

PUBLIC VERSION
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SURFACE TRANSPORTATION BOARD

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<p>E.I. DUPONT DE NEMOURS & COMPANY</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>NORFOLK SOUTHERN RAILWAY COMPANY</p> <p style="text-align: center;">Defendant.</p>	<p>)</p>	<p>Docket No. NOR 42125</p>
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ERRATA TO REPLY EVIDENCE OF
NORFOLK SOUTHERN RAILWAY COMPANY

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The Errata makes the following corrections to NS's Public Reply Narrative:

Narrative Page II-B-104: In the second-to-last line, "less than { }" should be changed to "{ }." A replacement page is attached.

Narrative Page II-B-112: In the third line of the first full paragraph, "January 2007" should be changed to "January 2008." A replacement page is attached.

Narrative Page II-B-144: In the third line of footnote 150 "provide" should be changed to "provided." A replacement page is attached.

Narrative Page II-B-153: In the third line of the first full paragraph, "Lane B81" should be changed to "B108." A replacement page is attached.

Narrative Page II-B-155: In the second-to-last line on the page, confidential information has been redacted. A replacement page is attached.

Narrative Page II-B-158: In the fourth line of the first full paragraph, "2007" should be changed to "2008." A replacement page is attached.

Narrative Page II-B-167: In the fifth line of the second full paragraph, confidential information has been redacted. A replacement page is attached.

Narrative Page II-B-174: In the sixth line of the first full paragraph, "2007" should be changed to "2008." A replacement page is attached.

which NS proposes trucking alternatives, and DuPont has extensive safety procedures in place for truck loading and unloading. While some of the issue commodities are hazardous materials, the safety concerns from transporting these materials by truck are no different than the safety concerns from transporting them by rail.¹⁰⁴

3) Shipment Volumes On The Issue Lane Are Consistent With Competitive Trucking And/Or Transloading.

The third issue Mr. Heisler considered was whether the volumes moving over the issue lanes were conducive to motor carrier transportation. One of the most significant advantages that rail transportation can have over truck transportation is that railroads are better suited to transport high volumes of bulk commodities. In a SAC case involving substantial long-distance shipments of bulk commodities, trucking is often not a realistic option.¹⁰⁵ In this case, however, the lanes DuPont has challenged are low-volume lanes that are naturally conducive to trucking. Most lanes average less than one railcar per week, and even the highest volume lane consists of only a few hundred carloads per year. *See* NS Reply Exhibit II-B-5 (detailing annual railcar volumes on issue lanes). As the chart below details, it would take less than five trucks per week to transport the entire annual volume of { } of the 99 issue lanes with a competitive alternative identified by Mr. Heisler. That averages to less than one truck per business day. And the highest-volume lane with a competitive alternative—{ }—could be entirely converted to truck transportation using { } trucks per week. *See id.* These volumes are far less than volumes that the Board has recognized could be trucked competitively.

¹⁰⁴ Chlorine is the only DuPont issue commodity to have a DOT Classification of 2.3 (gas poisonous by inhalation). NS does not contend that transporting chlorine by truck is a realistic competitive option in these lanes and at these volumes.

¹⁰⁵ *See, e.g., Metropolitan Edison Co. v. Conrail*, 5 I.C.C.2d 385, 412 (1989) (finding that it was “[s]imply impractical” to move a million tons of coal by truck).

are subject to effective competition from rail-truck transloading.¹¹⁷ DuPont ships substantial volumes of sulfuric acid by truck from Reybold—a total of {{ }} sulfuric acid truck shipments originated at Red Lion between 2006 and 2010. *See* NS Reply WP “DuPont Sulfuric Acid Truck Shipments.xls.” That number is even more impressive in light of the fact that Red Lion shut down production for a substantial portion of that period. *See* DuPont Opening II-B-11. DuPont has protocols for loading sulfuric acid to tank trucks at Red Lion,¹¹⁸ and it has the capacity to load as many as six sulfuric acid trucks during normal business hours each day.¹¹⁹

DuPont’s claim that it does not have sufficient truck loading capacity at Red Lion to accommodate more truck shipments is meritless. The total railcar volume on the eighteen Reybold lanes was merely { } carloads between January 2008 and June 2012. *See* NS Reply Ex. II-B-5. Even assuming a substantial increase in volume to { } carloads per year would require only { } trucks, just { } per business day. Given the fast 1.5 hour truck loading time and its dedicated truck loading spot, DuPont can hardly claim that it is incapable of transporting the issue volumes by truck. As demonstrated below, direct truck transportation of sulfuric acid from Reybold is an effective competitive option for DuPont to serve customers east of the Mississippi.

DuPont’s competitive options for transportation from Reybold are not limited to direct truck shipments, however. It alternatively could truck sulfuric acid the short distance to the CSX

¹¹⁷ Eight lanes—A23, B127, B129, B130, B134, B136, B141, and B142—are subject to competition from both direct truck and rail-truck transload alternatives.

¹¹⁸ *See* NS Reply WP “Red Lion Sulfuric Acid Loading Procedures.pdf” (DD000334—341).

¹¹⁹ DuPont admits that it has a truck loading spot at Red Lion dedicated to outbound sulfuric acid and that it typically takes 1.5 hours to load a sulfuric acid truck at Reybold. *See* DuPont Opening II-B-15; NS Reply WPs “Barge and Truck Spots.xls” and “Truck Loading-Unloading.xls.” Thus, during a nine-hour day from 8:00 AM to 5:00 PM, DuPont could expect to load up to {{ }} trucks at Red Lion.

documents produced by DuPont {{ }} in discovery show that DuPont has access to the appropriate equipment.¹⁴⁸ Indeed, {{

}} And any doubt about

Sentinel's ability to truck these commodities is conclusively dispelled by the fact that {{

DuPont has also used other carriers for anhydrous methylamine truck shipments, including {{ }}¹⁵⁰ *See id.*

DuPont also claims that it does not have sufficient truck loading capacity for anhydrous methylamines. DuPont claims that because its Belle plant has only one truck loading rack for anhydrous methylamines and dimethyl ether, DuPont can only load trucks with “the equivalent volume of a single railcar” in one day. DuPont Opening II-B-109. As a result, DuPont claims that it would be impractical to transport its entire production of anhydrous methylamines by truck instead of railcars unless DuPont were to construct a second loading rack. *See id.* The clear flaw in this analysis is that DuPont does not need the ability to completely abandon its use of rail transportation for all anhydrous methylamines in order to have a competitive trucking option on the particular lanes at issue in this case. *See supra* II-B-105 to II-B-106. In fact, DuPont does not even need to be able to convert all the volume of the issue lanes to truck for

¹⁴⁸ *See* NS Reply WP “DuPont Available Equipment.xls.”

¹⁴⁹ *See* NS Reply WP “Sentinel Charleston, WV Terminal Scope of Work.”

¹⁵⁰ DuPont admits that “nearly all of the issue customers have AHM storage tanks at their facilities,” but nonetheless hypothesizes that its customers may be using railcars for additional storage. DuPont Opening II-B-112. DuPont has provided no evidence that directly supports its hypothesis—indeed, all it points to is the fact that sometimes customers do not immediately unload railcars upon receipt. *See id.* This is plainly insufficient to meet DuPont's burden to demonstrate that its customers demand railcar shipments.

from whatever source. The DuPont “study” becomes truly ridiculous because it includes DuPont facilities that are not even served by NS. The idea that DuPont does not have effective truck competition for the issue movements because it would be impractical for it to forswear all rail transportation of sodium caustic is utter nonsense.

The issue is whether DuPont has the ability to convert a meaningful volume of the issue shipments to truck. Here, the volumes at issue are eminently truckable. The highest-volume sodium caustic lane in the case—Lane B108—averaged { } railcars per year. Converting 100% of that lane’s volume to trucking would require less than { } truck shipments per week. See NS Reply Ex. II-B-5. {{

}} And it must not be forgotten that an alternative mode does not need to accommodate 100% of the lane volume to be an effective competitive option. See *DuPont (Chlorine)*, STB Docket No. 42100, at 4. DuPont’s meaningless special study cannot obscure the truth that it could readily transport the volumes at issue by truck if it chose to.

At least eight sodium caustic lanes are subject to effective competition from truck transportation:

Lane B47 (Charleston, TN to Woodstock, TN): DuPont challenges NS’s rate for rail shipments of sodium caustic from Olin’s Charleston, TN, plant to DuPont’s Woodstock, TN facility. Alternatively, sodium caustic could be trucked over the 354-mile route from Charleston to Woodstock at a price competitive with rail service. DuPont’s contract with {{ }} provides a truck rate {{ }} the equivalent rail rate. See NS Reply Exhibit II-B-2. {{

Mobile for interchange with CN, which transports the railcars to Woodstock. Alternatively, DuPont could truck sodium caustic directly over the 348-highway-mile route between McIntosh and Woodstock. The cost of this truck transportation under the {{ }} contract is {{ }} of the cost of rail service {{

}}

Lane B107 (Natrium, WV to Belle, WV): DuPont challenges NS's Rule 11 rate for the joint CSXT-NS rail movement between PPG's Natrium facility and DuPont's Belle plant. CSXT originates shipments at Natrium, WV and interchanges with NS at Cincinnati; NS then delivers the railcars to Belle, WV. An effective competitive alternative to this two-carrier movement would be for DuPont to truck product directly from Natrium to Belle. As discussed above, Sentinel has a trucking terminal within the Belle complex, and there is another Sentinel terminal in Parkersburg, WV (just 20 miles from Natrium).¹⁵⁴ {{

}}

These {{ }} are particularly significant because the rail volumes over this route amount to just { } railcars annually. {{

}}¹⁵⁵ The costs of trucking over the short 140-mile

¹⁵⁴ See NS Reply WP "Sentinel Transportation Terminal Locations."

¹⁵⁵ DuPont suggests that the admitted "large truck volumes" at Belle are irrelevant because some of its business units are configured to receive trucks and one is configured to receive railcars. DuPont Opening II-B-61. This suggestion misses the point, which is that truck volumes are

}}¹⁵⁹ And DuPont ships DME from Belle via truck, moving {{ }} truckloads of DME from Belle between 2006 and 2010. *See* NS Reply WP “DuPont Dimethyl Ether Truck Shipments.xls.” As demonstrated below, {{

}} *See id.* {{ }} *See id.*

DuPont argues that it takes up to 4-6 hours to load a truck with DME, and therefore that truck transportation is impractical. But DuPont ignores the fact that the volumes over these lanes are relatively small—Lanes { } each average { } railcars per year, and { } has seen only { } railcar shipments since 2008. *See* NS Reply Ex. II-B-5 (volume exhibit). And even the highest volume DME lane { } averages only { } railcars a year. Converting 100% of the volume of every lane for which NS has identified a competitive option to truck transportation translates to less than { } truck shipments per year—less than { } additional truck loadings a day.¹⁶⁰ Indeed, loading just one DME truck per day would enable DuPont to convert 61% of the total lane volume to trucks. If DuPont believes that it needs more truck loading capacity for DME at Belle, then it is free to construct it. DuPont has not presented any evidence that building an additional truck loading rack would be cost-prohibitive.¹⁶¹

¹⁵⁹ *See* NS Reply WP “Sentinel Transportation Terminal Locations”; NS Reply WP “Sentinel Charleston, WV Terminal Scope of Work.”

¹⁶⁰ The average annual volume of Lanes A3, B23, B42, B89, and B120 amounts to { } railcars per year. *See* NS Reply Ex. II-B-5. According to DuPont, 4.5 trucks can transport the volume of one railcar. *See* DuPont Opening II-B-78.

¹⁶¹ {{

}}

In the five-year period between 2006 and 2010 DuPont shipped {{ }} truckloads of methylamine aqueous. *See* NS Reply WP “DuPont Methylamine Truck Shipments.xls.” Many of these methylamine shipments were trucked over long distances—DuPont shipping records show truck shipments of methylamines from Belle to {{

}}. *See id.* Most importantly, DuPont has used trucks for methylamine aqueous shipments on {{ }} of the three lanes for which Mr. Heisler identified a competitive truck alternative. *See id.*

DuPont claims that it takes{{ }} to load a truck with aqueous methylamines, and that the {{ }} truck spots at Belle for methylamine truck loading must be shared with other commodities. *See* NS Reply WPs “Barge and Truck Spots.xls” and “Truck Loading-Unloading.xls.” But even accepting all those claims as true, converting 100% of the railcar volume of every lane discussed in this section to trucks would require only { } additional truck loadings per year—less than { } *See* NS Reply Ex. II-B-5.

Like it does for other commodities, DuPont generally alleges that its customers require rail cars to store aqueous methylamine without producing hard evidence to support that fact. DuPont has not bothered to provide any statements from its customers expressing such a storage need, or showing that they objected when DuPont supplied them via truck. Instead, DuPont says that customers’ need for storage can be inferred from the fact that sometimes they did not unload railcars immediately. This is not sufficient to carry its burden. DuPont cannot demonstrate that the Board has jurisdiction over lanes that have competitively priced truck alternatives {{ }} with an unsupported hypothesis that its customers might like to use railcars for storage.

}} See NS Reply WP “DuPont Truck Requirements.” DuPont has {{ }} truck spots available to load hydrochloric acid at Louisville, KY, and there is a Sentinel terminal at Louisville that could provide trucks for this movement.¹⁷⁴

While DuPont alleges that each of the muriatic acid lanes has railcar volumes too high to be trucked, its claimed lane volumes are significantly inflated by including shipments for which DuPont does not pay the freight. See DuPont Opening II-B-36 (admitting that a third party “currently pays the freight” for most muriatic acid shipments between Louisville and Lafayette, IN, and Decatur, IN. As NS Reply Ex. II-B-5 shows, only { } railcars moved over these lanes in DuPont’s account between 2008 and the first half of 2012. This volume is well within the range that could be readily handled by trucks. And even if one accepts DuPont’s position on the lane volumes, a competitive truck option does not need to be able to handle 100% of the lane volume to constitute effective competition. See *DuPont*, STB Docket No. 42100, at 4 (“For an alternative mode to provide effective competition, it need not necessarily be ‘capable of handling substantially all or even a majority of the subject traffic.’”). Indeed, DuPont has access to an intramodal CSXT rail option that could supplement or substitute for the truck options on these lanes. See *supra* at II-B-8 to II-B-9.

Lane A18 (Louisville to Decatur, IN): DuPont challenges NS’s rate for transporting muriatic acid from the DuPont Louisville plant to ADM Corp. and Tate and Lyle in Decatur, IL. A competitive alternative to this rail movement is direct truck shipments of hydrochloric acid over the 258-mile highway route between Louisville and Decatur. DuPont’s truck contract with

¹⁷⁴ See NS Reply WPs “Barge and Truck Spots” and “Sentinel Transportation Terminal Locations.”