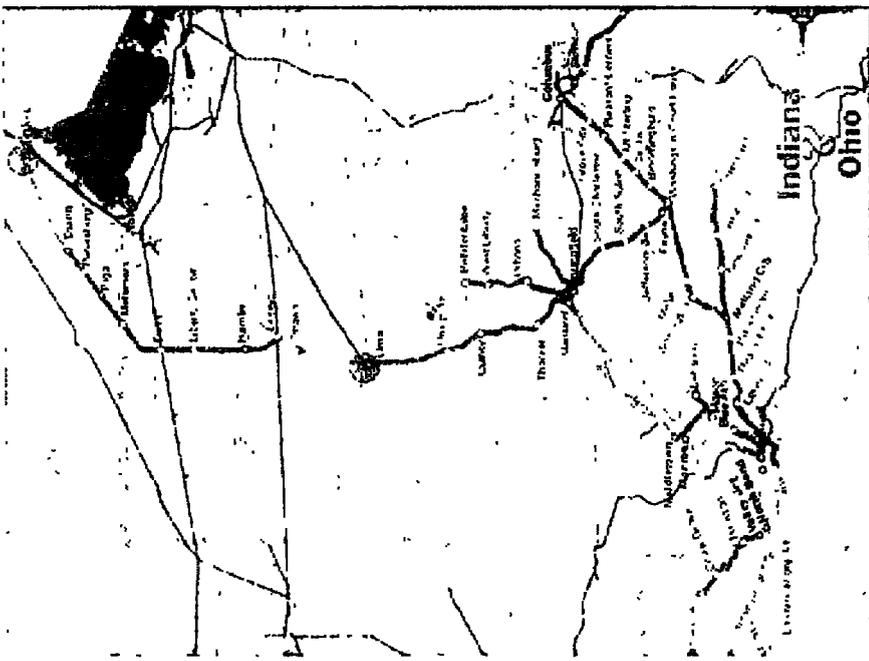
Because of the varying operating conditions across all RailAmerica properties, the railroads that move TIH/PIH commodities will have to create specific operating procedures.

- Some railroads may choose to use "Go-Teams" to augment existing transportation crews.
- Some roads may request advance notification from Class I railroads of movements of TIH/PIH commodities.
- Physical interchange procedures will have to be developed for each property
- In extreme situations, some roads may need additional locomotives and crews.

RailAmerica

The local IORY operating team developed an operating plan for the movement of anhydrous ammonia from Lima, OH to interchange with CN at Flat Rock, MI.

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### OPERATING PLAN

- 1 NS advance notice sent to IORY.
- 2 IORY Mechanical team member meets the NS crew at interchange track in Lima.
- 3 IORY Mechanical inspects car and signs NS chain of custody and waits with car.
- 4 Lima Switcher pulls car from NS interchange track to North End of Lima Yard and sets car over. Lima Switcher attends car
5. Special Train crew moves locomotive to car and takes control of car.
- 6 Special Train crew moves car from Lima to Delta. MP 130 to MP 74 - 56 miles.
- 7 Crew one vans back to Lima.
8. Special Train crew number two goes on duty at Delta Boards train and takes position of car / train.
- 9 Crew two moves car from Delta to Flat Rock MP 74 to MP 18 - 56 Miles.
10. Crew runs light engine back to Delta
- 11 Engine runs on "normal" freight train next night to Lima



We will designate a new position to manage and maintain the new process. The position will be responsible for monitoring all TIH/PIH movements on RailAmerica properties.

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### **Manager Special Services (Roles and Responsibilities)**

**Create SOP's for the movement of TIH/PIH shipments with local operating teams.**

**Coordinate with Class I partners and customers the movement of TIH/PIH commodities.**

**Initiate movements of shipments with local railroad operating teams.**

**Monitor TIH/PIH carloads on RailAmerica properties.**

**Coordinate communication strategy for customers, Class I's and local communities.**

**RailAmerica**

The Manager Special Services (MSS) will manage the shipment up to the time that the railroad takes physical control of the shipment. After that time the MSS will monitor and coordinate the movement and delivery with the railroad, customer and any interline parties.

NO LESS  
THAN 5 DAYS  
BEFORE  
RECEIPT OF  
SHIPMENT

**MANAGER SPECIAL SERVICES  
PROCESS**

1. Customer applies for transportation permit
2. MSS confirms that a transportation rate exists
3. MSS confirms that an operating plan exists for the movement
  - A. If no operating plan exists MSS coordinates with railroad to create new operating plan.
4. MSS notifies Dispatcher that movement is pending.
  - A. The Dispatcher will notify local emergency response teams.
5. MSS notifies railroad that customer wishes to initiate a movement
6. MSS notifies destination customer or railroad that the railroad will be making a delivery.
7. MSS monitors all aspects of movement while on RA

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**LOCAL OPERATING TEAM  
PROCESS**

1. NS advance sent to IORY
2. IORY Mechanical team member meets the NS crew at interchange track in Lima
3. IORY Mechanical inspects car and signs NS chain of custody and waits with car.
4. Lima Switcher pulls car from NS interchange track to North End of Lima Yard and sets car over Lima Switcher attends car.
5. Special Train crew moves locomotive to car and takes control of car
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FUNCTIONAL  
HAND-OFF

DELIVERY TO  
RAILAMERICA  
DESTINATION

**RailAmerica**