

EXPEDITED CONSIDERATION REQUESTED

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

ENTERED
Office of Proceedings
June 10, 2016
Part of
Public Record

C. L. CONSULTING AND MANAGEMENT)
CORP. – PETITION FOR DECLARATORY)
ORDER – REASONABLENESS OF)
DEMURRAGE CHARGES)

DOCKET NO. 36042

PETITION FOR DECLARATORY ORDER

1. Pursuant to 4 U.S.C. § 554(c) and 49 U.S.C. § 721(a), C. L. Consulting and Management Corp. (CLC) hereby petitions for an order declaring that collection of certain rail demurrage charges by Norfolk Southern Railway Company (NSR) constitutes an unreasonable practice related to NSR’s transportation and service in violation of 49 U.S.C. § 10702(2).¹

The Parties

2. Petitioner, CLC, is a re-seller of liquid asphalt cement (hereinafter “asphalt”) that is used as a road pavement material. Verified Statement, Brandon C. Rose at ¶ 2. (V.S. Rose).² CLC purchases this material, which is a by-product of the petroleum refining industry, from refiners, such as Marathon

¹ 49 U.S.C. § 10702 provides as follows: “A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable ... (2) rules and practices on matters related to that transportation or service.”

² Attachment 1 hereto.

FILED
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Petroleum Company (Marathon), WRB Refinery, Inc. (WRB), a subsidiary of Phillips 66, and Flint Hills Resources, LP (Flint Hills), that are located throughout the United States. CLC has and maintains no location or facility to receive, handle and unload inbound rail cars containing asphalt. See V.S. Rose, at ¶ 2.

3. Since at least early 2012, CLC, through its affiliate, NJ Asphalt Terminals, LLC, has had a contractual relationship with New York Terminals, LLC (NYT), which receives and unloads all rail cars containing this asphalt that are delivered to it by either NSR or CSX Transportation (CSXT). NYT maintains a liquid storage terminal and rail receiving facility located at 534 Front Street, Elizabeth, NJ. NYT's facility has multiple rail spots capable of unloading asphalt from inbound rail cars. At no time does CLC play any role in the unloading process. It is only after NYT removes the asphalt from the rail tank cars that CLC acquires any control and possession of the material. V.S. Rose at ¶ 4 – ¶6.

4. NSR is a common carrier by rail that provides rail service to and from NYT's facility in Elizabeth, NJ. NSR's demurrage and storage charges at issue herein were published in NSR Freight Tariff NS 6004-C, which has been superseded by NS 6004-D. According to Item 1015, Storage of Explosives, Hazardous Materials, Substances or Waste, "This item applies to all cars held on NS tracks ... containing ... [h]azardous materials ... requiring the use of a four-digit identification number on shipping documents, placards or panels, as named in Part 11 Section 172.101." Item 1012 imposes an additional \$100.00

daily charge for such materials. In addition, a \$60 per day charge is assessed for non-hazardous materials pursuant to Item 400 of NSR's tariff.³

Background

5. This matter arises in the context of two pending cases before the United States District Court for the District of New Jersey. The first case is entitled *Norfolk Southern Railway Company v. New York Terminals, LLC and NY Terminals II, LLC*, Civil Action No. 2-14-CV-07664-WJM-MF (NYT Case). In that action, CLC's affiliate, NJ Asphalt, LLC has been named as a third-party defendant by NYT. In the second case, *Norfolk Southern Railway Company v. C. L. Consulting and Management Corp.*, Case No. 2:15-CV-02548-JMV-JBC (CLC Case), NSR is seeking to collect from CLC demurrage charges that were originally assessed against NYT. The demurrage charges alleged in those cases amount to \$579,320.00. Approximately sixty-two percent (62%) of that amount arises from charges of alleged hazardous materials storage on NSR tracks.

6. At the commencement of the CLC case, CLC moved before the District Court to refer that matter to this Board pursuant to the primary jurisdiction doctrine for the determination that various practices NSR had engaged in constituted unreasonable practices under 49 U.S.C. § 10702. By Order, dated January 11, 2016, the Magistrate Judge denied CLC's request.

³ Copies of the cited NSR tariff provisions are attached as Attachment B to V.S. Brandon Rose.

7. The demurrage claims in both the NYT Case and the later CLC Case involve tank cars containing liquid asphalt cement that were transported by NSR and released to NYT between October of 2013 and May of 2014. Both the movement and the unloading of many of the rail cars for which demurrage is sought were adversely affected by the severe, extremely cold winter weather that created gridlock throughout the entire North American rail system for several months during the 2013/2014 winter. V.S. Rose at ¶ 18. In fact, NSR's demurrage bills show that, during January and February of 2014, cars were constructively placed at the joint CSXT/NSR yard at Oak Island, New Jersey, for up to 51 days.⁴ As NYT fully explained to NSR and CSXT, the harsh weather severely impacted NYT's ability to receive and unload CLC's shipments of materials from the railcars throughout that winter. While CSXT granted relief from demurrage that resulted from the extreme cold that substantially crippled NYT's ability to switch and unload the railcars, NSR has steadfastly and unreasonably refused to grant similar relief.

Material Involved

8. As noted in ¶ 2 above, CLC ordered the asphalt from unrelated refiner-manufacturers. CLC Exhibit 1, attached hereto, reflects that WRB shipments originated in Wood River, Illinois, and traveled for as many as 20 days before being constructively placed on NSR's tracks at NSR's Oak Island

⁴ See CLC Exhibit 1, which sets out the date of shipment which coincides with the date of the bill of lading, the tank car number, the date the tank car was constructively placed, the date that the tank car was placed at NYT's facility and the total days. All information in CLC Exhibit 1 was provided by NSR.

rail classification yard in Elizabeth, New Jersey. Flint Hill shipments originated at Roseport, Minnesota and were initially transported by Canadian Pacific Railroad before being interchanged with NSR. On average, these shipments were in transit approximately 20 days before being constructively placed on NSR's tracks. Shipments at issue herein that were received from Marathon originated at Canton, Ohio, and traveled, on average, at least seven days before being constructively placed on the same NSR tracks.

9. As explained in the attached Report of Clement Mesavage (Mesavage Report),⁵ the type of asphalt that is involved in the District Court cases (and which is the focus of this petition) is used as a road pavement material and, generally, is **not** a hazardous material that is subject to regulation by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the U.S. Department of Transportation (DOT). In order to facilitate loading into tank cars, this type of asphalt is intentionally heated to more than 212° F at the various refineries prior to being pumped into railcars and tendered to the originating rail carrier. So long as the asphalt retains a temperature of more than 212° F, it is deemed to be a miscellaneous hazardous material (Class 9), subject to the definition of an "Elevated Temperature Liquid, N.O.S. (Asphalt)" in 49 C.F.R. § 171.8, and marked with UN number 3257. Because of the elevated temperature at origin, a marking must be displayed on the packaging itself (the packaging being the rail tank car), which is stenciled on the car and

⁵ Attachment 2 hereto.

reflects the word “HOT” for the elevated temperature material. In addition, the marking may be displayed “in black lettering on a plain white square-on-point configuration having the same outside dimensions as a placard.” 49 C.F.R. § 172.325. Mesavage Report at pp. 4-5. As the Mesavage Report notes, rather than using the term “placard-like configuration,” the Report used the term “placard” as an abbreviation. (*Id.* at 5). That same abbreviation will be used herein.

10. It is important to note that the permanent “HOT” stenciling is not taken off the car after the car is pumped free of asphalt nor when the car has some residual asphalt in it after pump out. Furthermore, the “placard” affixed to the rail car with the UN #3257 designation typically remains on the car when the car is empty or holding only residual. This is true because the rail tank cars are typically in dedicated service for asphalt. Since the HOT label remains stenciled on the car, the placard may or may not be either removed or “turned backwards” after emptying or while in residual status. However, it is common to see it remain on cars placed in dedicated service for asphalt movements because the HazMat rules of PHMSA regarding elevated temperature shipments are confusing. Mesavage Report at Section 8, pp. 7-8.

11. As the Mesavage Report has also explained, based on data provided by GATX engineers who analyzed the correlation of “Commodity Temperature” and “Transit Time,” the asphalt’s temperature during transportation falls well below 212° F. Because the asphalt’s temperature of over 212° F when it is loaded at origin is “the sole factor that caused it to fit with the definition of an

‘elevated temperature’ material and be subject to the PHMSA regulation,” the loss of temperature to a point below 212° F causes it to cease being treated as a hazardous material. Mesavage Report at Sections 5 and 8 (pp. 5-8). As reflected in the Memo and Study authored by Gabe Buzas, Sr. Engineer-Mechanical Analyst, Railcar Engineer, GATX Rail, ⁶ depending on the ambient temperature surrounding the tank car, within 72 hours after being loaded in a tank car, the temperature of the loaded material will drop below 212° F. Moreover, as the temperature of the asphalt drops, the asphalt loses most of its liquidity and no longer freely flows. Indeed, by the times that all of the tank cars reached New Jersey and were constructively placed on NSR’s tracks, the temperature of the asphalt during winter would have dropped well below 100° F. In fact, in all instances the asphalt would have cooled to the point that NYT was required to reheat it in order to unload the tank car.

12. Because on average it took at least 9 days (or 216 hours) for a tank car filled with the material to reach Elizabeth, NJ, after being loaded at Marathon’s facility at Canton, Ohio, the closest point of origination, the asphalt would have cooled to below 114° F within 72 hours if the ambient temperature was 55° F. As shown in the GATX study, in mid-winter when ambient temperatures are as low as 25° F, the material would have cooled to around 90° F within 72 hours. Even in the summer, when the ambient temperature was 95° F, the material would have cooled to 143° F within 72 hours. In all

⁶ CLC Exhibit 2.

instances, after the material had cooled to under 212° F, it would no longer be an “elevated temperature material” within the definition set forth at 49 C.F.R. § 171.8 in PHMSA’s Hazardous Materials Regulations. Because the point at which the material ceased to be a hazardous material occurred days before the tank car in which it was loaded was constructively placed, it is an unreasonable practice for NSR to assess demurrage charges based on the erroneous assumption that the material was hazardous.

13. By the time that NYT was apparently notified of a car” arrival and constructive placement on NSR’s track in its railyard, the material no longer satisfied the definition of an “elevated temperature material.” Therefore, at all times between the constructive placement and actual delivery to NYT for unloading, the cooled asphalt would not have constituted a hazardous material subject to regulation by DOT. Because the cooled asphalt was not a hazardous material it did not require the use of a 4-digit identification number on shipping documents, placards or panels when held on NSR tracks. Nor were such items required when the tank cars were moved from NSR’s Oak Island facility to NYT’s facility and returned to NSR. Therefore, Item 1015 of NSR’s Freight Tariff NS 60004-C, which applies to “cars held on NS[R] tracks” that contain hazardous materials and substances, does not apply. Hence, even if NSR may be entitled to collect the \$60 demurrage or storage charge, its attempt to collect additional demurrage of \$100 per day on the ground that the material was hazardous when stored on NSR’s tracks cannot withstand scrutiny and constitutes an unreasonable practice.

14. As the Mesavage Report has also explained, while the asphalt was stored in the tank cars at NSR's facility at Oak Island, it presented no hazardous dangers to NSR's facilities or any of its employees. Mesavage Report at p. 6 and n. 12. Were it otherwise, PHMSA would define asphalt that is less than 212° F as a hazardous material, which it does not.

Argument

Issues regarding the reasonableness of NSR's rates and practices are subject to the Board's exclusive jurisdiction pursuant to 49 U.S.C. 10501(b), which concerns the reasonableness of rates, rules and practices of rail carriers. Because only the Board has jurisdiction to determine whether a practice is unreasonable, a court is not empowered to determine the reasonableness of rates and practices in force through an established tariff and rules set forth therein. As the Supreme Court recognized in *United States v. Western Pacific Railroad Co.*, 352 U.S. 59, 63 (1956), questions "of tariff construction, as well as that of the reasonableness of the tariff as applied" are within the exclusive primary jurisdiction of the Board. Because the inquiry here is essentially one of fact and of discretion in technical matters, the Board's interpretation of the provisions of NSR's tariff may affect other rail carrier's tariffs; and the District Courts hearing the NYT Case and the CLC Case would be guided by the Board's determination herein, the Board should expeditiously issue a declaratory order to resolve the issues raised in this Petition involving unreasonable practices, which in part, involve the proper interpretation of NSR's tariff.

CLC submits that NSR has engaged in unreasonable practices through the following actions:

- NSR has engaged in an unreasonable practice by assessing demurrage charges based on the “paper fiction” that the material in the subject tank cars was a hazardous material when, in all instances, at the time the tank car was constructively placed on NSR’s track for storage, the asphalt no longer fit within the definition of an elevated temperature, or hazardous material. Because the hazardous material charge set out in Item 1012 of NSR’s Demurrage Rules and Charges and Storage Rules and Charges applies only to *hazardous materials* “held on NS[R] tracks,”⁷ by definition those rules and charges cannot be applied to a material that is not a hazardous material. See Mesavage Report at Section 5.
- Based on its stated reason that CLC was not its customer, NSR, in violation of Item 300, Notification To Customers, published in Tariff NS 6004-C, Rules and Other Governing Provisions, unreasonably refused to provide CLC with any notification of constructive or actual placement of any cars held on NS tracks due to any condition attributable to Consignee. V.S. Rose at ¶ 7.

⁷ Item 2015.

- When CLC, well after the fact, learned of demurrage charges that NSR had assessed against NYT and attempted to obtain information regarding such charges, NSR unreasonably continued to refuse to provide CLC with information based on NSR's position that CLC was *not* its customer. V.S. Rose at ¶ 7.
- NSR engaged in an unreasonable practice by refusing to adhere to the literal wording of Item 400 of its Demurrage Tariff as it pertains to the elimination of demurrage/storage charges due to severe weather. Because NSR was well aware of the adverse impact on NYT's facilities caused by the severe cold that blanketed the Northeastern portion of the United States during large segments of the winter of 2013/2014, and that crippled NYT's operations as well as railroad operations throughout the United States, it is an unreasonable practice for NSR to ignore the plain meaning of "elimination" in order to exact demurrage charges from either NYT or CLC.
- NSR engaged in an unreasonable practice when, contrary to the terms and conditions of Item 400 of its tariff, it refused to grant relief to NYT in the form of additional credits to offset the cold temperature that disrupted NYT's operations and increased the time needed to heat the asphalt to a high enough temperature to be pumped out of the tank car. That, in turn, has impacted CLC,

which is being forced to defend itself against NYT's claims in the pending NYT Case.

- NSR engaged in an unreasonable practice when, contrary to the terms and conditions of its tariff, after it refused to grant relief to NYT, months later it modified its Freight Bills to make it appear that CLC was its customer, rather than NYT. Due to the absence of any prior notice to CLC of constructive and actual placement, NSR's belated attempt to exact payment from CLC unreasonably prevented CLC from seeking relief pursuant to the terms of NSR's tariff. *See V.S. Rose at ¶ 19.*
- NSR engaged in an unreasonable practice when it failed to advise CLC that it would hold CLC responsible for demurrage charges attributable to weather interference that disrupted the operations of NYT, which was solely responsible for unloading all of the tank cars involved in this matter. *See V.S. Rose at ¶ 19.*

REQUEST FOR EXPEDITED CONSIDERATION

CLC respectfully requests that the Board issue an order finding that it has jurisdiction to resolve the issue of whether NSR has engaged in unreasonable practices in attempting to collect demurrage charges from CLC based on the claim that asphalt, when stored in tank cars on NSR tracks, was a hazardous material, despite the fact that the temperature of the asphalt at all times was lower than 212° F. It is respectfully submitted that the expedited resolution of this issue by the Board will be in the best interests of all the

involved parties and will aid the Court in its adjudication of the issues involved in the pending litigation in the aforementioned civil actions.

To facilitate expedited consideration, CLC has served a copy of this Petition for Declaratory Order on the following:

John Scheib, General Counsel
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

Craig Royston, General Manager
New York Terminals, LLC and NY Terminals II, LLC
534 S. Front St.
Elizabeth, NJ 07202

PROPOSED PROCEDURAL SCHEDULE

In consideration of CLC's request for expedited consideration, CLC respectfully requests that the Board adopt the following schedule for submission of comments in this proceeding.

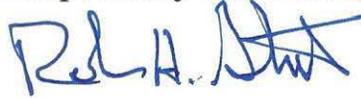
Day 0	STB order instituting a declaratory proceeding
Day 30	Reply Comments Due
Day 45	Rebuttal Comments Due

CONCLUSION

For all the foregoing reasons, C.L. Consulting and Management Corp. respectfully requests the Board issue and order declaring that NSR has engaged in various unreasonable practices in violation of its tariffs. In particular, the Board is requested to declare that NSR engaged in an

unreasonable practice by attempting to collect demurrage charges of \$100 per day based on the erroneous claim that the tank cars contained a hazardous material. Because asphalt is not deemed to be a hazardous material when its temperature is lower than 212° F; and because the temperature of the asphalt in all of the involved tank cars was lower than 212° F when placed on NSR's tracks located at NSR's Oak Island rail classification yard in Elizabeth, New Jersey, the asphalt, by definition, was non-hazardous. In addition, the Board should find that NSR engaged in other unreasonable practices as described in the attached documents.

Respectfully submitted,



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Dated: June 10, 2016

LIST OF EXHIBITS AND ATTACHMENTS

Exhibit 1: List of Tank Cars reflecting date of shipment and bill of lading; date of Constructive Placement; date of Actual Placemen; Days Charged based on NSR bills of lading and invoices.

Exhibit 2: Memo and Study authored by Gabe Buzas, Sr. Engineer-Mechanical Analyst, Railcar Engineer, GATX Rail

Attachment 1 Verified Statement Brandon C. Rose

Attachment 2 Report of Clement Mesavage

CLC EXHIBIT NO. 1
TO
FD NO. 36042
PETITION FOR DECLARATORY ORDER

LIST OF TANK CARS REFLECTING DATE OF SHIPMENT AND BILL OF LADING; DATE OF CONSTRUCTIVE PLACEMENT; DATE OF ACTUAL PLACEMEN; DAYS CHARGED BASED ON NSR BILLS OF LADING AND INVOICES.

BOL Date	Vendor	BOL #	Car ID#	Constr Placed	Placed at NYT	Date Released	Days Charged
9/16/2013	Marathon	30693	UTLX 649483	9/24/2013	10/3/2013	10/9/2013	6
9/16/2013	Marathon	30694	UTLX067581	9/24/2013	10/3/2013	10/9/2013	6
9/16/2013	Marathon	30695	UTLX 660093	9/24/2013	10/3/2013	10/9/2013	6
9/16/2013	Marathon	30696	SHPX 209214	9/24/2013	10/3/2013		6
9/16/2013	Phillips 66	840208537	UTLX 646381	9/25/2013	10/8/2013		9
9/16/2013	Phillips 66	840208535	UTLX 646351	9/25/2013	10/8/2013	10/31/2013	4
9/16/2013	Phillips 66	840208534	UTLX 645239	9/25/2013	10/8/2013		4
9/16/2013	FHR	1742205	FHRX 260095	10/1/2013	10/15/2013		11
9/16/2013	FHR	1742205	FHRX 260124	10/1/2013	10/17/2013		13
9/16/2013	FHR	1742205	GATX 063734	10/1/2013	10/8/2013		4
9/16/2013	FHR	1742205	GATX 211066	10/1/2013	10/17/2013		13
9/16/2013	FHR	1742205	NATX 077110	10/1/2013	10/15/2013		11
9/16/2013	FHR	1742205	TILX 256601	10/1/2013	10/17/2013		13
9/16/2013	FHR	1742405	GATX 211057	10/1/2013	10/15/2013		11
9/16/2013	FHR	1742405	GATX 211089	10/1/2013	10/15/2013		11
9/16/2013	FHR	1742405	NATX 076121	10/1/2013	10/8/2013		4
9/16/2013	FHR	1742405	TCBX 230038	10/1/2013	10/17/2013		13
9/19/2013	Phillips 66	840242685	UTLX 661032	9/30/2013	10/8/2013		5
9/19/2013	Phillips 66	840242684	UTLX 644034	9/30/2013	10/8/2013		5
9/19/2013	Phillips 66	840242683	UTLX 645224	9/30/2013	10/8/2013		5
9/19/2013	Phillips 66	840242682	UTLX 661071	9/30/2013	10/8/2013		5
9/19/2013	Phillips 66	840242681	UTLX 663829	9/30/2013	10/8/2013		5
9/23/2013	Marathon	30789	GATX213116	10/3/2013	10/18/2013		12
9/23/2013	Marathon	30790	UTLX 662470	10/3/2013	10/18/2013		12
9/23/2013	Marathon	30783	UTLX 645577	10/2/2013	10/18/2013	10/31/2013	19
9/24/2013	Marathon	30802	GATX 204935	10/3/2013	10/18/2013	10/31/2013	19
9/24/2013	Marathon	30803	UTLX 645511	10/3/2013	10/18/2013		12
9/20/2013	FHR	1749605	FHRX 260075	10/7/2013	10/25/2013	10/31/2013	15
9/20/2013	FHR	1749605	FHRX 260148	10/4/2013	11/8/2013		
9/20/2013	FHR	1749605	GATX 089104	10/7/2013	10/22/2013		12
9/20/2013	FHR	1749605	GATX 212364	10/10/2013	11/8/2013		26
9/20/2013	FHR	1749305	FHRX 260077	10/7/2013	10/22/2013		12
9/20/2013	FHR	1749305	GATX 066481	10/7/2013	10/22/2013		12

BOL Date	Vendor	BOL #	Car ID#	Constr Placed	Placed at NYT	Date Released	Days Charged
9/20/2013	FHR	1749305	GATX 067828	10/7/2013	10/22/2013		12
9/20/2013	FHR	1749305	GATX 211044	10/10/2013	11/8/2013		26
9/20/2013	FHR	1749305	GATX 211059	10/10/2013	10/25/2013		12
9/20/2013	FHR	1749305	TILX 256612	10/10/2013	10/25/2013	10/31/2013	12
10/8/2013	Phillips 66	840457524	GATX 063691	10/16/2013	10/30/2013		10
10/8/2013	Phillips 66	840457523	UTLX 663868	10/16/2013	10/30/2013		10
10/8/2013	Phillips 66	840457522	UTLX 663863	10/16/2013	10/30/2013		10
10/8/2013	Phillips 66	840457518	UTLX 663847	10/16/2013	10/30/2013		
10/8/2013	Phillips 66	840457513	UTLX 661019	10/17/2013	11/1/2013		12
10/8/2013	Phillips 66	840457511	UTLX 661049	10/17/2013	11/1/2013		12
10/8/2013	Phillips 66	840457510	UTLX 643973	10/17/2013	11/1/2013		12
10/8/2013	Phillips 66	840457509	UTLX 644032	10/16/2013	11/1/2013		12
10/17/2013	Marathon	031177CN	GATX 63817	11/4/2013	11/26/2013	12/9/2013	19
10/17/2013	Marathon	031168CN	UTLX 67326	10/25/2013	11/26/2013	12/9/2013	29
10/17/2013	Marathon	031179CN	UTLX 661804	10/31/2013	11/26/2013	12/10/2013	23
10/17/2013	Marathon	031176CN	UTLX 650998	10/31/2013	11/26/2013	12/10/2013	23
10/21/2013	Phillips 66	840595196	UTLX 646385	10/31/2013	11/19/2013	12/9/2013	10
10/22/2013	Marathon	031240CN	UTLX 067581	10/31/2013	12/4/2013	12/18/2013	29
10/22/2013	Marathon	031239CN	UTLX 660093	10/31/2013	12/4/2013	12/18/2013	29
10/25/2013	Phillips 66	840637867	UTLX 663885	11/4/2013	11/19/2013	12/10/2013	12
10/25/2013	Phillips 66	840637868	UTLX 663896	11/4/2013	12/4/2013	12/13/2013	25
10/25/2013	Phillips 66	840637866	UTLX 645215	11/4/2013	11/19/2013	12/27/2013	12
10/29/2013	Marathon	031338CN	UTLX 644677	11/5/2013	12/12/2013	12/22/2013	32
10/29/2013	Marathon	031339CN	GATX 213078	11/11/2013	12/26/2013	1/7/2014	38
11/5/2013	Phillips 66	840793831	UTLX 661068	11/14/2013	11/26/2013	12/13/2013	9
11/5/2013	Phillips 66	840793811	GATX 23143	11/14/2013	12/12/2013	12/22/2013	23
11/5/2013	Phillips 66	840793386	UTLX 643972	11/14/2013	12/12/2013	12/22/2013	23
11/5/2013	Phillips 66	840793398	UTLX 663860	11/14/2013	12/12/2013	12/27/2013	23
11/5/2013	Phillips 66	840793820	UTLX 645241	11/14/2013	1/3/2013	1/16/2014	35
11/7/2013	Marathon	031490CN	GATX 63805	11/20/2013	12/27/2013	12/31/2013	30
11/7/2013	Marathon	031491CN	UTLX 664655	11/20/2013	12/26/2013	1/9/2014	29
11/7/2013	Marathon	031492CN	GATX 213064	11/20/2013	12/30/2013	1/15/2014	34
11/7/2013	Marathon	031493CN	GATX 67216	11/20/2013	12/30/2013	1/16/2014	34

BOL Date	Vendor	BOL #	Car ID#	Constr Placed	Placed at NYT	Date Released	
11/13/2013	Phillips 66	840886112	UTLX 067578	11/25/2013	12/27/2013	12/31/2013	25
11/13/2013	Phillips 66	840886111	UTLX 070670	11/25/2013	12/27/2013	12/31/2013	25
11/13/2013	Phillips 66	840886113	UTLX 663823	11/21/2013	12/30/2013	1/15/2014	33
11/20/2013	Marathon	031686CN	GATX 67222	12/2/2013	12/27/2013	12/30/2013	20
11/20/2013	Marathon	031687CN	UTLX 642755	12/2/2013	1/15/2013	1/19/2014	37
11/20/2013	Marathon	031684CN	UTLX 642395	12/5/2013	1/27/2014	2/3/2014	44
11/20/2013	Marathon	031685CN	GATX 68693	12/2/2013	1/21/2014	2/8/2014	43
11/21/2013	Marathon	031711CN	GATX 213116	12/5/2013	12/30/2013	1/8/2014	21
11/21/2013	Marathon	031713CN	GATX 71348	12/5/2013	1/15/2013	1/19/2014	34
11/21/2013	Marathon	031712CN	GATX 63813	12/5/2013	1/27/2014	2/6/2014	44
11/21/2013	Marathon	031710CN	GATX 204935	12/5/2013	1/27/2014	2/28/2014	46
11/22/2013	Phillips 66	841012029	UTLX 663741	12/5/2013	12/26/2013	1/7/2014	
11/22/2013	Phillips 66	841012027	UTLX 663819	12/5/2013	1/15/2013	1/19/2014	
11/22/2013	Phillips 66	841012026	GATX 056592	12/5/2013	1/21/2014	1/27/2014	
11/22/2013	Phillips 66	841012028	GATX 003192	12/5/2013	2/19/2014	2/24/2014	
11/23/2013	Marathon	031741CN	GATX 213074	12/5/2013	1/15/2013	1/19/2014	34
11/23/2013	Marathon	031742CN	UTLX 662109	12/5/2013	1/27/2014	2/6/2014	44
11/23/2013	Marathon	031743CN	GATX 71312	12/5/2013	1/29/2014	2/24/2014	48
11/27/2013	Phillips 66	841088632	UTLX 646381	12/9/2013	1/21/2014	1/27/2014	36
11/27/2013	Phillips 66	841088633	UTLX 646359	12/9/2013	1/21/2014	1/27/2014	36
11/27/2013	Phillips 66	841088634	UTLX 644718	12/11/2013	2/18/2014	2/24/2014	
12/17/2013	FHR	1847705	FHRX 260056	1/3/2013	2/24/2014	2/28/2014	43
12/17/2013	FHR	1848405	PTLX 223731	1/3/2013	2/24/2014	3/2/2014	43
12/17/2013	FHR	1848405	FHRX 260096	1/3/2013	2/28/2014	3/7/2014	49
12/17/2013	FHR	1848405	GATX 211061	1/3/2013	2/28/2014	3/7/2014	49
12/17/2013	FHR	1848405	GATX 211041	1/3/2013	3/5/2014	3/22/2014	50
12/18/2013	FHR	1850905	FHRX 260054	1/3/2013	2/18/2014	2/24/2014	37
12/18/2013	FHR	1850905	FHRX 260045	1/3/2013	2/24/2014	3/1/2014	43
12/18/2013	FHR	1850705	GATX 066768	1/3/2013	2/28/2014	3/7/2014	49
12/18/2013	FHR	1850905	GATX 211047	1/3/2013	3/5/2014	3/13/2014	50
12/18/2013	FHR	1850705	GATX 089074	1/3/2013	3/5/2014	3/15/2014	50
12/26/2013	FHR	1859405	GATX 060846	1/15/2014	2/28/2014	3/10/2014	49
12/26/2013	FHR	1859405	TILX 256608	1/15/2014	3/5/2014	3/12/2014	45

BOL Date	Vendor	BOL #	Car ID#	Constr Placed	Placed at NYT	Date Released	Days Charged
12/26/2013	FHR	1859405	TCBX 230053	1/15/2014	3/5/2014	3/12/2014	45
12/26/2013	FHR	1859405	TILX 256599	1/15/2014	3/5/2014	3/15/2014	41
12/26/2013	FHR	1859405	GATX 212378	1/15/2014	3/5/2014	3/15/2014	45
12/26/2013	FHR	1859405	TILX 256604	1/15/2014	3/5/2014	3/15/2014	41
12/26/2013	FHR	1859405	FHRX 260032	1/28/2014	3/14/2014	3/21/2014	41
12/26/2013	FHR	1859405	GATX 011474	1/27/2014	3/21/2014	4/8/2014	49
12/27/2013	FHR	1860105	NATX 050500	1/17/2014	3/14/2014	3/20/2014	49
12/30/2013	Marathon	032319CN	GATX 213062	1/15/2014	1/29/2014	2/16/2014	11
12/30/2013	Marathon	032320CN	GATX 213094	1/15/2014	1/29/2014	2/16/2014	11
12/30/2013	FHR	1862705	GATX 211035	1/22/2014	3/14/2014	3/20/2014	47
12/31/2013	Marathon	032322CN	UTLX 649518	1/15/2014	1/29/2014	2/16/2014	11
12/31/2013	Marathon	032323CN	UTLX 645577	1/15/2014	1/30/2014	2/16/2014	11
1/20/2014	FHR	6527963638	GATX 212374	2/20/2014	3/14/2014	3/21/2014	19
1/20/2014	FHR	6527963638	FHRX 260147	2/20/2014	3/14/2014	3/22/2014	19
1/20/2014	FHR	6527963638	GATX 212375	2/20/2014	3/21/2014	3/29/2014	26
1/20/2014	FHR	6527963638	PTLX 223808	2/20/2014	3/19/2014	3/30/2014	24
1/20/2014	FHR	6527963638	GATX 70474	2/20/2014	3/19/2014	4/6/2014	24
1/22/2014	FHR	6536094137	GATX 89095	2/10/2014	3/14/2014	3/20/2014	28
1/24/2014	FHR	6540293360	TILX 256592	2/20/2014	3/19/2014	3/23/2014	24
1/24/2014	FHR	6540293360	GATX 211027	2/20/2014	3/21/2014	3/28/2014	26
1/24/2014	FHR	6540293360	ACFX 087901	2/20/2014	3/21/2014	3/30/2014	26
1/24/2014	FHR	6540293360	FHRX 260074	2/20/2014	3/21/2014	3/30/2014	26
1/28/2014	FHR	6545990315	FHRX 260039	2/20/2014	3/14/2014	3/22/2014	19
1/28/2014	FHR	6545990315	FHRX 260036	2/20/2014	3/19/2014	3/24/2014	24
1/28/2014	FHR	6545990315	GATX 211059	2/20/2014	3/21/2014	3/29/2014	26
1/28/2014	FHR	6545990315	GATX 211066	2/20/2014	3/26/2014	4/6/2014	31
2/3/2014	FHR	6555928864	GATX 211069	2/21/2014	3/28/2014	4/2/2014	32
2/3/2014	FHR	6555928864	GATX 089098	2/21/2014	3/28/2014	4/3/2014	32
2/3/2014	FHR	6555928864	GATX 211044	2/21/2014	3/28/2014	4/4/2014	32
2/3/2014	FHR	6555928864	GATX 060869	2/21/2014	3/26/2014	4/8/2014	30
2/3/2014	FHR	6555928864	FHRX 260080	3/5/2014	4/1/2014	4/9/2014	24
2/6/2014	FHR	6561094372	FHRX 260116	2/28/2014	3/28/2014	4/2/2014	25
2/11/2014	FHR	6588926161	GATX 69958	3/3/2014	4/1/2014	4/16/2014	26

BOL Date	Vendor	BOL #	Car ID#	Constr Placed	Placed at NYT	Date Released	Days Charged
2/13/2014	FHR	6572791446	GATX 64535	3/5/2014	3/21/2014	3/29/2014	13
2/13/2014	FHR	6572791446	FHRX 260120	3/5/2014	4/1/2014	4/8/2014	24
2/13/2014	FHR	6572791446	FHRX 260156	3/5/2014	4/1/2014	4/15/2014	24
2/13/2014	FHR	6572791446	GATX 2970	3/5/2014	4/1/2014	4/15/2014	24
2/19/2014	Marathon	033124CN	GATX 069655	3/3/2014	4/1/2014	4/8/2014	26
2/19/2014	Marathon	033125CN	GATX 063812	3/3/2014	4/1/2014	4/16/2014	26
2/19/2014	Marathon	033126CN	GATX 070309	3/3/2014	4/1/2014	4/17/2014	26
2/19/2014	Marathon	033127CN	UTLX 649447	3/12/2014	4/10/2014	4/20/2014	26
3/3/2014	Marathon	033268CN	UTLX 668455	3/14/2014	3/21/2014	3/29/2014	4
3/3/2014	Marathon	033276CN	GATX 063813	3/14/2014	4/1/2014	4/9/2014	15
3/3/2014	Marathon	033266CN	GATX 063798	3/14/2014	4/4/2014	4/14/2014	18
3/3/2014	Marathon	033265CN	UTLX 662109	3/14/2014	4/4/2014	4/14/2014	18
3/3/2014	Marathon	033267CN	UTLX 642405	3/14/2014	4/4/2014	4/17/2014	18
3/3/2014	Marathon	033275CN	GATX 204907	3/14/2014	4/10/2014	4/23/2014	24
3/3/2014	Marathon	033273CN	GATX 071313	3/14/2014	4/10/2014	4/23/2014	24
3/3/2014	Marathon	033274CN	GATX 213157	3/14/2014	4/10/2014	4/23/2014	24
3/4/2014	Marathon	033279CN	SHPX 209219	3/14/2014	4/10/2014	4/21/2014	24
3/4/2014	Marathon	033280CN	SHPX 209215	3/14/2014	4/10/2014	4/21/2014	24
3/4/2014	Marathon	033281CN	SHPX 209214	3/14/2014	4/10/2014	4/21/2014	24
3/4/2014	Marathon	033282CN	GATX 067207	3/14/2014	4/10/2014	4/23/2014	24

CLC EXHIBIT NO. 2
TO
FD NO. 36042
PETITION FOR DECLARATORY ORDER

Memo and Study authored by Gabe Buzas, Sr. Engineer-Mechanical Analyst,
Railcar Engineer, GATX Rail



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MEMO

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TO Doug Deaver
FROM Gabe Buzas
DATE April 28, 2016
SUBJECT Heat Loss Chart

I have completed the heat loss calculations that you requested. I used information for a sample tank car GATX-056572 hauling Asphalt. I ran the analysis with 4" glass wool blanket insulation considering loading temperatures of 325 F with ambient temperatures 25 F, 35 F, 45 F, 55 F, 65F, 75F, 85F, and 95F considering a 30 day transit. The results are summarized in the heat loss curve that are attached to this memo.

Key Mechanical details used for the analysis are summarized in Table 1.

Car Number/Type	GATX-056572
Tank Diameter (in)	110.25
Distance BBL (in)	537.625
Commodity Volume (gal) – assuming 2% outage	23,079
Insulation Type - Glass wool blanket (GWB)	GWB
Insulation Thickness (in) - glass wool blanket	4
U-value - Tank Attachments (Btu / Lb – F) – glass wool blanket	187.18
Thermal Conductivity of insulation (Btu-in/hr-ft ² -F) – GWB	0.26

Table 1

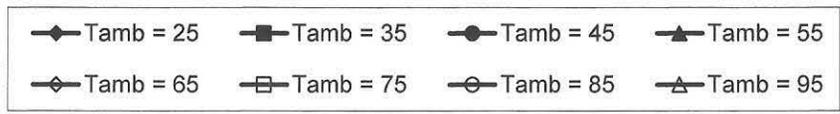
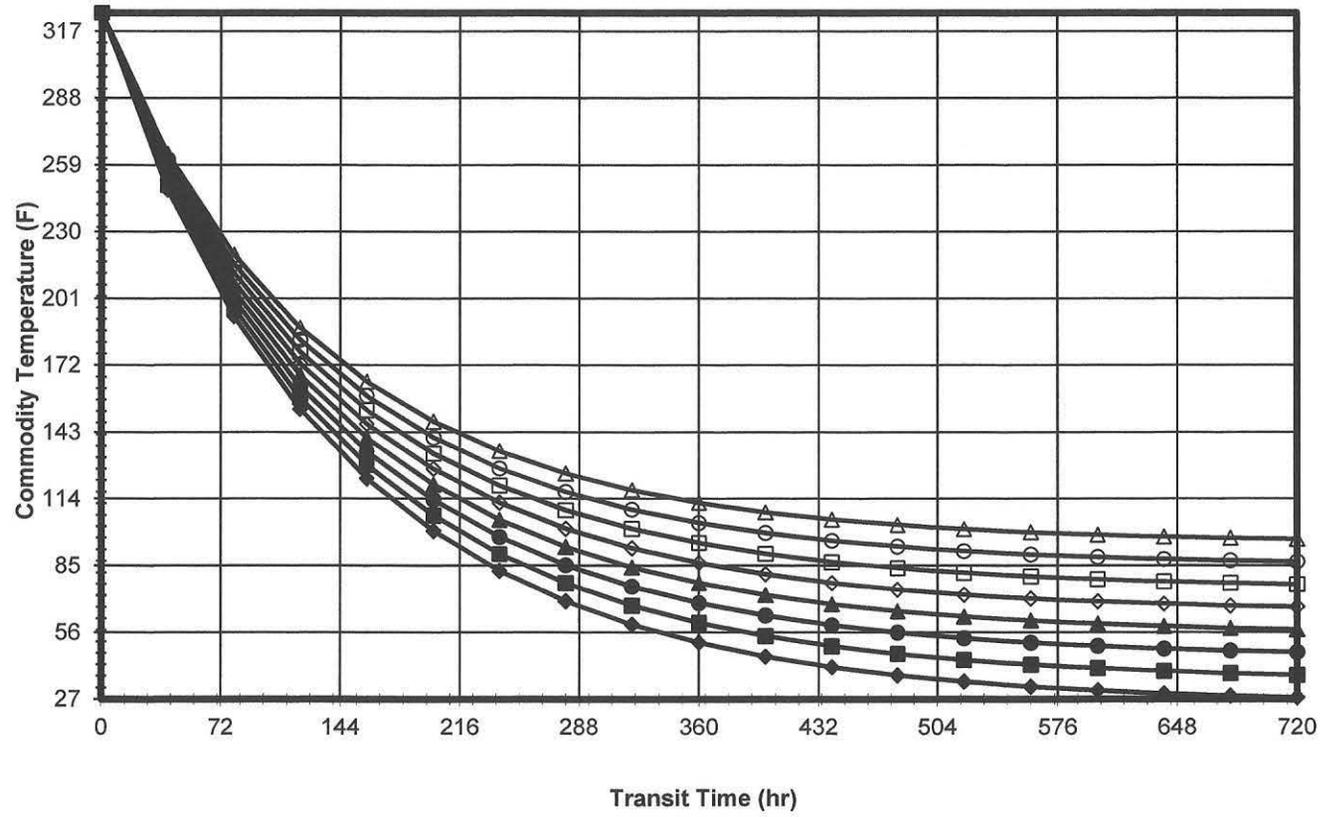
The physical property data used in the calculations is given in Table 2. I used a value of specific heat and density as provided.

Property	Property value
Specific Heat (Btu/lb-F)	0.22
Density (lb/gal)	8.659

Table 2

The heat loss calculation accounts for the average heat loss from the commodity by conduction heat transfer through the insulation, fittings, and other attachments to the tank. For an insulated car, conduction is assumed to be the limiting mode of heat transfer. Thus, convection inside and outside the tank is not considered. Our experience has indicated that this calculation yields conservative results.

Commodity Temperature vs. Transit Time - GATX-056572
Asphalt, 23,079 Gallon Tank, 4 Inches Glass Wool Blanket
Load Temp = 325 F, Specific Gravity = 8.659 LB/GAL, Specific Heat = 0.22 Btu/Lb-F



ATTACHMENT 2
TO
FD NO. 36042
PETITION FOR DECLARATORY ORDER

EXPERT REPORT
CLEMENT MESAVAGE

EXPERT STATEMENT

In the matter involving
C. L. CONSULTING AND MANAGEMENT CORP.

Regarding its

**PETITION FOR DECLARATORY ORDER -
REASONABLENESS OF DEMURRAGE CHARGES**

of

NORFOLK SOUTHERN RAILWAY COMPANY (“NSRR”)

Submitted to the

**SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423**

REPORT OF CLEMENT MESAVAGE

SCS ENGINEERS
15521 Midlothian Turnpike, Suite 305
Midlothian, VA 23113-7313

Prepared for the
Law offices of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016

Dates of Demurrage: 2013-2014
Locations of Rail Car Track: Oak Island Yard, New Jersey

Finance Docket No. 36042

June 9, 2016

INTRODUCTION

My name is Clement Mesavage, Jr. I have been retained by the Law Offices of Richard H. Streeter¹ to provide an expert statement to the Surface Transportation Board (STB) in support of a Petition for Declaratory Order (Petition) filed by Mr. Streeter on behalf of C.L. Management and Consulting Corp. (CLC). The Petition addresses the reasonableness of demurrage charges applied by Norfolk Southern Railway (NSR) pursuant to provisions in NS's Tariff No. 6004-C, Demurrage Rules and Charges.

In particular, CLC is challenging the NSR practice of collecting demurrage charges pursuant to Item 1012-Hazardous Commodities. The unreasonableness of the practice is based on the fact that well before the date that the tank cars in question would have reached their ultimate destination or been placed on NSR's tracks, the material being transported, liquid asphalt cement (hereinafter referred to as "asphalt"), would not have been deemed to be a hazardous commodity pursuant to PHMSA regulations.

Petitioner, CLC, is a re-seller of asphalt.² CLC purchases this asphalt, which is a by-product of the petroleum refining industry. However, as a re-seller, CLC does not receive the cars at the point of destination and has no ability to control the unloading of inbound rail cars at any given location.

I have had extensive professional experience with hundreds of bulk liquids including asphalt moving in the chain of commerce involving shippers, carriers, and offerors that utilize transport modes such as railroads as well as bulk liquid storage and transfer facilities known as terminals. The Law Office of Richard H. Streeter asked Mr. Mesavage to prepare an Expert Statement regarding when asphalt may be regulated as a hazardous material ("HazMat") while in transit or at related transportation infrastructure facilities involving the temporary storage of tank cars loaded with asphalt and transfer.

DOCUMENTS REVIEWED

Documents provided to me by the Law Offices of Richard H. Streeter are limited to the Petition for Declaratory Order and attachments thereto, including an exhibit that reflects time in transit and time spent in storage following constructive placement of the loaded tank cars, as well as a letter from Gabe Buzas, Sr. Engineer-Mechanical Analyst, Railcar Engineering, GATX Rail. Other documents reviewed are limited to some reference documents, commodity safety data sheets, and federal and state regulations that are described hereinafter.

Selected references in this report to these documents reviewed or others may also be made in text footnotes. The documents reviewed support my opinions as of May 31, 2016. I reserve the right to make changes and/or additions to this report.

RESUME OF EXPERT WITNESS

My full resume was made available to the Law Office of Richard H. Streeter and is included herein as Attachment B. In total, I have over 40 years of experience with HazMat materials relative to their transport, storage, and transfer including product variance and loss, environmental, health, and safety protocol, fire and explosion matters, and HazMat security. My work has encompassed bulk liquid terminal facility, railroad yard, and transport mode operators (rail, road, water, and pipeline). I have been utilized by the

¹ Law Offices of Richard H. Streeter. Address: 5255 Partridge Lane, N.W., Washington, DC 20016.

² The asphalt in transit destined for use as a road pavement material is also referred to as hot mix asphalt. It is typically a combination of stone, sand, or gravel bound together by asphalt cement, a product of crude oil. Asphalt cement is heated aggregate, combined, and mixed with the aggregate at an asphalt facility.

operators for regulatory compliance assistance and standard operating procedures and is used as needed by plaintiffs, defendants, agencies, the U.S. Justice Dept., insurance companies, and others for legal testimony.

Examples of my current work include being engaged as an expert to scrutinize asphalt tank steam heating operations and to investigate heavy hydro-cracker feedstock and pyrophoric hazardous material residues (at an asphalt plant and at a refinery, both work matters in CA). Other asphalt related handling experience has included site inspections at IMTT, ERGON, Kinder Morgan, Powell Duffryn, Apex Oil, Colonial Terminals, NOCO Energy, Seneca Petroleum, Williams Pipeline, Blue Knight Energy Partners, and several other facilities where asphalt may be received and handled by rail. In addition, My experience includes work for railroad yards including nearly 100 locations of Union Pacific Railroad (UPRR)³.

Virtually all work experience has had some HazMat related element associated with the multitude of bulk liquids transported in commerce. As such I am conversant in safety regulations, e.g. such as those of the federal Pipeline and Hazardous Material Safety Administration (PHMSA) and the Federal Railroad Administration (FRA). In this regard, I am well-known in industry for conducting agency rule *compliance*, internal company standard operating procedure (SOP) *conformance*, and industry standard *consensus* audits relative to liquid and gas product stewardship policies plus overall facility and transport mode equipment inspection frequency, care and custody, and control of liquid and gas products handled. Among other capacities, I am currently a full member of the Department of Homeland Security/U.S. Coast Guard Chemical Transportation Committee (CTAC).

In addition to my consulting career (including SCS Engineers, Midstream Farm, LLC, Antea Group USA, Earth Tech, Think Tank Resources, and Bechtel) providing services to the midstream portion of the oil and chemical industry,⁴ I was National Technical and Regulatory Director of the International Liquid Terminals Association (ILTA), the world's largest tank terminal trade association, in Washington, DC from 1981 to 1989, and West Coast Manager of Environmental Affairs for GATX Terminals Corp. (the largest tank terminal company of the day) between 1979 to 1981. In these capacities, I monitored all industry regulations.

I have authored various publications including "Model Hazard Communication Plan for a Bulk Liquid Terminal," "Model Safety Checklist for Bulk Liquid Terminals," "Contractor Safety Management at Bulk Liquid Terminals," "Training Requirements for Bulk Liquid Terminals," "OSHA Emergency Action Plan for a Bulk Liquid Terminal," "Waste Management Plan for a Bulk Liquid Terminal," "Gauging and Measurement at Terminals," "Computer Systems and Applicability at Terminals," "Marine Oil Pollution (MARPOL) Compliance at Marine Terminals," "Model USCG Operation Manual for a Bulk Liquid Terminal," "Model Spill Prevention, Control, and Countermeasure (SPCC) Plan for a Bulk Liquid Terminal," "Model EPA Facility Response Plan (FRP) for Shoreside Terminals." In addition, I am co-author of "ILTA Law and Regulation Guide for Bulk Liquid Terminals" (four volume set) and am the author of the California Hazardous Material Pipeline Safety Act of 1979.

³ My extensive training has included being a UPRR e-Railsafe System Trained Contractor.

⁴ The midstream portion of the oil and chemical industry operates bulk liquid and gas terminals and transport modes in the supply chain of commerce. Locations store and transfer a large number of different oil, chemical, and other products. Facilities may be "for-hire" to store and transfer liquids for liquid owning customers or they may be locations where liquids are "proprietary" in nature (facility company owns the liquids before selling to customers). In any event, the locations in the midstream transportation arena may be served by road tank truck, rail tank car, interstate and intrastate pipeline, and tank barge and ship.

After the events of 9/11 and at the invitation of the FBI and DOE, I served for several years under Special Term Expert (STE) appointment to participate in the Nation's Infrastructure Assurance Program at DOE's Argonne National Laboratory. I still advise on security assessment matters that can impact both industry and military terminals in all 50 states and have been engaged by DOE to prioritize ~1,500 terminals in the U.S. as to their security vulnerability.

I hold two engineering degrees from M.I.T. and Purdue University, and have a third degree (administration) from Southern Cal (U.S.C.). I also graduated from USC's Environmental Management Institute. My academic training encompassed transportation system logistics, safety management, water and wastewater, air pollution control, and waste management coursework as well as government agency public policy classes. I am a Registered Environmental Assessor (CA REA #00036) and a Registered Environmental Property Assessor (REPA #818740).

ISSUE BACKGROUND AND FOCUS OF STATEMENT

I understand the matter of the demurrage charges has involved rail tank cars of asphalt that sat at the Bayway and/or Oak Island rail yards in a marine port and airport area of Newark, NJ on track controlled by NSR. The cars were subject to a base NSR demurrage fee of \$60.00 per day. In addition, a \$100 per day hazardous material fee was charged by NSR on each rail tank car after the first 2 days onsite.

For the HazMat fee, I have been asked to address under what conditions asphalt will be deemed to be a hazardous material that is subject to regulation by PHMSA and the DOT. Issues related to the matter can include asphalt temperature, its physical state and constituents, and how it is regulated under federal regulation. Consideration is also given to how it is customarily handled in the industry. Given this background and selected issues noted, I hereby transmit my statement and related opinion(s).

STATEMENT AND GENERAL OPINION OF CLEMENT MESA VAGE

In addition to my own experience, my statement and any related opinion(s) are based on my own experience. I did not have the opportunity to see the cars subject to the fees but I understand that demurrage resulted from the inability of the rail tank cars to be unloaded in a timely fashion which, in many instances, was attributed to the harsh weather encountered during the winter season of 2013-14.

In any event, it is customary in the regulated community that there be compliance with federal regulations regardless of whether the regulated party is the shipper, offeror, carrier or otherwise. I placed particular emphasis on how the federal DOT defines and characterizes HazMat materials under its regulations in addition to taking into consideration standard and customary operating procedures typical of the industry relative to asphalt transportation, storage, and transfer.

In general, it is my opinion that a HazMat demurrage fee of \$100 is inappropriate when the asphalt's temperature during transportation falls below 212 degrees Fahrenheit (212 ° F), which was the sole factor that caused it to fit within the definition of an "elevated temperature" material and to be subject to the PHMSA regulation. I note in particular the GATX study which details heat loss in 72-hour increments at various ambient temperatures from 25° F to 95° F.

As that study demonstrates, approximately 100 hours after the asphalt is placed in the tank car it can no longer be treated as a hazardous material for any purpose even if the ambient temperature is as high as 95° F. Because the transit time of the cars from point of origin to Elizabeth, NJ averaged between 7 and 9 days, the temperature of the asphalt would have cooled to between approximately 90° F and 143° F when the cars were constructively placed.

ELABORATION - SPECIFIC COMMENTS, OPINIONS, AND OBSERVATIONS

In support of my statements and general opinion(s) regarding the application of a HazMat demurrage fee on the asphalt described herein, I have the following specific comments and opinion(s). They are all based upon my experience with the terminal and railroad industry with emphasis placed on the business and operating nature of the asphalt shipments via rail tank car.

1. THE ASPHALT TANK CARS INVOLVED MUST BE HEATED AND REHEATED

It is common for rail tank cars to transport asphalt (aka bitumen) and the rail cars can vary in type, age, and condition. Asphalt has residual crudes of solid carbon material which contribute to it having a specific gravity that is greater of water weight (typical weight range of 7.9 to 9.4 lbs/gal). In some cases asphalt may have some diluents that are liquid hydrocarbons added that can increase the asphalt's pumping ability when needed. For the asphalt and tank cars subject to discussion in this Statement, the asphalt was of a typical road asphalt nature with high flash point that must be heated to stay a liquid; diluents were not germane to the matter in my opinion.

Asphalt must be heated at its destinations if the temperature is 250 F or less to remain pumpable to efficiently unload a rail car, e.g. at a terminal⁵. It is heated at/between 300-400 F (typically 325° F) at its place of origin before shipping in the rail cars. The rail cars are not heated while underway and regardless upon the length of travel time and ambient temperature the railcars typically require reheating at a destination⁶.

When the asphalt has cooled substantially, it normally takes up to 24 hours of reheating before the material can be unloaded to over 300 F for insulated tank storage at the destination. Asphalt tank cars are insulated and have steam coils and steam lines, but like trucks do not have heaters.

Steam in the coils transfers heat to the railcar's tank and that heat radiates into the asphalt increasing its fluidity. The steam is typically supplied from either a stationary or a portable boiler and the heater/boiler. The range of temperature peaks that asphalt is heated at its origin/upon departure with the heater/boiler temperatures peaks can vary. Also, it is not uncommon for steam coils within tank cars to clog or leak due to age and for discharge valves on tank cars to be plugged with hardened asphalt. Indeed asphalt may need reheating in the summer after only 2 days on the track and destination terminals opt to heat to ensure a good pumping flow rate.

2. ASPHALT TANK CARS ARE MARKED HOT

A marking (aka stencil) is a descriptive commodity name, identification number, caution, or tank car specification and qualification date stencil(s) that are displayed on the sides of a tank car⁷. Markings reflect the hazard class (aka category) assigned to a tank car's cargo and can be expressed as a number or with word(s).

Relative to the wording, because asphalt is hot when shipped as a liquid, it is common pursuant to federal PHMSA regulations for tank cars, which are dedicated to the transportation of asphalt, to be permanently

⁵ NOTE: Because of these temperature constraints, pipelines are impractical in transporting asphalt over great distances. Therefore, rail tank cars or road tank trucks are used.

⁶ Viscosity is a measure of a fluid's resistance to flow and is related to temperature. The viscosity of asphalt must be low enough to allow it to be pumped from the delivery tank car into the storage tanks. . The higher the temperature the lower the viscosity and associated resistance to flow.

⁷ For example, a car's load limit/maximum weight in tons and volumetric capacity in gallons & liters.

marked ⁸ (typically referred to as stenciled) on two opposing sides with the word "HOT" in black or white Gothic lettering on a contrasting background. When used, the marking must be displayed on the packaging itself, i.e., the rail tank car, and/or in black lettering on a plastic, metal or other cardboard plain white square-on-point configuration having the same outside dimensions as a placard-like-configuration (typically abbreviated and just called placard) with type specifications given at 49 C.F.R. 172.519. Rather than use the term "placard-like configuration," I will use the term "placard" as an abbreviation. For the use of a number as the descriptive marking, this is discussed below in Section 8.

3. ASPHALT CAN BE REGULATED AS AN ELEVATED TEMPERATURE MATERIAL

PHMSA regulations define an elevated temperature material that can be hazardous. Such materials can differ, e.g., have different flash points and they are not limited to asphalt. For a typical road asphalt, it may be considered an elevated temperature material if it is transported with a temperature of 212 degrees F (100° C) or higher.⁹ The asphalt involved in this NSR demurrage would have been greater than 212°F immediately after being loaded onto tank cars at the various origin locations, e.g., refineries, and before being tendered to rail carrier(s) for transportation to be shipped for several days of travel.

However, by the time the asphalt tank cars reach a destination and/or are parked or interchanged at rail yards, the lading, if it has cooled below 212 F, will no longer constitute an elevated temperature liquid within the definition set forth at 49 C.F.R. 171.8 of PHMSA's hazardous materials regulations. Based on records provided by CLC, I am aware that the temperature of the asphalt will have dropped during the summer approximately 182° F degrees and approximately 235° F degrees in the winter months. If so, the asphalt is no longer regulated by PHMSA. As a result, all of the tanks, even if they are not held for several days before being placed for unloading, must be reheated in order to unload them.

4. DOT AFFIRMED THAT ASPHALT IS NOT A HAZARDOUS MATERIAL UNDER 212 F

The federal Department of Transportation (DOT) historically included the Research and Special Programs Administration (RSPA) from 1977 to 2004 as one of its agencies. RSPA encompassed the Office of Hazardous Materials Safety (OHMS) and the Office of Pipeline Safety (OPS) of the day prior the formation of PHMSA. RSPA issued in late 2004 a letter of clarification regarding the application of hazardous material regulations to asphalt.

As noted above in this Statement, in the RSPA letter (Appendix A of this Statement), RSPA was asked if asphalt was regulated under hazardous material regulation (HMR) and pursuant to federal law. RSPA affirmed that asphalt meets the definition of an elevated temperature material per 49 C.F.R. 171.8 if it is offered into transportation or transported in a bulk packaging that is in a liquid phase and intentionally heated at a temperature at or above 212 F (200 C) ¹⁰. Under 212 F, the asphalt does not meet the definition of an elevated temperature material.

5. THE ASPHALT SHIPPED IS NOT OTHERWISE REGULATED AS HAZARDOUS

⁸ Per 49 C.F.R. 172.325 and 172.302 plus 49 C.F.R. 173.140 - Class 9-Definitions.

⁹ Hazardous material is defined at 49 C.F.R. 171.8. The definition includes "elevated temperature materials." Such materials include a bulk liquid offered for transportation or transported in a bulk packaging in a liquid phase and at a temperature at or above 100 °C (212 °F) labeled and placarded pursuant to 49 C.F.R. 172, Subpart F applicable to its hazard class (Flammable, Class 9, or other).

¹⁰ RSPA also stated that the asphalt was not a Class 3 Hazardous Material which is one that would have a low flash point due to diluents, e.g. a distillate like diesel oil being added to it.

In addition to being deemed a hazardous material if shipped as an elevated temperature material, a hazardous material is termed under the definition in 49 C.F.R. 171.8 to mean a substance or material that is capable of posing an unreasonable risk to health, safety, and property when transported in commerce (a broad definition).

Indeed, in addition to elevated temperature material applicability, DOT incorporates for Hazardous Material other characteristics that may cause it to be regulated as a hazardous material. These include hazardous substances, hazardous wastes, marine pollutants, and other materials designated as hazardous in the Hazardous Materials Table (49 C.F.R. 172.101) as well as other materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. 173.

With this in mind, I find the following for the asphalt:

Other Possible HazMat Characteristics of the Asphalt	
HAZARDOUS NATURE	ASPHALT FOUND TO BE HAZMAT?
Hazardous Substance	No
Hazardous Waste	No
Marine Pollutant	No
Other Material	No

Indeed, for environmental characteristics that DOT takes into account, for the typical road asphalt shipped and often referred to as hot mix asphalt, the federal Environmental Protection Agency (EPA) exempted it from its spill prevention control and countermeasure regulations in 2009.

6. SAFETY FIRST CONSIDERATONS – RAILCARS SITTING ON A SPUR OR IN YARD

I believe a “safety first” review, for any matter, should be taken into consideration. Although railroad workers would be expected to wear appropriate personal protective equipment (PPE) as needed, I do not find any safety concerns of relevance to this rail demurrage fee matter associated with rail cars held waiting on private track spurs or in railroad yards ¹¹. The cars are maintained when sitting within monitored areas and there is no confined space entry concerns or hot surface issues associated with the rail car demurrage fee matter ¹².

¹¹ NSR defines in its Tariff the term “NSR Track” to mean tracks which NSR provides for its own uses and purposes and other tracks located inside of its right-of-way or at yards and terminals. I understand that the asphalt tank cars subject to demurrage fees were associated with track located on NSR controlled areas associated with the West-Of-Hudson Freight Rail System that includes the Oak Island Yard and the Bayway Yard areas (5 miles apart in the System corridor). The cars were held at the Oak Island Yard (10 reception and 30 classification tracks) and/or Bayway Yard (3 of 5 tracks serve large refinery) for up to 51 days. NSR handled the asphalt cars during the winter season of 2013 and 2014.

¹² A review of Safety Data Sheets (SDS) sheets (aka MSDS) of CLC asphalt customers (including Conoco-Philips, Marathon, and Axelon) did not suggest any safety concerns of significance for a delayed rail car. Additional review included the New Jersey Department of Health and Senior Services Hazardous Subject Fact Sheet Fact Sheet for Asphalt (RTK Sub. # 0170).

In addition, I did not find any reason to believe that the cars, while sitting at a rail yard ¹³, would need to be cut with a low flash point diluent to increase asphalt fluidity. Nor did I find any reason to believe that such a diluent that may be already present in the asphalt cars, in any concentration, would cause any health concern (acute or chronic) while in a standing state at a rail yard or spur. In any event for rail cars under 212 F sitting on at a rail yard, I do not find any particular safety problem of concern to this matter that would cause them to be considered a hazardous material.

7. RAIL YARDS DON'T DO STEAM HEATING FOR ASPHALT TANK CARS

I have walked many railroad yards that have a large variety of commodities on rail cards throughout various types of yards such as flat yards, hump yards, gravity yards, switching yards, staging yards, and/or shunting yards. Railroad yards have engine and other maintenance shops where there may be steam used due to boilers and heaters. However, steam is not used by or offered as a service by the railroad company to heat up long lines of detained asphalt tank cars in route to their destinations (for a fee or otherwise). Instead any reheating is done at a destination, e.g. terminal.

In this regard, tank cars on a track occupy space but there is no particular service that needs to be performed on the cars other than repositioning as needed over one, or more days. Therefore, I do not know why there would be more than one type or level of demurrage fee, HazMat or otherwise, for cars parked before, during, or after 2 free days in any season of the year.

8. TERMINAL DESTINATIONS REHEAT ASPHALT AS NEEDED FOR TANK STORAGE

As stated for the purposes of this Statement, I understand that the asphalt rail cars were subject to their demurrage fees only while at the rail yards in New Jersey where they were under the control of NSR. Non-railroad terminals may also receive asphalt tank cars for their customers where the asphalt is typically unloaded and pumped to a storage tank. The asphalt is subsequently distributed from the terminal (typically via tank truck) to customer designated locations.

Commodities (such as asphalt) that arrive by rail may or may not reach the terminal via railroad yards and in some cases, the cars may have to be routed by the terminal back to a railroad yard if there is some problem at the terminal that delays the unloading of the asphalt to tank storage. In any event, whether in winter or summer, it is typical for the terminal to connect the tank cars with terminal boiler/heater steam lines so that the steam can enter the heating coils of the cars to heat the liquid to a desired temperature to ensure good pumping ability and flow transfer rates. As stated, for those cars that arrive in a solid or semi-solid state, the heating of the cars may take 24 hours. It is typical to maintain terminal/facility tank storage temperatures to over 300 F (typically 325-350 F).

Relative to the status of the asphalt cars as being HazMat, the cars may arrive with either the appropriate elevated temperature material stenciling and/or white #3257 placard-like-configuration (as stated, typically abbreviated and just called placard). Once a car is emptied, it has been common for the terminal to turn the placard around to its white blank side before outbound shipment, even though there is typically some residual asphalt left (hard, and not a HazMat temperature).

As a further note regarding residual asphalt, or for that matter a tank car fully emptied of its asphalt, that the residue/empty shipments last containing an elevated temperature material such as asphalt, are not

¹³ I note that a New Jersey Transportation and Planning Authority (NJTPA) report has stated that relative to rail freight capacity and needs assessments, the rail traffic volumes in the Oak Island Yard and Bayway can become backed-up with customer traffic.

considered hazardous materials. This is why the Association of American Railroads (AAR) and others ¹⁴ have noted that for HazMat shipping papers, e.g., a bill of lading, the shipment may be moved in rail transportation without the hazardous material shipping description entries, even though the elevated temperature material mark and identification number (#3257 for asphalt) are displayed.

Therefore, it is typical to see that the stencil wording HOT on the side of the tank car is not “painted over” or otherwise hidden on rail cars proceeding back to the locations where they will be filled again. Likewise, the placards with #3257 are typically just left in place on the cars. In my opinion, this is primarily reflective of the fact that the applicable regulations are confusing. Hence, operators simply elect to move the rail cars as being dedicated to asphalt with the stencil and placard just left in place in response to the confusion.

CONCLUDING STATEMENT OF CLEMENT MESAVAGE

In my opinion, the application of a NSR of a hazardous material demurrage fee for the asphalt should not have been applied to any rail tank cars delayed or stored at a railroad yard for more than 2 days of storage. With consideration given to winter temperatures (high temperatures for at least 30 days of the 2014-15 season were 32 F or less), I do not believe the asphalt would have been at a temperature exceeding 212 F sitting on track at a rail yard after transit. Such an asphalt state no longer satisfies the definition of an elevated temperature liquid nor meets any other regulated characteristics characteristic of a hazardous material as regulated by the DOT.

Otherwise, with regard to agency regulation compliance, industry standard consensus, or internal SOP conformance, I did not see any reason for the asphalt to be regulated as being HazMat.

DEGREE OF CERTAINTY

All of the above statements and opinions are given within a reasonable degree of industry certainty.



Signed: _____

¹⁴ “U.S. Hazardous Materials Instructions for Rail” manual, of the Association of American Railroads (AAR), the Bureau of Explosives (BOE), and the AAR Hazardous Materials Committee (2011). The manual is used for general guidelines.

ATTACHMENT A



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

DEC 28 2004

Mr. Denis Sapiro
Karden Associates, Inc.
3241 44th Ave. SW
Seattle, WA 98116-3324

Ref. No.: 04-0276

Dear Mr. Sapiro:

This is in response to your December 2, 2004 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if asphalt is subject to the HMR in the following scenario:

Hot asphalt is loaded into a bulk container at a shipper's facility. The asphalt is allowed to cool to a temperature below 37.8 °C. Finally, the material is offered into transportation at a temperature below the flash point of the asphalt and 100 °C. In addition, the asphalt does not meet the definition of any hazard class listed in § 173.2.

Asphalt must be classed as a flammable liquid (Class 3; see § 173.120) if:

- (1) The flash point of the material is not more than 60.5 °C (141 °F), or
- (2) The material is in a liquid phase with a flash point at or above 37.8 °C (100 °F) and is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging.

Asphalt meets the definition of an "elevated temperature material" (see § 171.8) if it is offered into transportation or transported in a bulk packaging and any of the following conditions are met:

- (1) The material is in a liquid phase and transported at a temperature at or above 100 °C;
- (2) The material is in a liquid phase with a flash point at or above 37.8 °C and is intentionally heated and offered for transportation or transported at or above its flash point; or
- (3) The material is in a solid phase and transported at a temperature at or above 240 °C.



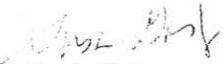
040276

172.101

According to the scenario you described, the asphalt offered into transportation does not meet the definition of a Class 3 (flammable liquid) or an "elevated temperature material" when it is offered into transportation. In addition, it does not meet the definition of any other hazard class listed in § 173.2. Therefore, the asphalt does not meet the definition of a hazardous material in § 171.8 and is not subject to the HMR.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,


John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

ATTACHMENT B

Vitae - Clement Mesavage

SCS Engineers, 15521 Midlothian Turnpike, Suite 305, Midlothian, VA 23113-7313 / usaclem@erols.com

804-317-0777 (cell) / (804) 378-7440 (land line) / <http://www.usaclem.com>



Title

Subject Matter Expert - Midstream Infrastructure Oil, Gas, & Chemical Product Stewardship

Education

MS, Civil Engineering, Massachusetts Institute of Technology (M.I.T.), '79
Cambridge, MA; Emphasis in Logistics of Bulk Liquid/Gas Transportation & Infrastructure Storage & Transfer

MPA, Southern Cal (USC), Los Angeles, CA; '77. Emphasis in Permit Acquisition & Regulatory Agency Decision Prediction Techniques

BS, Environmental Engineering Purdue University '74 Lafayette, IN.
Air/water/waste pollution control

Professional Registrations

- Registered Environmental Property Assessor (REPA #818710)
- Registered Environmental Assessor, California (REA #00036)
- DHS TSA TWIC and CFATS CVI

Professional Associations

- API Standard 2350 Tank Overfill Protection and Other AST Committees
- DHS USCG Chemical Transportation Advisory Committee (CTAC)
- VA DEQ AST RAP Panel Member
- Volunteer - Centerville, VA Fire Dept.

Experience Summary

Clement Mesavage ("Clem") is a subject matter expert for bulk liquid terminal, bulk plant, and pipeline facility locations. He has completed Compliance, Conformance, and Consensus ("3-C") audits, incident investigations, and standard operating procedure (SOP) benchmarking in 50 states and abroad. He has over 40 years of experience in transportation, storage, and transfer logistics, security, variance and loss, environmental, health, safety, fire and explosion, construction, and product quality control and best management practice matters associated with budgets, schedules, and scopes of work. Recent work examples include being U.S. DOJ's expert in Charleston, WV for HazMat rule standing (300,000 lost water), asphalt tank explosion expert at Owens Corning site in Los Angeles, and asphalt contingency planning at Blue Knight Energy Partners in VA and NC.

In addition, Clem's career includes being a member of API Standard 2350, Tank Overfill Protection Committee and being a Special Term Expert (STE) to the Nation's Infrastructure Protection Program for post 9/11 vulnerability prioritization of 643 midstream infrastructure locations for the DOE. He routinely handles facility compliance and contractor service quality audits, due diligence site assessments, waste management services, contingency plan preparation, air, water, and waste permitting associated with military, FRA, PHMSA, EPA, OSHA, USCG, and State requirements as well as industry/customer specifications. He has also had contracts with military and private pipeline operators (SIC Codes 4612, 4613, 4619, and 9711) for pipeline segment assessment, and with manufacturers, municipalities, port/airport authorities, and insurance companies. Note that his experience has included being International Technical and Regulatory Director of the International Liquid Terminals Association (ILTA) in Washington monitoring regulatory and legal proposals that can impact liquid transportation and storage.

Related Projects

- Served as a qualified expert witness to the oil, gas, and chemical industry and transportation infrastructure site plaintiffs and defendants, plus insurance companies for matters involving regulation compliance primarily with 6 CFR 27 (DHS), 49 CFR 172-199 (DOT/PHMSA), 29 CFR 1910.119 (OSHA), 40 CFR 60 (CAA), 40 CFR 110-112 (SPCC/OPA) plus 40 CFR 312 (due diligence), 29 CFR 1910.119/40 CFR 68 (PSM/RMP), 40 CFR 52, 60, 61, 68, 79 and 80 (Air/RMP), and 122-126 (NPDES/SWPPP), 33 CFR 154-158 (USCG), 40 CFR 300-302 (CERCLA), 40 CFR 355-370 (SARA/EPCRA), 29 CFR 1910 thru 1910.1000, 40 CFR 403 (CWA/POTW), 40 CFR 260-280 (RCRA), and 40 CFR 761 (TSCA).

Vitae - Clement Mesavage

Also provides testimony regarding industry codes and standards **such as API, ANSI, ASME, and NFPA**, plus product care, custody, and control practices in industry, to State/local rules affecting storage/transfer, and to military specs.

- Completed the following for **Midstream oil/gas/chemical AST entities** (hundreds of documents written):
 - DOT/PHMSA/FRA/USCG/EPA "3-C" HazMat audits, e.g. at pipeline, terminal, and rail yard locations.
 - DOT PHMSA/DOT Operation Manuals (pipeline O&M Manuals and HazMat SOPs)
 - EPA/OSHA safety and environmental AST facility HazMat risk assessments (RMP, PSM, HazOp)
 - SARA Title 3 Community Right to Know Form R and Tier 2 reports for HazMat liquids.
 - OSHA hazardous chemical safety plans (e.g., confined space, HazCom, LO-TO, etc.)
 - Pre-Airfield Terminal Standard Operating Procedure (SOP) Manuals, e.g. Jet Fuel Quality Control
 - DHS & MTSA HazMat Facility Security Plans (FSP) & SVAs
 - Title V and other air permits (HazMat air pollution control)
 - NPDES permits (water pollution control) and Corp of Engineer dredging permits
 - SWPPP Plans (stormwater pollution)
 - USCG Operation Manuals for HazMat liquids, gases, plus MARPOL dry and liquid wastes
 - EPA/State SPCC Plans and EPA/USCG/DOT OPA '90 FRP Oil and HazMat Contingency Plans
 - Phase I/II site assessments (including HazMat spill remediation + compliance cost analyses)
 - ISO 14000 EMS systems for Hazmat facility clients.
 - ISGOTT HazMat Marine Terminal Management and Self-Assessment Manuals (MTMSA)

Prior to SCS Engineers (current), he was National Director of Technical and Regulatory Services of the International Liquid Terminals Association (ILTA) for 8 years, Midstream Segment Manager for both **Antea Group USA** and for **Earth Tech** (10 years total), President of **Think Tank Resources, Inc.** for 14 years, West Coast Manager of Environmental Affairs for **GATX Terminals Corp (GATX (now Kinder Morgan)** for 3 years, Environmental Systems Engineer for **Bechtel** for 2 years, and a **Bulk Liquid Terminal Consultant** (Midstream Farm, LLC) for the balance of his career. In addition to providing EHS&S services, he is known worldwide for his Expert Witness work (**refer to case load below**).

Examples of specific client experience have included being regulatory compliance auditor of DLA/DFSC Navy and Air Force jet fuel facilities nationwide plus providing services to the following industrial and commercial/other clients: AceGroup, AIG, AceGroup, Agrium, Allied Terminals, Alon, Ameropan, Amoco Oil, Apex Oil, Arcadian, Archer Daniels Midland, Argonne National Lab, Arizona Public Service, BASF, Baytank, BP, Bethlehem Shipyards, Blue Knight Energy Partners, Brooklyn Union, Buckeye Pipeline, Cabot Corp., California State Assembly, CALTEX, Carbon Steel, CAPECO., Center Oil, Champlin, Charter Terminal, Charter-Triad LLC, Chevron, Citgo, Citicorp, Clark Oil, CAN, Cogent Energy Solutions, Colonial Pipeline, Corco, County of Los Angeles, Croda Inc., Croda Storage, Crowley, Crown Centrap Petroleum, Cummins Terminal, Defense Fuel Supply Center (DFSC/DESC)/Defense Logistics Agency, Delaware Terminal, Delta Commodities, Demaco Corp., Diamond Oil, Dubai, U.A.E., Dominion Generation, Dynamac, E D & F Man, EOTT Energy, Enron Oil/Gas, Fleet Supplies, Florida Power & Light, Foster Wheeler, Francis Oil and Propane, Freeport Terminals, Galveston Terminals, Gantrade, GATX Terminals, Gaylord Chemical, General Chemical, Grace Chemical, Gulf Interstate, Gulf States, Halliburton NUS, Houston Fuel Oil, Howard Energy, HOVENSA, Hudson Tank Terminals, ICI Americas, Kinder Morgan, ILTA, Independent Liquid Manufacturers Association, International Oil, ITAPCO, IWRN,

Vitae - Clement Mesavage

IMTT, Lemm Corp., Liquid Transfer, Lincoln Energy Solutions Louis Solution, Louis Dreyfus Energy Corp., Lubripac, MacMillan, Marathon Petroleum, Marlex Petroleum, Media General Cable, MEIOCO, MN Pollution Control Agency, M.I.T., Marketwest, Mobil Oil, Montank, Motiva, Nelson Energy, New Haven Terminal, NOCO, Norfolk & Southern RR, Norfolk Oil Transit, Norfolk Naval Shipyard, Northville, NuStar, Odfjell, O-3 Limited, Oiltanking, Optimal Quality Grains/DuPont, PanOcean, Pennsylvania Power & Light, PEPCO, PetroChina, PetroUnited, Perimeter Oil, Petroleum Fuel and Terminal, Pipeline Tech, Pirelli Tire, Platzer Shipyard, PM Ag Products, Port City Terminal, Port of Port Royal, PPG, Praxair, Ramsey Scarlett, REV LNG, Port of Long Beach, Port of Los Angeles, R. M. Walsdorf, Rollins, Roscom, San Diego Naval Base, SC Fuels, Seachem, SICPA, SOHIO/BP South Coast Terminals, Southern California Edison, Santa Fe Pacific Pipelines, Sprague Energy, SPX, ST Services, Star/Texaco, Statia, Steuart Petroleum, Stratus, Sunoco Logistics, Systems Logistic Trucking, Summit Midstream, Suncor Energy, Terquimca, Tesoro, 3M, Tidewater Barge, Tidewater, Todd Shipyards, Trammo, Union Pacific RR, Unitank, United Elastic, U.S. Air Force, U.S. Justice Department, Union Pacific RR, U.S. Navy, Valleytank, Verizon Wireless, W.A.S. Terminals, Westway Terminals, Whitaker Oil, Witco, Witco Chemical, Wolf Lake, & Zapata Haynie, Transmontaigne, White Pass Alaska, and other companies.

Expert Witness Testimony (Deposition, Trial Court, Hearing, Mediation)

Participated in administrative hearings, submitted affidavits and declarations, has participated in agency rulemaking, and has been retained for litigation support services including deposition and trial testimony experience. Career experience (not limited in years) includes the following (legal cases or other matters): (a.h. = admin. hearing; e.r. = expert report; d. = deposition; t.t. = trial testimony; r.d. = rulemaking development; c.l. = committee liaison); f.q.d. = fact question development; c. = contacted; s.i. = site investigation; a. = affidavit); and p.i.) = possible involvement:

1. Marlex Petroleum & Federal EPA (e.r.) (San Francisco)
2. Fletcher v. Utah Power and Light (e.r.) (Salt Lake City)
3. Graybill and Unocal (e.r. d.). (San Diego)
4. Halliburton NUS Environmental. v. Roy F. Weston Services (e.r. d., t.t.) (Philadelphia)
5. Petroport and N.Y.C. Fire Department (e.r.) (New York)
6. Amoco and City of Fairfax, VA (a.h.) (Fairfax)
7. Petroleum Fuel & Terminal and Chicago Sanitation District (a.h.) (Chicago)
8. County of L.A. and Federal EPA (r.d. a.h.) (Los Angeles)
9. GATX and Port of Los Angeles (a.h.) (Los Angeles)
10. SOHIO and Port of Long Beach (r.d. a.h.) (Long Beach)
11. Clark Refining & Marketing and Illinois EPA (a.h.) (Rockford)
12. Clark Refining & Marketing and Missouri DNR (s.i.) (Rockford)
13. Pacific Molasses and State of Alabama (a.h.) (Montgomery)
14. Pacific Molasses and Federal EPA (s.i.) (Houston)
15. California State Assembly and Pipeline Operators (r.d. c.l., a.h.) (Sacramento)
16. ST Services and State of Texas (a.h.) (Austin)
17. City of Boston and Federal EPA (c.l.) (Boston)
18. Agency Rulemaking and Congressional Lawmaking (r.d. & c.l.) (Washington)
19. PPG Industries and Clorox (s.i. e.r.) (Louisville)
20. United Elastic and Chevron (e.r.) (Richmond)
21. Ameropan Oil and Commonwealth Edison (e.r. a.h.) (Chicago)
22. Sun Pipe Line v. Toxic Tort Party (f.q.d.) (Corpus Christi)

Vitae - Clement Mesavage

23. U.S.

23. U.S. vs. Koch Oil (f.q.d. for d.) (Tulsa & Houston)
24. U.S. v. Texaco Pipeline (e.r.) (Houston)
25. Pittston Company & Ultramar America, Ltd (Tankport) v. Allianz Insurance, Hartford Insurance, London Insurers, Wausau & American Marine Underwriters (e.r. d) (Newark)
26. Stan Trans. v. Norman Trainer (e.r.) (Galveston)
27. Stan Trans v. Loughridge (p.i.) (Texas City)
28. Galveston Terminal, Hollywood Marine, & SeaRiver Maritime v. J. Young (s.i.) (Houston)
29. Shell Oil Products v. Lloyds of London and Deverin (p.i.) (Newark)
30. White Pass Alaska v. Harbor Transportation Canada (e.r.) (Anchorage)
31. Posey v. Chaparral (p.i.) (Phoenix)
32. Witco Chemical v. OSHA (e.r.) (Pittsburgh)
33. International Matex v. Archer Daniels Midland (p.i.) (New Orleans)
34. Vopak/Paktank & Yasuda Fire & Marine Insurance v. M/V Stolt Kikyo et al (e.r.) (Houston)
35. Chester County Airport Authority v. AE&C, Inc. (e.r.) (Philadelphia)
36. U.S. EPA & Texas v. ARCO, Ashland, GATX, & El Paso et al (e.r., d.) (Houston)
37. Dow Chemical v. Odfjeld Shipping (p.i.) (Freeport)
38. Dupont Optimum Quality Grains v. Westway Trading (e.r. d.) (Sioux City)
39. Global Solutions & Am. Guarantee & Liability v. NASDI & Greenwich Insurance (e.r.) (Century City)
40. Crowley Maritime v. Beacon Insurance and Chicago Insurance (e.r. d, a.) (Seattle)
41. ExxonMobil v. Proposition 65 Coalition (p.i.) (Los Angeles)
42. Amerada Hess v. El Paso Pipe Line Company (p.i.) (Corpus Christi)
43. Baltimore Gas & Electric & Pinkerton Securities v. Injured Party (p.i.) (Baltimore)
44. Kinder Morgan v. Injured Party (p.i.) (Carteret, NJ)
45. Motiva (Texaco) v. U.S. Justice/EPA (p.i.) (Delaware City)
46. Hong King Int'l Airport v. Shiuwing Steel (p.i.) (Hong Kong)
47. Injured Party v. Denver Area Facility (p.i.) (Denver)
48. CSX Railroad Company Employees v. Lemm Services (f.q.d.) (Charleston, SC)
49. Ship Agent/Vessel Party v. Shell Oil (p.i.) (New Orleans)
50. Radtke v. Rohm & Hass Company (p.i.) (Chicago)
51. Crown Central Petroleum v. Robson (e.r.) (d.) (Indianapolis)
52. Pipeline Technology v. ICOM Pipeline (p.i.) (Baton Rouge)
53. Systems Logistics Trucking v Southern Counties Oil Co. (e.r.) (Los Angeles)
54. International Oil & SL Transport v. Plaintiff Federated Insurance Company (e.r.) (West Virginia)
55. Titan Tire v. Pirelli Tire, et al (e.r.) (Des Moines)
56. U.S. Justice Dept. v. Sunoco (p.i.) (Philadelphia, PA)
57. Genetech v. Rice (p.i.) (San Francisco)
58. Richmond Redevelopment Agency v. Ashland Oil & Petromark (e.r.) (San Francisco)
59. Customer v. Birch Oil (e.r.) (Baltimore)
60. Citgo v. State of New Hampshire (e.r.) (San Francisco)
61. Delta Terminals v. Various Contractors (p.i.) (Cleveland)
62. Shell Oil v. Bulk Services (p.i.) (Savannah)
63. Benzene Pipeline Operator v. Neighborhood (Baton Rouge)
64. Sharon Lee Brate etc. v TEPPCO et al (Todhunter, OH) (p.i.)
65. Chem Marine v. Marine Shipper (Charleston, SC) (p.i.)
66. Missouri & No. Arkansas R.R. v. Facility Operator (Kansas City) (p.i.)

Vitae - Clement Mesavage

67. Marathon 67. 67. Marathon Petroleum Co., LLC v. Various Parties (West Virginia) (e.r.)
68. Air Products and Chemicals v. Odfjell Terminals and Seachem (Houston) (Houston) (e.r.)
69. Kinder Morgan v. Lewis & Barker (Mississippi) (e.r.) (Jackson, MS)
70. Colour Quest Ltd, et. al. v. Hertfordshire Oil, Chevron, TAV Engineering, & Total Downstream (London, UK) (e.r.)
71. Apex Oil/FP&T vs. State of Maryland (e.r) (Baltimore)
72. Ogden Aviation vs. Private Party (New York) (p.i.)
73. Tesoro vs. HeliAir (Kihue, HI) (p.i.)
74. ExxonMobil vs. GATX, Pacific Atlantic, & State of NJ (e.r., d.) (NJ)
75. BP vs. Caribbean Oil et al. (p.i.)
76. Vantassel v. Warex Terminals (New York), (p.i.)
77. Exxon Mobil v. Nicoletti Oil Co. (CA) (e.r.)
78. ARCO Midcon, Magellan, & Wil-Tel v. Henke and Kluner (MO) (e.r)
79. Westway Terminals v. Piping Contractor (OH) (p.i.)
80. EPCO/TEPPCO, Veolia, & O&M Construction v. Pace/Decker/Powell & Mathis (AR) (e.r., d.)
81. Paramount Petroleum v. GEM Mobile Treatment Services (CA) (e.r.)
82. Niemi Oil Co. v. ExxonMobil Corp (OR) (e.r)
83. PetroChina v. Artic Tundra Operator (Mongolia)(e.r.)
84. City of Los Angeles v. Crimson Pipeline Company (Los Angeles) (e.r.)
85. Enbridge Pipeline v. AIG (Detroit) (p.i.)
86. Bennington v. Genon and NRG (San Francisco) (p.i.)
87. Apex Oil & Premcor vrs. Pipeline Company (Hartford, IL) (p.i.)
88. U.S. DOJ v. Freedom Industries (Charleston, WV) (e.r.)
89. Citizens v. Tank Farm Hill (Cut Bank, MT) (e.r.)
90. Jennings Terminal vs. Standard Oil and Nationwide Insurance (CT) (p.i.)
91. Dialog Services vs. Tanjung Langsat Port (Malaysia) (p.i.)
92. FCC Environmental v. General Machine (Richmond, VA) (e.r.)
93. Carrubean Oil Company v. Intertek Caleb-Brret (e.r.)
94. Summit Gas Company of Maine v. Tetra-Tech (e.r.)
95. Freeport Terminal vs. Moore (Pittsburgh) (e.r.)
96. Bill Barrett Corporation vs. Injured Party (Utah) (p.i.)
97. Rex Energy and Prop Logistics, LLC v. Citizens (Ohio) (e.r.)
98. NY Terminal v. Carrier (New York)(e.r.)
99. Magellan Pipeline v. Suncor (CO) (p.i.)
100. Suncor v. Conoco-Phillips (CO) (e.r.)
101. Questar Gas v. Pipeline Route Business (Utah) (p.i.)
102. Petroleum Fuel & Terminal v. Chevron (MD) (p.i.)
103. Owens Corning v. Williams (CA) (e.r.)
104. Patent Holder v. Supplier (NY) (p.i.)

- “Contractor Safety Management at Bulk Liquid Terminals”, ILTA, 2009.
- “CERCLA Arranger Liability to Railroads and Lessors of Railroad Properties” 2011
- “Author of “Management Strategies for LNG Ship Conversion to Other Liquefied Gas Liquid Carriage.”
- “Vulnerability Ranking and Assessment of Over 800 Bulk Liquid Terminals,” Homeland Security, 2005.
- “Pre-Airfield Jet Fuel QA/QC O&M Manual Integrity Off the Tarmac” 2012
- Author of the California Hazardous Pipeline Safety Act of 1979 for the California State Assembly (AB 2587, Elder).

Vitae - Clement Mesavage

- "ILTA Law and Regulation Guide to Bulk Liquid Terminals" (co-author, 1983), and author of "OSHA Emergency Action Plans" (1981), "Terminal Personnel Training" (1981), "Model Spill Prevention, Control, & Countermeasure Plan" (1982), "Model U.S. Coast Guard Operations Manual" (1982), "Computer Application at Terminals" (1982), "Scales, Meters, and Liquid Gauging" (1982), "Application of Hazardous Waste Regulation to Terminal Operations" (1982), "MARPOL Ship/Waste Water Reception" (1984), "Model Safety Checklist for Design and Operation of Terminals" (1985), and "Model Hazard Communication Manual for Terminals" (1988).
- Wrote in 1994 the model EPA/USCG FRP OPA spill response plan for the tank farms used nationwide. Numerous other publications including "Air Rights Stock Trading in Indianapolis Air Basin", "Management Strategies for LNG Ship Conversion to Other Liquefied Gas Liquid Carriage", and "Economics of City of LA Sewage Sludge Exportation to the Middle East as Ship Ballast."

Training: Gives operator training presentations for agency rule Compliance, internal company Conformance, and industry standard Consensus (best management practices and continuous improvement strategies).

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Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

C. L. CONSULTING AND MANAGEMENT)	
CORP. – PETITION FOR DECLARATORY)	DOCKET NO.
ORDER – REASONABLENESS OF)	NOR-
DEMURRAGE CHARGES)	

VERIFIED STATEMENT OF BRANDON C. ROSE
IN SUPPORT OF
PETITION FOR DECLARATORY ORDER

My name is BRANDON C. ROSE:

1. I am the President of C.L. Consulting and Management Corp., a domestic corporation of the State of New Jersey and whose principal office and operations are located 544 Mt. Hope Road, Wharton, NJ 07885, New Jersey (“CLC”). I am personally and fully familiar with the facts and circumstances I set forth in this statement in support of CLC’s Petition for Declaratory Order (“Petition”).

Background Facts

2. CLC is a re-seller of liquid asphalt cement oil (asphalt) which it purchases from refiners who ship it to CLC by rail from locations around the country. The present Petition involves asphalt that was purchased from Marathon Petroleum Company (Marathon); WRB Refining, Inc. (WRB), a subsidiary of Phillips 66; and Flint Hills Resources, LP (Flint Hills). In all

cases, carriage was handled by Norfolk Southern Railway Company (NSR). As reflected in CLC Exhibit 1 to the Petition, WRB shipments originated in Wood River, Illinois, and traveled for as many as 20 days before being constructively placed on NSR's tracks at NSR's Oak Island facility in Elizabeth, New Jersey. Flint Hill shipments originated at Roseport, Minnesota, and were initially transported by Canadian Pacific Railroad before being interchanged with NSR. On average, the shipments in this case were in transit approximately 20 days before being constructively placed on NSR's tracks. Shipments that were received from Marathon originated at Canton, Ohio, and traveled, on average, at least seven days before being constructively placed on the same NSR tracks at Oak Island.

3. CLC neither owns nor maintains its own location or facility to receive, process and unload inbound rail tank cars containing the asphalt it purchases. Since at least early 2012, CLC, through its affiliate, NJ Asphalt Terminals, LLC, has had a contractual relationship with NY Terminals II, LLC ("NYT"), which maintains a liquid storage terminal and rail receiving facility located at 534 South Front Street, Elizabeth, New Jersey. NYT's terminal is a short distance from NSR's Oak Island facility where the tank cars that are the subject of this proceeding were constructively placed on NSR's tracking pending delivery to NYT. NYT has multiple rail spots capable of unloading the asphalt from inbound rail cars delivered by NSR. CLC was not responsible for the timing, conduct or manner of the performance of the work required to receive and unload the inbound rail cars containing asphalt cement: Contractually, that

work was entirely and solely within NYT's purview. The contract also provides that "To avoid delays, Ship To Destination Railyard: Bayway, New Jersey[;] Consignee: New York Terminals." Because of the time-sensitive nature of both CLC's and NYT's businesses, the parties' contract also provides that NYT's terminal shall be open for the purpose of loading or unloading CLC's product 24 hours/7 days except for Union holidays.

4. The refiners invoice CLC for the costs of goods sold and for the associated shipping charges. With regard to the shipments involved in this case, CLC placed its orders and the refiners then entered into carriage agreements with NSR. CLC played no role whatsoever in obtaining NSR quotes or even selecting NSR for any of the shipments involved here. By virtue of the contract between the refiner and NSR, every aspect and every step in the shipping process was controlled by NSR until it transferred the rail cars to NYT. At that point, control was immediately and completely assumed by NYT, which was solely responsible for unloading the asphalt from the rail cars.

NSR's Unreasonable Practices

5. Presumably on the basis that NYT was the consignee of the shipments in issue here, NSR did not treat CLC as its customer. NSR never provided notification to CLC by electronic means or otherwise of constructive placement. It is my understanding that Item 300 of NSR's Tariff No. 6004-C, "Notification to Customers by NS[R]," which was in effect during the relevant time period,

provides that notice of constructive placement “will be furnished” to NSR’s customer.

6. In addition, CLC received no communication or notice from NSR or even from NYT about the shipments, progress, status, or location of the rail cars at any time during their transit to the NYT terminal. Hence, CLC did not and could not affect how and when NSR released the rail cars to NYT or how NYT chose to receive the cars and perform the unloading function. Again, contractually, in all instances, it was solely NYT’s obligations to unload the rail cars and to return the empty cars to NSR’s Bayway receiving yard.

7. When I first learned – in December 2013 -- that substantial amounts of demurrage charges were being assessed against NYT, CLC contacted NSR in an effort to obtain information. We were told that CLC was not NSR’s customer and, therefore, NSR would not provide any information to CLC. It is my understanding that, both before and after CLC’s attempt to get information from NSR, NSR was engaged in lengthy, direct negotiations with NYT in an attempt to collect its demurrage charges.

8. It was only in November 2014 that NSR first notified CLC that it was responsible for payment of demurrage charges. By email dated November 3, 2014, NSR -- for the first time -- presented CLC with copies of updated invoices that, oddly, reflect CLC as both shipper and as consignee. See Attachment A hereto which contains a true copy of NSR’s November 3, 2014 email and invoices and spreadsheets referenced in that email. NSR’s Freight Tariff NS

6004-C, which contains NSR's Demurrage Rules and Charges and its Storage Rules and Charges was also attached to the email. See Attachment B hereto.

9. By the time the asphalt was placed in storage on NSR's tracks at the Bayway facility, it did not fit within the definition of "hazardous material." As reflected in the invoices and related documents, NSR is seeking to collect a daily demurrage or storage charge of \$60 per car from CLC. In addition to those sums, NSR's invoices impose an additional \$100 daily storage or demurrage charge which is claimed pursuant to its Tariff, Item 1012, Hazardous Commodities. As explained in Item 1015, Item 1012 applies to "all cars held on NS[R] tracks ... containing ... hazardous materials ... requiring the use of a four-digit identification number on shipping documents, placards or panels, as named in Part 11 Section 172.101."

10. Attached to the Petition as CLC Exhibit 2 is the Report of Clement Mesavage (the "Mesavage Report"). As explained in detail in the Mesavage Report, even before the tank cars were constructively placed, the asphalt product no longer satisfied the definition of a hazardous substance or materials as those terms are defined in 49 C.F.R. § 171.8.

11. For that reason, it was an unreasonable practice for NS to assess the additional daily charge of \$100 for each rail car involved in this case.

12. While NYT was engaged in negotiations with NSR with regard to the demurrage/storage charges, NSR filed suit against NYT in the United States District Court for the District of New Jersey. *Norfolk Southern Railway*

Company v. New York Terminals, LLC and NY Terminals II, LLC, Civil Action No. 2-14-CV-07664-WJM-MF (NYT Case). In that action, CLC's affiliate, NJ Asphalt, LLC, was joined by NYT as a third-party defendant. In a later case, *Norfolk Southern Railway Company v. C. L. Consulting and Management Corp.*, Case No. 2:15-CV-02548-JMV-JBC (CLC Case), NSR is seeking to collect demurrage charges from CLC that were, in part, originally assessed against NYT. The demurrage charges alleged in the two cases amount to \$579,320.00. Approximately 62% of that amount, or almost \$360,000, arises from NSR's assessment of charges based on its contention that allegedly hazardous materials were stored on NSR's tracks.

13. As CLC Exhibit 1 to the Petition shows, a substantial portion of NSR's claim involves storage charges for days that the loaded tank cars were held on NSR's tracks awaiting actual placement at NYT's facility. However, the time in transit before the cars in question were constructively placed and held on NSR's tracks awaiting delivery to NYT's facility is of critical importance.

14. As the Mesavage Report explains, it is solely because the asphalt product must be heated to approximately 325° F to effect loading into tank cars that the material is initially treated as an "elevated temperature material" and momentarily subjected to regulation by DOT. Once the temperature drops below 212° F, however, it is no longer deemed to be hazardous.

15. As confirmed in an April 28, 2016 heat loss study performed by GATX Rail¹ at CLC's request, assuming no other independent heating source, the elevated temperature of asphalt falls off precipitously shortly after being loaded into rail cars. A copy of the GATX study is attached to the Mesavage Report. Because the asphalt is not heated in the rail cars during transit, the study shows that the temperature of asphalt will drop to well below 212° F in less than four (4) days. At the lowered temperature, the asphalt no longer meets the definition of hazardous material. By the time any of the cars in issue reached New Jersey and was constructively placed on NSR's track, the asphalt material would have cooled to as low as 114° or below.

16. As the GATX study reflects, after a rail car has sat for more than 30 days in NSR's yard in sub-freezing temperatures, as was often the case during the particularly harsh 2013/2014 winter, the asphalt material would have cooled to as low as 27° F. To off-load the asphalt at NYT's terminal under these conditions required several days of re-heating for each one of the cars.

17. In short, because the asphalt was not a hazardous material when the cars in issue were placed on NSR's tracks, NSR's assessment of a \$100/car hazardous material storage charge against CLC and NYT was not warranted under the terms of NSR's tariff and was unreasonable.

¹ 222 West Adams Street, Chicago, IL 60606-5314; study performed by Gabe Buzas, mechanical engineer for GATX Rail.

CLC's Contentions: NSR Provided No Opportunity for CLC
to Seek Relief Under the Tariff, An Unreasonable Practice

18. In addition to the \$100 daily hazardous materials charge, NSR has also demanded payment or demurrage of \$60 per day per car. Item 400 of the NSR Tariff provides for situations of relief from the payment of ordinary demurrage charges. In relevant part, Item 400 provides:

1. Weather Interference: When because of ... heavy snow, the operations of the ... Consignee are disrupted, the demurrage/storage directly chargeable thereto will be eliminated, provided the disruption exceeds two (2) days in duration.

When at the time of placement, lading is frozen or congealed so as to require heating, thawing, or loosening to unload, Railroad will grant 1 credit for each day a car under actual placement is being heated, thawed or the lading is being loosened, with a maximum of 2 credits.

A Consignee desiring additional credits for unloading shall, prior to the expiration of ten (10) car days, after the date on which the car was released, send or give NS a written statement certifying by car initial and number, that the lading required heating, thawing or loosening.

19. Because NSR did not regard CLC as its customer and therefore declined to provide timely and necessary information to CLC, and because CLC was not originally identified as the consignee and did not receive any information from NSR regarding constructive or actual placement of the subject rail cars, CLC was completely denied a timely opportunity by NSR to provide NSR with information that would have allowed CLC to obtain the original or additional credits. At base, CLC did not and could not know that its rights were slipping away over time nor that it would never be able to assert them. Indeed, for

some of the shipments at issue, NSR waited more than a full year before it demanded payment from CLC, foreclosing and preventing CLC from seeking relief under Item 400 or otherwise.

20. Based on information and belief,² in light of the extreme weather conditions that caused extended and profound impacts on railroad operations throughout large segments of the country during the unusual 2013/2014 winter (as well as to NYT's operations), CSXT voluntarily agreed to waive demurrage charges during the period. For its customers that had shipped using CSXT, NYT received those credits against assessed demurrage/storage charges. This reasonable and pragmatic approach to its customers casts CSXT in stark contrast to the unreasonable practices of NSR against its customers as described in this Statement and Petition.

Conclusion

21. I am aware of the Board's decision in its Docket No. EP 707, *Demurrage Liability*, served April 11, 2014. Although the effective date of the rule changes was set as of July 15, 2014, the principles discussed in that decision were well known to NSR because it is my understanding that NSR actively participated in that rulemaking proceeding. Based on those principles and under the circumstances of this case: Where CLC did not detain the cars and was in no position to expedite the unloading of the rail cars at destination; where NSR

² The information discussed next was obtained during the discovery periods in the two federal district court cases brought by NSR, discussed above.

provided no information regarding constructive or actual placement of rail cars to CLC; where CLC was denied the only opportunities to seek relief because it was unaware that NSR would belatedly seek payment from it; and where NSR allowed months to pass after the rules became effective before it sought to force CLC to pay demurrage charges that had previously been billed to NYT, NSR should not be permitted to collect any demurrage charges from CLC.

I, Brandon C. Rose, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 10th day of June, 2016.



Brandon C. Rose

VERIFIED STATEMENT BRANDON C. ROSE
F.D. NO. 36042
ATTACHMENT A

From: Schamber, Judith A. [<mailto:Judith.Schamber@nscorp.com>]
Sent: Monday, November 03, 2014 4:33 PM
To: Nancy Stymacks; tyleryouvan@gmail.com; byouvan@yahoo.com
Cc: Reese, Tom G.; Martinetz, Paul C.; Bell, Rita L.; Cape, Vince H.; Schamber, Judith A.; Mcdonald, Matthew C; Pittman, John T.
Subject: CL Consulting (016297) - NS Demurrage @ Oak Island, NJ

Nancy, Tyler, Brad,

Per my phone conversation with Nancy, attached are the invoices and corresponding spreadsheet details for the demurrage charges. Note that there are several tabs on each spreadsheet with cars and dates involved.

To recap the situation, these shipments were received at New York Terminals facility in Oak Island, NJ between October 2013 and April 2014. These charges were originally billed to New York Terminals; however, they have refused payment. Legally per our tariff, the consignee listed on the bills of lading are responsible for any demurrage charges if refused by the party receiving the cars. I have also attached a copy of this tariff (last attachment).

In an effort to resolve these charges, I would like to propose a conference call to discuss them once you have had a chance to review. Please let me know your availability the week of November 10th, or if you would like to discuss sooner, let me know a convenient time for you.

Thanks for your assistance with this matter,

Judy Schamber

Assistant Manager Revenue Accounting | Demurrage

Norfolk Southern Railway

Ph: 404-582-6649 | Fax: 404-589-6744

Manage your account online at <https://www2.nscorp.com/accessNS/>

DIRECT INQUIRIES TO:

JOHN PITTMAN
 (404) 529-1034 FAX: 589-6776
 JOHN.PITTMAN@NSCORP.COM

PAYMENT DUE

10/08/2014

REMIT TO: NORFOLK SOUTHERN RAILWAY

P.O. BOX 532797
 ATLANTA GA 30353-2797

AMOUNT DUE

\$8,320.00

1200 Peachtree Street N.E. Atlanta, GA 30309

WITH THIS PORTION OF FREIGHT BILL

CL CONSULTING & MANAGEMENT CORP
 625 MT HOPE RD
 WHARTON NJ 07885-2807

FREIGHT BILL NO.
 2281147837

CUSTOMER NO.
 0162970026

CREDIT TERMS DUE DATE

10/08/2014

FREIGHT BILL DATE
 10/08/14

** NS SERIAL :5544531690**

IMAGE ID.

Car Initial & No. MISC 999999	Kind	Trailer Initial & No.	Length	Plan	LENGTH OF CAR	Waybill Date 12/09/13	Waybill Number 902406
Car Transferred To					CAPACITY OF CAR Ordered Furnished	VERSION 001	
						Time 12:52	By RXG
Station No. Station		State		Station No. Station		State	
Origin 075202 OAK ISLAND		NJ		Destination			
Billed At				Recd At			
Full Name of Shipper & Address CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON NJ 07885-2807	Customer Code 0162970026	Consignee & Address CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON NJ 07885-2807	Customer Code 0162970026				
RWC	Shpr. Bill of Lading	Date	Number	Route	A/S/R	Rte Code	555-
	12/09/2013	12:52		NS			
Previous Waybill Reference				Final Destination			
Special Instructions NOT FOR CAR MOVEMENT PTA PER J PITTMAN X1034 10/7/14				Bill To Party		Customer Code	
Additional Info/Reconsignment	PPD/COLL PREPAID	Sec. 7 NO	Weighed At				
	Rev. Date 12/09/13	Time	Gross				
	Declared Value		Tare				
			Allowance				
			Net				
Contract SYS FGN	Explanation of Rate Symbols N = Net Ton C = CWT	Tariff Authority # /					
Purchase Order No.	G = Gross Ton P = Per Unit						
SHIPPER LOAD AND COUNT NO	Commodity Code 106*	Mine NO.	Mine Name	Date Tagged	Permit Number		
Pkgs	Qual	Description of Articles	W/Q	Weight	Rate	Freight	Advances
00001	106	DEMURRAGE-AVG AGREEMENT MONTHLY DEMURRAGE AND STORAGE BILL FOR MONTH: NOVEMBER 2013 REF FB#1344182033			8320.0000		
							Prepaid 8320.00

FREIGHT BILL

FREIGHT BILL

Norfolk Southern Corporation
Month Charges Accrued: November
Invoice Number: 2281147837

Billing Date: 12/10/2013
Customer Number: 0162970026

Station Number: 075202
Waybill Number: 902406

CL CONSULTING & MANAGEMENT CORP
625 MT HOPE RD
WHARTON, NJ 07885-2807

Bill To: 0162970026

Cars Held Containing Hazardous Materials	\$5,200.00
Pvt Cars Held Under Tender Until Released	\$3,120.00
Total Monthly Charges	<u>\$8,320.00</u>

Demurrage Details for Invoice Number: 2281147837

Billing Date: 12/10/2013 **Station Number:** 075202
Customer Number: 0162970026 **Waybill Number:** 902406

CL CONSULTING & MANAGEMENT CORP **Bill To:** 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

****Cars Held Containing Hazardous Materials****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
E	GATX 211044		ASPHALTUM LQD	10/9/2013	10/9/2013	11/7/2013	10/10/2013	11/8/2013			2	0	28	\$100.00
E	GATX 212364		ASPHALTUM LQD	10/9/2013	10/9/2013	11/7/2013	10/10/2013	11/8/2013			2	0	28	\$100.00
		In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due					
		1	2	4	0	56	52	\$100.00	\$5,200.00					
Summary Total - Cars Held Containing Hazardous Materials									\$5,200.00					

Demurrage Details for Invoice Number: 2281147837

Billing Date: 12/10/2013
Customer Number: 0162970026

Station Number: 075202
Waybill Number: 902406

CL CONSULTING & MANAGEMENT CORP
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

Bill To: 0162970026

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
E	GATX 211044		ASPHALTUM LQD	10/9/2013	10/9/2013	11/7/2013	10/10/2013	11/8/2013			2	0	28	\$60.00
E	GATX 212364		ASPHALTUM LQD	10/9/2013	10/9/2013	11/7/2013	10/10/2013	11/8/2013			2	0	28	\$60.00
		In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due					
		1	2	4	0	56	52	\$60.00	\$3,120.00					
Summary Total - Pvt Cars Held Under Tender Until Released									\$3,120.00					

5

Norfolk Southern Corporation
Month Charges Accrued: October
Invoice Number: 2281147845

Billing Date: 11/12/2013
Customer Number: 0162970026

Station Number: 075202
Waybill Number: 902458

CL CONSULTING & MANAGEMENT CORP
625 MT HOPE RD
WHARTON, NJ 07885-2807

Bill To: 0162970026

Cars Held Containing Hazardous Materials	\$19,100.00
Pvt Cars Held Under Tender Until Released	\$11,460.00
Total Monthly Charges	<u>\$30,560.00</u>

7

Demurrage Details for Invoice Number: 2281147845

Billing Date: 11/12/2013 **Station Number:** 075202
Customer Number: 0162970026 **Waybill Number:** 902458

CL CONSULTING & MANAGEMENT CORP **Bill To:** 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

****Cars Held Containing Hazardous Materials****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR		RELEASED	PULLED	CREDITS	SVC		RATE
							PLACED	PLACED				CREDITS	DAYS	
E	FHRX 260075		ASPHALTUM LQD	10/4/2013	10/4/2013	10/24/2013	10/7/2013	10/25/2013		10/31/2013	2	0	17	\$100.00
E	FHRX 260077		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$100.00
E	FHRX 260095		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$100.00
E	FHRX 260124		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$100.00
E	GATX 063734		ASPHALTUM LQD	9/30/2013	9/30/2013	10/7/2013	10/1/2013	10/8/2013			2	0	6	\$100.00
E	GATX 066481		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$100.00
E	GATX 067828		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$100.00
E	GATX 089104		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$100.00
E	GATX 211057		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$100.00
E	GATX 211059		ASPHALTUM LQD	10/9/2013	10/9/2013	10/24/2013	10/10/2013	10/25/2013			2	0	14	\$100.00
E	GATX 211066		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$100.00
E	GATX 211089		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$100.00
E	NATX 076121		ASPHALTUM LQD	9/30/2013	9/30/2013	10/7/2013	10/1/2013	10/8/2013			2	0	6	\$100.00
E	NATX 077110		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$100.00
E	TCBX 230038		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$100.00
E	TILX 256601		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$100.00
E	TILX 256612		ASPHALTUM LQD	10/9/2013	10/9/2013	10/24/2013	10/10/2013	10/25/2013		10/31/2013	2	0	14	\$100.00

In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due
I	17	34	0	225	191	\$100.00	\$19,100.00

Summary Total - Cars Held Containing Hazardous Materials \$19,100.00

Billing Date: 11/12/2013
 Customer Number: 0162970026

Station Number: 075202
 Waybill Number: 902458

CL CONSULTING & MANAGEMENT CORP
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

Bill To: 0162970026

****Pvt Cars Held Under Tender Until Released****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
F	FHRX 260075		ASPHALTUM LQD	10/4/2013	10/4/2013	10/24/2013	10/7/2013	10/25/2013		10/31/2013	2	0	17	\$60.00
F	FHRX 260077		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$60.00
F	FHRX 260095		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$60.00
F	FHRX 260124		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$60.00
F	GATX 063734		ASPHALTUM LQD	9/30/2013	9/30/2013	10/7/2013	10/1/2013	10/8/2013			2	0	6	\$60.00
F	GATX 066481		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$60.00
F	GATX 067828		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$60.00
F	GATX 089104		ASPHALTUM LQD	10/4/2013	10/4/2013	10/21/2013	10/7/2013	10/22/2013			2	0	14	\$60.00
F	GATX 211057		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$60.00
F	GATX 211059		ASPHALTUM LQD	10/9/2013	10/9/2013	10/24/2013	10/10/2013	10/25/2013			2	0	14	\$60.00
F	GATX 211066		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$60.00
F	GATX 211089		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$60.00
F	NATX 076121		ASPHALTUM LQD	9/30/2013	9/30/2013	10/7/2013	10/1/2013	10/8/2013			2	0	6	\$60.00
F	NATX 077110		ASPHALTUM LQD	9/30/2013	9/30/2013	10/14/2013	10/1/2013	10/15/2013			2	0	13	\$60.00
F	TCBX 230038		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$60.00
F	TILX 256601		ASPHALTUM LQD	9/30/2013	9/30/2013	10/16/2013	10/1/2013	10/17/2013			2	0	15	\$60.00
F	TILX 256612		ASPHALTUM LQD	10/9/2013	10/9/2013	10/24/2013	10/10/2013	10/25/2013		10/31/2013	2	0	14	\$60.00

In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due
I	17	34	0	225	191	\$60.00	\$11,460.00

Summary Total - Pvt Cars Held Under Tender Until Released \$11,460.00

Norfolk Southern Corporation
Month Charges Accrued: February
Invoice Number: 2282161224

Billing Date:	3/11/2014	Station Number:	075202
Customer Number:	0162970026	Waybill Number:	902401

CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON, NJ 07885-2807	Bill To:	0162970026
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Cars Held Containing Hazardous Materials	\$35,300.00
Pvt Cars Held Under Tender Until Released	\$21,180.00
Total Monthly Charges	<u>\$56,480.00</u>

Demurrage Details for Invoice Number: 2282161224

Billing Date: 3/11/2014 **Station Number:** 075202
Customer Number: 0162970026 **Waybill Number:** 902401

CL CONSULTING & MANAGEMENT CORP **Bill To:** 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

****Cars Held Containing Hazardous Materials****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
E	FHRX 260045		ASPHALTUM LQD	1/3/2014	1/3/2014	2/21/2014	1/6/2014	2/24/2014			2	0	45	\$100.00
E	FHRX 260054		ASPHALTUM LQD	1/3/2014	1/3/2014	2/14/2014	1/6/2014	2/17/2014			2	0	39	\$100.00
E	FHRX 260056		ASPHALTUM LQD	1/3/2014	1/3/2014	2/21/2014	1/6/2014	2/24/2014			2	0	45	\$100.00
E	FHRX 260096		ASPHALTUM LQD	1/3/2014	1/3/2014	2/27/2014	1/6/2014	2/28/2014			2	0	51	\$100.00
E	GATX 060846		ASPHALTUM LQD	1/14/2014	1/14/2014	2/27/2014	1/15/2014	2/28/2014			2	0	42	\$100.00
E	GATX 066768		ASPHALTUM LQD	1/3/2014	1/3/2014	2/27/2014	1/6/2014	2/28/2014			2	0	51	\$100.00
E	GATX 211061		ASPHALTUM LQD	1/3/2014	1/3/2014	2/27/2014	1/6/2014	2/28/2014			2	0	51	\$100.00
E	PTLX 223731		ASPHALTUM LQD	1/3/2014	1/3/2014	2/21/2014	1/6/2014	2/24/2014			2	0	45	\$100.00

In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due
1	8	16	0	369	353	\$100.00	\$35,300.00

Summary Total - Cars Held Containing Hazardous Materials \$35,300.00

Demurrage Details for Invoice Number: 2282161224

Billing Date: 3/11/2014
Customer Number: 0162970026

Station Number: 075202
Waybill Number: 902401

CL CONSULTING & MANAGEMENT CORP
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

Bill To: 0162970026

****Pvt Cars Held Under Tender Until Released****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
F	FHRX 260045		ASPHALTUM LQD	1/3/2014	1/3/2014	2/21/2014	1/6/2014	2/24/2014			2	0	45	\$60.00
F	FHRX 260054		ASPHALTUM LQD	1/3/2014	1/3/2014	2/14/2014	1/6/2014	2/17/2014			2	0	39	\$60.00
F	FHRX 260056		ASPHALTUM LQD	1/3/2014	1/3/2014	2/21/2014	1/6/2014	2/24/2014			2	0	45	\$60.00
F	FHRX 260096		ASPHALTUM LQD	1/3/2014	1/3/2014	2/27/2014	1/6/2014	2/28/2014			2	0	51	\$60.00
F	GATX 060846		ASPHALTUM LQD	1/14/2014	1/14/2014	2/27/2014	1/15/2014	2/28/2014			2	0	42	\$60.00
F	GATX 066768		ASPHALTUM LQD	1/3/2014	1/3/2014	2/27/2014	1/6/2014	2/28/2014			2	0	51	\$60.00
F	GATX 211061		ASPHALTUM LQD	1/3/2014	1/3/2014	2/27/2014	1/6/2014	2/28/2014			2	0	51	\$60.00
F	PTLX 223731		ASPHALTUM LQD	1/3/2014	1/3/2014	2/21/2014	1/6/2014	2/24/2014			2	0	45	\$60.00

In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due
I	8	16	0	369	353	\$60.00	\$21,180.00

Summary Total - Pvt Cars Held Under Tender Until Released \$21,180.00

DIRECT INQUIRIES TO: JOHN PITTMAN (404) 529-1034 FAX: 589-6776 JOHN.PITTMAN@NSCORP.COM 1200 Peachtree Street N.E. Atlanta, GA 30309	PAYMENT DUE 10/09/2014	REMIT TO: NORFOLK SOUTHERN RAILWAY P.O. BOX 532797 ATLANTA GA 30353-2797	AMOUNT DUE \$170,080.00
			WITH THIS PORTION OF FREIGHT BILL

CL CONSULTING & MANAGEMENT CORP
625 MT HOPE RD
WHARTON NJ 07885-2807

FREIGHT BILL NO.
2282161266

CUSTOMER NO.
0162970026

CREDIT TERMS DUE DATE
10/09/2014

FREIGHT BILL DATE
10/09/14

** NS SERIAL :5544575131**

IMAGE ID.

FREIGHT BILL

FREIGHT BILL

Car Initial & No. MISC 999999	Kind	Trailer Initial & No.	Length	Plan	LENGTH OF CAR	Waybill Date 04/09/14	Waybill Number 902422
Car Transferred To					CAPACITY OF CAR Ordered Furnished	VERSION 004 Time 13:57	By BH7
Station No. 075202	Station OAK ISLAND	State NJ			Station No.	Station	State
Origin Billed At				Destination Recd At			
Full Name of Shipper & Address CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON NJ 07885-2807		Customer Code 0162970026	Consignee & Address CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON NJ 07885-2807		Customer Code 0162970026		
RWC	Shpr. Bill of Lading	Date 04/09/2014	Number WPC	Route NS	A/S/R	Rte Code	555-
Previous Waybill Reference				Final Destination			
Special Instructions NOT FOR CAR MOVEMENT REF FB# 2100186001 NEW YORK TERMINALS MONTH CHARGED MARCH 2014 PTA PER JOHN PITTMAN 529-1034				Bill To Party		Customer Code	
Additional Info/Reconsignment				PPD/COLL PREPAID	Sec. 7 NO	Weighed At	
				Rev. Date 04/09/14	Time	Gross	
				Declared Value		Tare	
						Allowance	
						Net	
Contract SYS FGN		Explanation of Rate Symbols N = Net Ton C = CWT G = Gross Ton P = Per Unit		Tariff Authority # /			
Purchase Order No. NO		Commodity Code 106*	Mine NO.	Mine Name	Date Tagged	Permit Number	
Pkgs	Qual	Description of Articles	W/Q	Weight	Rate	Freight	Advances
00001	106	DEMURRAGE-AVG AGREEMENT "SUMMARIZED MONTHLY DEMURRAGE AND STORAGE BILLING PER AGREEMENT FOR THE MONTH OF MARCH 2014"					Prepaid 170080.00

Norfolk Southern Corporation
Month Charges Accrued: March
Invoice Number: 2282161266

Billing Date: 4/10/2014
Customer Number: 0162970026

Station Number: 075202
Waybill Number: 902422

CL CONSULTING & MANAGEMENT CORP
625 MT HOPE RD
WHARTON, NJ 07885-2807

Bill To: 0162970026

Cars Held Containing Hazardous Materials	\$106,300.00
Pvt Cars Held Under Tender Until Released	\$63,780.00
Total Monthly Charges	<u>\$170,080.00</u>

Demurrage Details for Invoice Number: 2282161266

Billing Date: 4/10/2014 **Station Number:** 075202
Customer Number: 0162970026 **Waybill Number:** 902422

CL CONSULTING & MANAGEMENT CORP **Bill To:** 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

****Cars Held Containing Hazardous Materials****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
E	ACFX 087901		ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$100.00
E	FHRX 260032		ASPHALTUM LQD	1/27/2014	1/27/2014	3/13/2014	1/28/2014	3/14/2014			2	0	43	\$100.00
E	FHRX 260036		ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014		3/25/2014	2	0	26	\$100.00
E	FHRX 260039		ASPHALTUM LQD	2/19/2014	2/19/2014	3/13/2014	2/20/2014	3/14/2014			2	0	21	\$100.00
E	FHRX 260074		ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$100.00
E	FHRX 260116		ASPHALTUM LQD	2/27/2014	2/27/2014	3/27/2014	2/28/2014	3/28/2014			2	0	27	\$100.00
E	FHRX 260147		ASPHALTUM LQD	2/19/2014	2/19/2014	3/13/2014	2/20/2014	3/14/2014			2	0	21	\$100.00
E	GATX 011474		ASPHALTUM LQD	1/24/2014	1/24/2014	3/20/2014	1/27/2014	3/21/2014			2	0	51	\$100.00
E	GATX 060869		ASPHALTUM LQD	2/20/2014	2/20/2014	3/25/2014	2/21/2014	3/26/2014			2	0	32	\$100.00
E	GATX 064535		ASPHALTUM LQD	3/4/2014	3/4/2014	3/20/2014	3/5/2014	3/21/2014			2	0	15	\$100.00
E	GATX 070474		ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014			2	0	26	\$100.00
E	GATX 089074		ASPHALTUM LQD	1/3/2014	1/3/2014	2/28/2014	1/6/2014	3/5/2014			2	0	52	\$100.00
E	GATX 089095		ASPHALTUM LQD	2/7/2014	2/7/2014	3/13/2014	2/10/2014	3/14/2014			2	0	30	\$100.00
E	GATX 089098		ASPHALTUM LQD	2/20/2014	2/20/2014	3/27/2014	2/21/2014	3/28/2014			2	0	34	\$100.00
E	GATX 211027		ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$100.00
E	GATX 211035		ASPHALTUM LQD	1/21/2014	1/21/2014	3/13/2014	1/22/2014	3/14/2014			2	0	49	\$100.00
E	GATX 211041		ASPHALTUM LQD	1/3/2014	1/3/2014	2/28/2014	1/6/2014	3/5/2014			2	0	52	\$100.00
E	GATX 211044		ASPHALTUM LQD	2/20/2014	2/20/2014	3/27/2014	2/21/2014	3/28/2014			2	0	34	\$100.00
E	GATX 211047		ASPHALTUM LQD	1/3/2014	1/3/2014	2/28/2014	1/6/2014	3/5/2014			2	0	52	\$100.00
E	GATX 211059		ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$100.00
E	GATX 211066		ASPHALTUM LQD	2/19/2014	2/19/2014	3/25/2014	2/20/2014	3/26/2014			2	0	33	\$100.00
E	GATX 211069		ASPHALTUM LQD	2/20/2014	2/20/2014	3/27/2014	2/21/2014	3/28/2014			2	0	34	\$100.00
E	GATX 212374		ASPHALTUM LQD	2/19/2014	2/19/2014	3/13/2014	2/20/2014	3/14/2014			2	0	21	\$100.00
E	GATX 212375		ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$100.00
E	GATX 212378		ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$100.00
E	NATX 050500		ASPHALTUM LQD	1/17/2014	1/17/2014	3/13/2014	1/20/2014	3/14/2014			2	0	51	\$100.00
E	PTLX 223808		ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014			2	0	26	\$100.00
E	TCBX 230053		ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$100.00
E	TILX 256592		ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014		3/25/2014	2	0	26	\$100.00
E	TILX 256599		ASPHALTUM LQD	1/14/2014	1/14/2014	2/28/2014	1/15/2014	3/5/2014			2	0	43	\$100.00
E	TILX 256604		ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$100.00
E	TILX 256608		ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$100.00

In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due
1	32	64	0	1127	1063	\$100.00	\$106,300.00

Summary Total - Cars Held Containing Hazardous Materials \$106,300.00

Demurrage Details for Invoice Number: 2282161266

Billing Date: 4/10/2014 Station Number: 075202
 Customer Number: 0162970026 Waybill Number: 902422

CL CONSULTING & MANAGEMENT CORP Bill To: 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

Pvt Cars Held Under Tender Until Released

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
E	ACFX	087901	ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$60.00
E	FHRX	260032	ASPHALTUM LQD	1/27/2014	1/27/2014	3/13/2014	1/28/2014	3/14/2014			2	0	43	\$60.00
E	FHRX	260036	ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014		3/25/2014	2	0	26	\$60.00
E	FHRX	260039	ASPHALTUM LQD	2/19/2014	2/19/2014	3/13/2014	2/20/2014	3/14/2014			2	0	21	\$60.00
E	FHRX	260074	ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$60.00
E	FHRX	260116	ASPHALTUM LQD	2/27/2014	2/27/2014	3/27/2014	2/28/2014	3/28/2014			2	0	27	\$60.00
E	FHRX	260147	ASPHALTUM LQD	2/19/2014	2/19/2014	3/13/2014	2/20/2014	3/14/2014			2	0	21	\$60.00
E	GATX	011474	ASPHALTUM LQD	1/24/2014	1/24/2014	3/20/2014	1/27/2014	3/21/2014			2	0	51	\$60.00
E	GATX	060869	ASPHALTUM LQD	2/20/2014	2/20/2014	3/25/2014	2/21/2014	3/26/2014			2	0	32	\$60.00
E	GATX	064535	ASPHALTUM LQD	3/4/2014	3/4/2014	3/20/2014	3/5/2014	3/21/2014			2	0	15	\$60.00
E	GATX	070474	ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014			2	0	26	\$60.00
E	GATX	089074	ASPHALTUM LQD	1/3/2014	1/3/2014	2/28/2014	1/6/2014	3/5/2014			2	0	52	\$60.00
E	GATX	089095	ASPHALTUM LQD	2/7/2014	2/7/2014	3/13/2014	2/10/2014	3/14/2014			2	0	30	\$60.00
E	GATX	089098	ASPHALTUM LQD	2/20/2014	2/20/2014	3/27/2014	2/21/2014	3/28/2014			2	0	34	\$60.00
E	GATX	211027	ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$60.00
E	GATX	211035	ASPHALTUM LQD	1/21/2014	1/21/2014	3/13/2014	1/22/2014	3/14/2014			2	0	49	\$60.00
E	GATX	211041	ASPHALTUM LQD	1/3/2014	1/3/2014	2/28/2014	1/6/2014	3/5/2014			2	0	52	\$60.00
E	GATX	211044	ASPHALTUM LQD	2/20/2014	2/20/2014	3/27/2014	2/21/2014	3/28/2014			2	0	34	\$60.00
E	GATX	211047	ASPHALTUM LQD	1/3/2014	1/3/2014	2/28/2014	1/6/2014	3/5/2014			2	0	52	\$60.00
E	GATX	211059	ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$60.00
E	GATX	211066	ASPHALTUM LQD	2/19/2014	2/19/2014	3/25/2014	2/20/2014	3/26/2014			2	0	33	\$60.00
E	GATX	211069	ASPHALTUM LQD	2/20/2014	2/20/2014	3/27/2014	2/21/2014	3/28/2014			2	0	34	\$60.00
E	GATX	212374	ASPHALTUM LQD	2/19/2014	2/19/2014	3/13/2014	2/20/2014	3/14/2014			2	0	21	\$60.00
E	GATX	212375	ASPHALTUM LQD	2/19/2014	2/19/2014	3/20/2014	2/20/2014	3/21/2014			2	0	28	\$60.00
E	GATX	212378	ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$60.00
E	NATX	050500	ASPHALTUM LQD	1/17/2014	1/17/2014	3/13/2014	1/20/2014	3/14/2014			2	0	51	\$60.00
E	PTLX	223808	ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014			2	0	26	\$60.00
E	TCBX	230053	ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$60.00
E	TILX	256592	ASPHALTUM LQD	2/19/2014	2/19/2014	3/18/2014	2/20/2014	3/19/2014		3/25/2014	2	0	26	\$60.00
E	TILX	256599	ASPHALTUM LQD	1/14/2014	1/14/2014	2/28/2014	1/15/2014	3/5/2014			2	0	43	\$60.00
E	TILX	256604	ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$60.00
E	TILX	256608	ASPHALTUM LQD	1/14/2014	1/14/2014	3/4/2014	1/15/2014	3/5/2014			2	0	47	\$60.00

In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due
I	32	64	0	1127	1063	\$60.00	\$63,780.00

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DIRECT INQUIRIES TO:

JOHN PITTMAN
 (404) 529-1034 FAX: 589-6776
 JOHN.PITTMAN@NSCORP.COM

1200 Peachtree Street N.E. Atlanta, GA 30309

PAYMENT DUE

10/09/2014

REMIT TO: NORFOLK SOUTHERN RAILWAY

P.O. BOX 532797
 ATLANTA GA 30353-2797

AMOUNT DUE

\$19,520.00

WITH THIS PORTION OF FREIGHT BILL

CL CONSULTING & MANAGEMENT CORP
 625 MT HOPE RD
 WHARTON NJ 07885-2807

FREIGHT BILL NO.
 2282161274

CUSTOMER NO.
 0162970026

CREDIT TERMS DUE DATE
 10/09/2014

FREIGHT BILL DATE
 10/09/14

** NS SERIAL :5544561970**

IMAGE ID.

Car Initial & No. MISC 999999	Kind	Trailer Initial & No.	Length	Plan	LENGTH OF CAR	Waybill Date 05/11/14	Waybill Number 902449
Car Transferred To					CAPACITY OF CAR Ordered Furnished	VERSION 003	
						Time 13:40	By RXG

Station No.	Station	State	Station No.	Station	State
Origin 075202	OAK ISLAND	NJ	Destination		
Billed At			Recd At		

Full Name of Shipper & Address CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON NJ 07885-2807	Customer Code 0162970026	Consignee & Address CL CONSULTING & MANAGEMENT CORP 625 MT HOPE RD WHARTON NJ 07885-2807	Customer Code 0162970026
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RWC	Shpr. Bill of Lading 05/11/2014	Date 13:40	Number	Route NS	A/S/R	Rte Code 555-
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Previous Waybill Reference	Final Destination
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Special Instructions NOT FOR CAR MOVEMENT PTA PER J PITTMAN X1034 10/7/14	Bill To Party	Customer Code
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Additional Info/Reconsignment	PPD/COLL PREPAID	Sec. 7 NO	Weighed At
	Rev. Date 05/11/14	Time	Gross
	Declared Value		Tare
			Allowance
			Net

Contract SYS FGN	Explanation of Rate Symbols N = Net Ton C = CWT G = Gross Ton P = Per Unit	Tariff Authority # /
------------------------	--	-------------------------

Purchase Order No. NO	Commodity Code 106*	Mine NO.	Mine Name	Date Tagged	Permit Number
--------------------------	------------------------	----------	-----------	-------------	---------------

Pkgs	Qual	Description of Articles	W/Q	Weight	Rate	Freight	Advances	Prepaid
00001	106	DEMURRAGE-AVG AGREEMENT MONTHLY DEMURRAGE AND STORAGE BILL FOR MONTH: APRIL 2014 REF FB#2132512775			9520.0000			19520.00

Norfolk Southern Corporation
Month Charges Accrued: April
Invoice Number: 2282161274

Billing Date: 5/12/2014
Customer Number: 0162970026

Station Number: 075202
Waybill Number: 902449

CL CONSULTING & MANAGEMENT CORP
625 MT HOPE RD
WHARTON, NJ 07885-2807

Bill To: 0162970026

Cars Held Containing Hazardous Materials	\$12,200.00
Pvt Cars Held Under Tender Until Released	\$7,320.00
Total Monthly Charges	<u>\$19,520.00</u>

Demurrage Details for Invoice Number: 2282161274

Billing Date: 5/12/2014 **Station Number:** 075202
Customer Number: 0162970026 **Waybill Number:** 902449

CL CONSULTING & MANAGEMENT CORP **Bill To:** 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

****Cars Held Containing Hazardous Materials****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
E	FHRX 260080		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$100.00
E	FHRX 260120		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$100.00
E	FHRX 260156		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$100.00
E	GATX 002970		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$100.00
E	GATX 069958		ASPHALTUM LQD	2/28/2014	2/28/2014	3/31/2014	3/3/2014	4/1/2014			2	0	28	\$100.00
		In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due					
		1	5	10	0	132	122	\$100.00	\$12,200.00					

Summary Total - Cars Held Containing Hazardous Materials \$12,200.00

Demurrage Details for Invoice Number: 2282161274

Billing Date: 5/12/2014 **Station Number:** 075202
Customer Number: 0162970026 **Waybill Number:** 902449

CL CONSULTING & MANAGEMENT CORP **Bill To:** 0162970026
 625 MT HOPE RD
 WHARTON, NJ 07885-2807

****Pvt Cars Held Under Tender Until Released****

BILL TYPE	EQUIPMENT	CAR TYPE	COMMODITY	ARRIVED	NOTIFIED	ORDERED	CONSTR PLACED	PLACED	RELEASED	PULLED	CREDITS	SVC CREDITS	DAYS	RATE
F	FHRX 260080		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$60.00
F	FHRX 260120		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$60.00
F	FHRX 260156		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$60.00
F	GATX 002970		ASPHALTUM LQD	3/4/2014	3/4/2014	3/31/2014	3/5/2014	4/1/2014			2	0	26	\$60.00
F	GATX 0069958		ASPHALTUM LQD	2/28/2014	2/28/2014	3/31/2014	3/3/2014	4/1/2014			2	0	28	\$60.00
		In Out	No. Cars Released	Credit Days	Service Credits	Car Days	Chargeable Days	Daily Rate	Amount Due					
		I	5	10	0	132	122	\$60.00	\$7,320.00					

Summary Total - Pvt Cars Held Under Tender Until Released \$7,320.00

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VERIFIED STATEMENT BRANDON C. ROSE
F.D. NO. 36042
ATTACHMENT B

NORFOLK SOUTHERN RAILWAY COMPANY

VISION: BE THE SAFEST, MOST CUSTOMER-FOCUSED AND SUCCESSFUL
TRANSPORTATION COMPANY IN THE WORLD

FREIGHT TARIFF NS 6004-C
CANCELS
FREIGHT TARIFF NS 6004-B
(For cancellation see Item 1)

DEMURRAGE RULES AND
CHARGES

STORAGE RULES AND
CHARGES

Applying at all NS points in the United States and other points as specifically provided herein.

Also at points on other roads
(See Item 4)

ISSUED December 7, 2008

EFFECTIVE February 1, 2009

ISSUED BY
C. J. Orndorff, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY
110 Franklin Road, S.E.
Roanoke, VA 24042-0047

ITEM 1 - CANCELLATION NOTICE

This tariff cancels Rates, rules, regulations and charges published in Demurrage Rules and Charges and Storage Provisions in the following Tariffs:

NS Tariff 6004-B

ITEM 2 - TABLE OF CONTENTS

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ITEM 4 - LIST OF PARTICIPATING CARRIERS

ABBREVIATION	NAME OF CARRIER
NS	Norfolk Southern Railway Company Includes the following subsidiaries and affiliated carriers: Norfolk and Western Railway Company Norfolk Southern Railway Company Alabama Great Southern Railroad Company, The Atlantic and East Carolina Railway Company Camp Lejeune Railroad Company Chesapeake Western Railway Cincinnati, New Orleans and Texas Pacific Railway Company, The Central of Georgia Railroad Company Georgia Southern and Florida Railway Company State University Railroad Company Tennessee, Alabama & Georgia Railway Company Tennessee Railway Company
	All NS Handling Line Stations on carriers named in note 3700 of The Official Railroad Station List OPSP 6000-series. (See Item 5) (See Note 1 this item)

Note 1 -The provisions of this tariff will also apply on traffic to or from Norfolk Southern Handling Lines as defined in Note 3700 of OPSP 6000-Series when traffic is billed from or to the NS stations numbers assigned to the handling line station. The carriers shown in Column 1 of Note 3700 are a party to this tariff except, where pricing authorities provide for specific demurrage provisions.

RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 5 - APPLICATION OF REFERENCED PUBLICATIONS

The following publications contain rules, regulations, charges and allowances specifically referred to herein or that may apply directly or indirectly along with the terms of demurrage, storage and other matters, that are covered in this publication.

NS Conditions of Carriage #1-Series
NS Conditions of Carriage #2-Series (Coal)
NS 6303 Rules for Handling Hazardous Materials
NS 6500 Canadian Car Demurrage Rules and Charges
NS 8001 Switching
NS 8002 Accessorial Services
NS 9209 Demurrage at Lamberts Point, VA
AAR 2 -- Hazardous Materials Shipping Descriptions (49-series STCC numbers)
BOE 6000 Bureau of Explosives Rules
RER 6411 Official Railway Equipment Register
RPS 6007 Mileage Allowances and Rules
RPS 6008 Demurrage Rules and Charges on Coal etc., at mines
RPS 6740 Heavy Duty Flat Car Charges
OPSL 6000 Official Railroad Station List
STCC 6001 Standard Transportation Commodity Code
UFC 6000 Uniform Freight Classification

ITEM 20 - REFERENCE TO TARIFFS, ITEMS, NOTES, AND RULES

Where reference is made in this tariff to tariffs, items, notes, the glossary and rules, etc. such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, the glossary and, rules.

ITEM 40 - CONSECUTIVE NUMBER

Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" or a hyphen they will be understood to include both of the numbers shown. If the first number only bears a reference mark such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

ITEM 75 - METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445, and Item 365-B cancels Item 365-A in a prior supplement, which in turn cancelled Item 365.

ITEM 100 - METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS

Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number (or letter, or number and letter) being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date, consult the supplement in which the reissued matter first became effective.

RULES AND OTHER GOVERNING PROVISIONS

ITEM 200 - GLOSSARY OF TERMS:

1. **Actual Placement:** When a car is placed in an accessible position for loading or unloading or at a point designated by Consignor or Consignee.
2. **Assignee:** A shipper who has requested and has been assigned cars to a specific pool of cars for their use.
3. **Assigned Car:** A car of any ownership specifically requested and assigned to a shipper from a pool of assignment service cars.
4. **Car Days:** A twenty four (24) hour period or fraction thereof commencing 0000 hours (Local Time) after actual or constructive placement until the car is released and available to NS.
5. **Closed Gate:** When a car cannot be placed on Consignee's siding at time of arrival due to siding having a locked gate-, door and/or standing instructions not to place any cars unless the Consignee first contacts NS for placement instructions. All cars are constructively placed at time of arrival.
6. **Consignee:** The party to whom a shipment is consigned or the party entitled to receive the shipment.
7. **Consignor:** The party in whose name cars are ordered.
8. **Constructive Placement:** When a car cannot be actually placed because of any condition attributable to the Consignor or Consignee, such car will be held at an available hold point and notice will be given the Consignor or Consignee that the car is held awaiting instructions. However, cars actually placed on customer siding will be considered constructively placed and no notification provided. Car Days will begin if instructions to NS are not received before 0000 hours (See Car Days), of day following notification.
9. **Credit Day:** Non-chargeable day. Credits can only be earned on those cars released to carrier for further disposition.
10. **Electronic Means:** Any approved electronic device (i.e. AccessNS, email, telephone, facsimile) used to communicate to CYO the disposition of a car.
11. **Forwarding Instructions:** A bill of lading or other suitable order containing all the necessary information to transport the shipment to final destination. Bill of lading or other suitable order must be given to NS via electronic data interchange or facsimile to the Agency Operations Center at 1-800 580-6092.
12. **Grain Unit:** 45 cars or more railroad cars, moving under one Bill of Lading or Waybill.
13. **Grain Unit Car Day:** A twenty four (24) hour period or fraction thereof commencing at the time of actual placement of all cars in the grain unit, (minimum of 45 cars).
14. **Holidays:** The following days will be considered NS Holidays: New Year's Eve Day, New Year's Day, Labor Day, President's Day, Good Friday, Thanksgiving Day, The Day After Thanksgiving, Memorial Day, Christmas Eve Day, Christmas Day, Independence Day.
15. **Hold Point:** the rail station where Assigned Cars are made available to the shipper.
16. **Lease Track:** Track (s) assigned to a user by written agreement. Lease Track will be treated the same as private track.
17. **Loading:** The complete or partial loading of a car in conformity with NS loading and clearance rules, and the furnishing of forwarding instructions.
18. **NS Track:** All tracks which NS provides for its own uses and purposes and other tracks located inside of its right-of-way or yards and terminals.
19. **Open Gate:** When a Consignee does not place any restrictions (physical or otherwise) on NS to place cars on their siding upon arrival.
20. **Origin Turnover:** Origin Turnover occurs when a car is loaded, and Consignor authorizes the carrier to accept shipping instructions from another party, while the car is still at origin.
21. **Ordered Placed:** The date and time that a car is to be placed on a private track.
22. **Private Car:** A car bearing other than railroad reporting marks and which is not a Railroad Controlled Car.
23. **Private Track:** Trackage assigned for individual use including privately owned or leased tracks.
24. **Public Delivery Track:** Any accessible track open to the general public for loading or unloading.
25. **Railroad-Controlled Cars:** a car with railroad reporting marks.
26. **Reload:** When the same car is completely unloaded and then replaced with a revenue load. Reloading will be expressed (with cars unloading demurrage) from the date of tender to the date forwarding instructions are received.
27. **Stopped in Transit:** When cars are held enroute because of any condition attributable to the Consignor or Consignee, or owner of the lading.
28. **Storage Day:** A 24 hour period, or part thereof.
29. **Tender:** When NS gives notification that a car is available for unloading or loading by either actual or constructive placement to Consignor or Consignee.
30. **Time:** Local time is applicable. Time is expressed on the basis of the 24-hour clock. (EXAMPLE: 12:01 AM is expressed as 0001 hours.)
31. **Unloading:** The complete unloading of a car and notice from the Consignee that the car is empty and available to NS.

ITEM 300 - NOTIFICATION TO CUSTOMERS BY NS:

1. The following notifications (including by Electronic Means) will be furnished as indicated:

Cars to be Delivered to Private Tracks

- (a) Notification of constructive placement on all cars held on NS tracks due to any condition attributable to Consignee or Consignor.
- (b) Delivery of car upon Consignee tracks will constitute notification.
- (c) Delivery upon industrial interchange tracks of Consignee or party entitled to receive same will constitute notification.

Cars to be Delivered to Public Tracks

Notice of arrival will be given to party entitled to receive notification when car is actually placed.

Refused Carload Freight

When advised of refusal of car at destination, notice will be sent or given to Consignor or owner of the lading.

2. Notification information provided:

- (a) Car Initial and Number
- (b) If contents transferred enroute, NS will furnish car initial and number of the original car and replacement car.

3. Methods and procedures for notification:

Notification may be sent or given by telephone communication or Electronic Means, (see Electronic Means, Item 200). When Consignor or Consignee utilizes an electronic or mechanical device (either in written, oral or keyed data form) notification left on such device will be considered as having been given to Consignor or Consignee, as of the date and time transmitted.

ITEM 350 - NOTIFICATION TO NS:

- (a) After Constructive placement Consignor/Consignee will have until 0000 hours (See Car Days, Item 200) of the next day to furnish required instructions or information.
 - (b) Notification by Electronic Means (see Electronic Means, Item 200) will be considered as having been received by NS at date and time Consignee or Consignor furnishes forwarding instructions or notification that car is available for movement.
-

ITEM 400 - SITUATIONS WHEN RELIEF IS PERMISSIBLE:

In order to be allowed relief as indicated, a claim must be presented to NS, in writing, by the last day of the calendar month following the month in which the bill was issued, stating fully the conditions for which relief is claimed.

1. **Weather Interference:** When because of earthquakes, tornadoes, hurricanes, floods or heavy snow, the operations of the Consignor or Consignee are disrupted, the demurrage / storage directly chargeable thereto will be eliminated, provided the disruption exceeds two (2) days in duration.

When at the time of placement, lading is frozen or congealed so as to require heating, thawing, or loosening to unload, Railroad will grant 1 credit for each day a car under actual placement is being heated, thawed or the lading is being loosened, with a maximum of 2 credits.

A Consignee desiring additional credits for unloading shall, prior to the expiration of ten (10) car days, after the date on which the car was released, send or give NS a written statement certifying by car initial and number, that the lading required heating, thawing or loosening. NS will not provide relief for the day on which a car was actually unloaded as certified.

2. **Strike Interference:** When it is impossible to load or unload or receive cars from or make cars available to NS because of strike interference at the point where the loading, or unloading or receipt of cars is to be accomplished, demurrage days will be charged at the rate of \$30.00 per day during the period of strike interference, provided:
 - (a) The disruption exceeds five (5) days in duration during one calendar month: and
 - (b) No Management personnel or reduced work force is available to perform work.

The provisions of this item will not apply to Cars for unloading when waybills are dated four (4) days after the beginning of strike interference, and Cars for loading when ordered after the beginning and prior to the ending of strike interference.

ITEM 450 - CARS AWAITING CUSTOMS INSTRUCTIONS PAYMENT OF DUTIES:

Cars delayed on carriers' tracks longer than forty-eight (48) hours, awaiting completion of customs documentation or payment of duties will begin to accrue normal demurrage and/or storage charges.

ITEM 500 - CARS SUBJECT TO DEMURRAGE:**GENERAL APPLICATION**

(See Exception)

All Railroad Controlled Cars held for or by Consignors or Consignees for any purpose are subject to demurrage rules and charges described in this tariff, except as follows:

- (1) Demurrage provisions in this tariff will not apply when demurrage rules are provided in contracts or other private agreements.
- (2) Private cars are not subject to demurrage rules except when placed on Public Delivery Tracks for loading or unloading.
- (3) Assigned cars returned empty (auto parts racks allowed) to point of assignment while subject to storage rules.
- (4) If a car is rejected within 24 hours of actual placement, empty cars found to be unsuitable for loading,

Exception: Empty Multi-Level Cars will not be subject to demurrage rules and charges

ITEM 550 - CARS SUBJECT TO STORAGE:

APPLICATION: This item applies to:

1. Loaded Private Cars and empty Private Cars held on NS tracks under constructive placement after notice of arrival is given to the Consignee or Consignor. Time accrues until the car is "ordered placed" (see Item 200) on private tracks.
2. Loaded Private Cars held on NS tracks waiting forwarding instructions from the Consignor. (see note)

Note: Private Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This form is available at the Norfolk Southern web site WWW.NSCORP.COM or by calling the Norfolk Southern Agency Operations at 800-854-2780. If such third party declines responsibility for storage payments, this note does not apply and Shipper retains responsibility for payment of storage charges.

NON-APPLICATION: - Private Car storage provisions do not apply to Private Cars located on private or leased tracks.

RULES AND OTHER GOVERNING PROVISIONS

ITEM 600 - RULES GOVERNING CARS HELD FOR LOADING:**Release:** (see Note below)

- (a) A car is released as of the date and time NS receives advice that the car is available and forwarding instructions are provided.
- (b) When Consignor does its own switching, the time a car is held for loading will commence once empty car(s) are placed on interchange tracks, and will continue until (i) car(s) are returned to an industrial interchange track, and (ii) NS receives forwarding instructions.
- (c) Cars found to be overloaded or improperly loaded while at origin will not be considered released until the load has been adjusted.

Note: Railroad Controlled Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This form is available at the Norfolk Southern web site WWW.NSCORP.COM or by calling the Norfolk Southern Agency Operations Center at 800-854-2780.

Computation:

- (a) Car Days will be computed from the first 0000 hours (See Car Days, Item 200) after Tender (i) until released with forwarding instructions for Railroad Controlled Cars, or (ii) until placement is made for Private Cars. In the case of Private Cars the calculation for charges will resume if the loaded car is pulled by NS without forwarding instructions.
- (b) On cars placed prior to date for which ordered, Car Days will be computed from the first 0000 hours of the day for which the car was ordered until the car is released.
- (c) Empty cars placed without being ordered, will be considered as having been ordered and actually placed on that day.

Credits: - One (1) Credit Day will be earned for each car released for which forwarding instructions have been received..

ITEM 650 - RULES GOVERNING CARS HELD FOR UNLOADING:**Release:**

- (a) A car is released as of the date and time NS receives advice that the car is empty, and is available.
- (b) Cars placed on interchange tracks of a Consignee that performs its own switching must also be returned to the same industrial interchange track for release.
- (c) A car is released when the same car is unloaded and reloaded, when forwarding instructions are received.
- (d) If a customer advises NS that an empty car is available to be pulled, but when NS arrives to pull the car and a release order has not been provided by customer, the empty pull timestamp represents release.

Computation: Car Days will be computed from the first 0000 hours (See Car Days, Item 200) after tender until release.

Credits:

- (a) Two (2) Credits Days will be earned for each car released from unloading.
- (b) One (1) additional Credit Days will be provided when the same car is reloaded with a revenue load. (Ex: When car is held for revenue loading after being emptied, in one continuous transaction, a total of three (3) credits will be earned.

ITEM 700 - RULES GOVERNING CARS HELD FOR PURPOSES OTHER THAN LOADING OR UNLOADING:

This Item applies to cars held:

- (a) On orders of the Consignor or Consignee.
- (b) While awaiting Disposition from the Consignor or Consignee.
- (c) As a result of conditions attributable to the Consignor or Consignee.

Note: Does not apply to origin turnovers.

Disposition: That information, which allows NS to either tender or release the car from the Consignor's or Consignee's account.

Release: Date and time that NS receives advice that the car is released and forwarding instructions are given on cars.

Computation: Car Days will be computed from the first 0000 hours: (See Car Days, Item 200).

- (a) After Tender until Release, on cars: (1) Partially unloaded. (2) Reconsigned.
- (b) After Tender until date of refusal on refused loaded cars (Consignee).

Credits: No Credits Days will be earned for a car that is released.

ITEM 750 - RULE GOVERNING CARS IN GRAIN UNITS:

The following definitions apply with respect to Grain Units, a term that is defined in Item 200

Loading: The complete or partial loading of all cars supplied within 24 hours of actual placement, conformity to NS loading and clearance rules, including the furnishing of forwarding instructions.

Tender: The notification, of actual or constructive placement of multiple empty cars (minimum of 45 cars), placed on orders of the Consignor.

Release:

- (a) Date and time NS receives advice by Electronic Means, (see Electronic Means, Item 200), that all cars are available and forwarding instructions are provided.
- (b) Cars found to be overloaded or improperly loaded while at origin will not be considered released until the load has been adjusted.
- (c) For empty cars placed on interchange tracks of a Consignor that performs its own switching, the time for calculating Grain Unit Car Days will, also continue until cars are returned by Consignor to an interchange track.

Computation: Grain Unit Car Days will begin immediately upon the completion of the Actual Placement of all cars of the Grain Unit (minimum of 45 cars) and will continue until the Grain Unit is released.

Credits: One (1) Credit Day per Grain Unit will be earned, when Grain Unit is released.

Demurrage Calculation:

1. Total Grain Unit Car Days will be added (Grain Unit Car Days include Holidays, (see Holidays, Item 200) and days that a Consignor or Consignee is not serviced by NS.
 2. If total Grain Unit Car Days exceed 1 then each car of the grain unit will be charged \$100 for each grain day or fraction thereof that exceeds 1.
-

ITEM 800 - RULES GOVERNING STORAGE OF ASSIGNED CARS:

1. **NOTICE OF ARRIVAL:** Notice will be given assignee within 24 hours after arrival of car at Hold Point. (see Hold Point, Item 200)
 2. **STORAGE DAYS:** Chargeable storage days will commence from the first 0000 hour (See Time, Item 200) following notice of arrival and continue until the car is placed on demurrage status or is released from the assignment.
 3. **STORAGE RULES:**
 - (a) Storage charges will be assessed against assignee.
 - (b) Storage arrangements will be maintained individually by pool assignment number.
 - (c) Settlement of charges will be made on a monthly basis on all cars released from storage during each calendar month.
 - (d) One (1) Credit Day is given on each car placed in storage. Thereafter, storage charges accrue until the car is placed into service.
 - (e) Chargeable storage rate is \$20.00 per day
-

ITEM 850 - RULES GOVERNING ORIGIN TURNS:**Origin Turnover:**

An origin turnover occurs when a notification, submitted at origin by the party responsible for loading a railcar, informs NS that the party responsible for loading has completed the loading and is 'turning over' the railcar and its lading to another party. The party designated on the Origin Turnover becomes the Consignor and will be responsible for submitting final destination forwarding instructions to Norfolk Southern before the railcar is pulled. (See publication NS 8002-A, Item 6030). The party responsible for loading may submit an Origin Turnover using Norfolk Southern's internet based Diversion and Reconsignment application. Origin Turnovers will also be accepted via facsimile or in writing at the address shown below:

Norfolk Southern CYO Administration – Origin Turnovers
1200 Peachtree Street, NE
Box 118
Atlanta, Georgia 30309
Phone: (404) 589-6108
FAX: (404) 589-6682

There is no charge for origin turnovers submitted through Norfolk Southern's internet based Diversion and Reconsignment application. When submitted via facsimile or in writing, the charge will be \$198.00 per car which will be due from the party executing the origin turnover.

ITEM 900 - STORAGE OF RAILWAY EQUIPMENT MOVING ON OWN WHEELS:**1. APPLICATION:**

This item applies to railway equipment held on NS tracks that will or has moved on its own wheels, as freight, subject to transportation charges.

2. STORAGE DAYS WILL COMMENCE:

- (a) At origin or enroute: From the first 0000 hours (see Time, Item 200) following receipt of the equipment and continuing until a document is given to NS containing all necessary information to forward the equipment.
- (b) At destination: From the first 0000 hours (see Time, Item 200) after notice of arrival is given to Consignee and continuing until equipment is released from hold tracks. (Notice of arrival will be given Consignee within 24 hours after arrival of equipment at hold point).

3. STORAGE RULES:

- (a) Unless otherwise advised, charges will be assessed to Consignor, if delays occurred at origin or enroute, or Consignee if storage delays occurred at destination.
 - (b) Settlement of charges will be made on an individual basis for equipment released from storage during each calendar month.
 - (c) One (1) Credit Day will be allowed on each car released from storage.
 - (d) Chargeable storage rate is \$60.00 per day
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ITEM 950 - DEMURRAGE / STORAGE RULES:

Billing will be tendered on a monthly basis for all cars released during a calendar month. Billing will be made per customer per station.

1. Billing cannot be combined for customers having facilities at separate stations.
 2. Credit Days and Car Day charges for cars held for unloading or other purposes will be kept separately from cars held for loading. Credits on Private Cars cannot be combined with credits on Railroad Controlled cars.
 3. Customer having two or more facilities at the same station with NS may combine the accounts into one if requested in writing.
 4. Credit Days earned in one calendar month cannot be carried over to another month.
 5. Demurrage charges will be assessed to Consignor at origin or to Consignee at destination as applicable.
 6. All days count including Saturday and Sundays. Eleven (11) holidays will not be subject to demurrage (See Holidays, Item 200)
 7. Demurrage/storage will be suspended while Cars are in bad order, pull turn, or pull weigh status.
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ITEM 1000 - DEMURRAGE / STORAGE CALCULATION:

1. Total Car Days per customer per location will be added. (Car/days are net of holidays (See Holidays, Item 200))
 2. Total Credit Days for all cars will be added.
 3. If total Credit Days equal or exceed total net Car Days, demurrage / storage charges will not be assessed.
 4. If total net Car Days exceed the total Credit Days, calculation of charges will be made as follows:
 - (a) Subtract total Credit Days from total Car Days to determine chargeable days.
 - (b) The number of chargeable days will be assessed as shown in Item 1010.
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RULES AND OTHER GOVERNING PROVISIONS

ITEM 1010 - DEMURRAGE / STORAGE APPLICATION:

<u>Demurrage Application</u>	<u>Loading Credits</u>	<u>Unloading Credits</u>	<u>Per Car Daily Charge</u>
Railroad Controlled Cars	1	2	\$100.00

	<u>Origin / Destination Credits</u>	
Other than loading Or unloading	0	\$100.00

<u>Storage Application</u>	<u>Loading Credits</u>	<u>Unloading Credits</u>	<u>Per Car Daily Charge</u>
Private Cars	5 (see note)	2	\$60.00
Assigned Cars	1	0	\$20.00

Note: 3 credits will be allowed for empty Private Cars stored or held on Railroad tracks at Louisville, KY or empty tank cars stored or held on Railroad tracks at Garden City, GA, Port Wentworth, GA, Savannah, GA and Colehour, IL. The Per Car Daily charge at these locations is \$90.00

RULES AND OTHER GOVERNING PROVISIONS

ITEM 1012 - HAZARDOUS COMMODITIES:

With respect to unloading credits, this provision applies in lieu of Item 1010 for commodities listed below.

	Unloading Credits	Per Car Daily Charge
Hazardous Material other than TIH	2	\$100.00 (see Item 1015)
TIH Material identified in note	0	\$690.00 (see Item 1015)

Note 1:

TIH STCC codes: 4821019, 4821261, 4821722, 4830030, 4904209 – 4904211, 4904879, 4907409, 4907434, 4909306 – 4910370, 4910370, 4916138, 4918180, 4918505, 4918507, 4920101 – 4920113, 4920115 – 4920116, 4920122, 4920135, 4920160, 4920164 – 4920165, 4920167, 4920173 – 4920175, 4920178, 4920180 – 4920181, 4920183 – 4920484, 4920187 – 4920189, 4920195 – 4920196, 4920300 – 4920325, 4920331, 4920337, 4920342 – 4920344, 4920346 – 4920349, 4920351 – 4920360, 4920368 – 4920369, 4920371, 4920373, 4920375, 4920378 – 4920383, 4920392, 4920394 – 4920396, 4920398 – 4920399, 4920502 – 4920505, 4920508 – 4920511, 4920513, 4920515 – 4920818, 4920522 – 4920523, 4920526 – 4920528, 4920530 – 4920531, 4920534 – 4920536, 4920547, 4920550, 4920556, 4920559, 4920570 – 4920571, 4920715, 4921000, 4921003 – 4921004, 4921006, 4921008 – 4921010, 4921016, 4921019 – 4921020, 4921023 – 4921024, 4921028, 4921063, 4921202, 4921207, 4921211, 4921213, 4921216, 4921239, 4921245, 4924248, 4921251 – 4921252, 4921254 – 4921255, 4921275, 4921287 – 4921288, 4921304, 4921401 – 4924102, 4921404 – 4921405, 4921413 – 4921414, 4921420, 4921438, 4921473, 4921487, 4921495, 4921497, 4921558, 4921587, 4921695, 4921722, 4921727, 4921730, 4921741 – 4921742, 4921744 – 4921746, 4921756, 4923113, 4923117, 4923209, 4923298, 4927004, 4927006 – 4927012, 4927014, 4927018 – 4927019, 4927022 – 4927028, 4927099, 4930024, 4930030, 4930050, 4930204, 4930260, 4931201, 4932010, 4932352, 4932385, 4933327, 4935231, 4936106, 4936110, 4936565

ITEM 1015 - STORAGE OF EXPLOSIVES, HAZARDOUS MATERIALS, SUBSTANCES OR WASTE:

(Subject to publication BOE 6000 - hazardous materials regulations of the Department of Transportation)

The hazardous material charge shown in Item 1012 will be in addition to demurrage and storage charges provided in Items 1010 and 1100.

Application: This item applies to all cars held on NS tracks (excluding leased tracks) containing: (see note)

- (a) Class A, B or C Explosives, named in Part 172 Commodity List, Publication BOE 6000.
- (b) Hazardous materials, substances, or wastes requiring the use of 4-digit identification number on shipping document, placards or panels, as named in Part 11 Section 172.101, Publication BOE 6000.
- (c) In all cases, tariff NS 6306 applies.

Note: Private Cars loaded and turned over to a third party at the same origin will be governed by this rule.

Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This form is available at the Norfolk Southern web site WWW.NSCORP.COM or by calling the Norfolk Southern Agency Operations at 800-854-2780.

ITEM 1100 - LEASE TRACK OVERAGE:

In the event a customer makes arrangements with Norfolk Southern to have a lease track agreement at a certain location, and the number of private cars described in the lease track agreement at that location exceeds the capacity of the track space allotted pursuant to the applicable, lease track agreement, an overage charge of \$50.00 per car will be assessed on all cars exceeding the lease limit. The overage charge will be applied on all overage cars commencing at 00:00 the day following day the lease limit was exceeded. No free time will be allowed. Also an intra-terminal switch charge will be assessed when the cars are requested to be spotted for unloading, or moved from the plant to the lease track for forwarding.