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April 15, 2011

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

Re: Docket No. NOR-42129; American Chemistry Council; The Chlorine Institute, Inc., The Fertilizer Institute, and PPG Industries, Inc. v. Alabama Gulf Coast Railway, and RailAmerica., Inc.

Dear Ms. Brown:

Enclosed for filing please find the original and ten (10) copies of the Complaint of the Chlorine Institute, Inc, et al. A check for \$ 20,600 is also attached to cover the filing fee required by 49 C.F.R. § 1002.2.

Sincerely,

Paul M. Donovan
Counsel for Complainants

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BEFORE THE
SURFACE TRANSPORTATION BOARD



American Chemistry Council,
The Chlorine Institute, Inc.,
The Fertilizer Institute, and
PPG Industries, Inc.,

Complainants,

v.

Alabama Gulf Coast Railway, and
RailAmerica, Inc.

Defendants.

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COMPLAINT

COME NOW Complainants, American Chemistry Council ("ACC"), 700 Second St., NE, Washington, DC 20002; the Chlorine Institute, Inc. ("CI"), 1300 Wilson Blvd., Suite 525, Arlington, VA 22209; The Fertilizer Institute ("TFI"), 425 Third Street, S.W., Suite 950, Washington, DC 20024; and PPG Industries, Inc. ("PPG"), One PPG Place, Pittsburgh, PA 15272 and file this Complaint against Defendants Alabama Gulf Coast Railway ("AGR"), 734 Hixon Road, Monroeville, AL 36460; and RailAmerica, Inc. ("RailAmerica"), 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256.

Complainants bring this Complaint pursuant to 49 U.S.C. §§ 10702, 11101, 11701, 11704, and 721 and 49 C.F.R. Part 1111. Complainants request that the Surface Transportation Board ("STB" or "Board") determine that the TIH/PIH Standard Operating Practice ("SOP") that is being and has been adopted and implemented by Defendant RailAmerica and various of its railroad operating subsidiaries, including

Defendant AGR, is an unreasonable practice in violation of 49 U.S.C. § 10702, and determine that the RailAmerica SOP is contrary to the common carrier obligations of its various operating subsidiaries, including AGR, in violation of 49 U.S.C. § 11101; and that the Board enjoin the implementation of the SOP pursuant to 49 U.S.C. § 721 (b)(4) pending final resolution of this Complaint.

The Parties

1. ACC represents the leading companies in the business of chemistry. ACC's 145 members manufacture a wide array of products including TIH products and depend on the railroads, including AGR and other RailAmerica subsidiaries, for the safe, efficient and secure transportation of these essential products. Complainant PPG is a member of ACC. ACC members ship and receive TIH materials via RailAmerica rail subsidiaries, including the AGR, and are subject to the RailAmerica SOP with respect to TIH materials.

2. CI is a 200 member, not-for-profit trade association of chlor-alkali producers worldwide, as well as packagers, distributors, users and suppliers. CI's North American Producer members account for more than 95 percent of the total chlorine production capacity of the U.S. and offer for transportation approximately 40 percent of the TIH materials moved by rail each year. Complainant PPG is a member of CI. CI members ship and receive TIH materials via RailAmerica rail subsidiaries, including AGR, and are subject to the RailAmerica SOP with respect to TIH materials.

3. TFI is the national trade association of the fertilizer industry. TFI members rely heavily on rail transportation particularly for the safe and efficient

movement of anhydrous ammonia which accounts for more than 45 percent of the TIH materials moved by rail each year.

4. PPG is a diversified manufacturer of chemicals, protective coatings, glass and fiberglass with over 14,000 employees in the United States (US) and more than 50 manufacturing, research and distribution facilities across the country. PPG's North American chlor-alkali chemicals business operates three production facilities and employed over 1800 people in 2010. PPG is the third largest North American producer of chlor-alkali products with facilities in Natrium, WV; Lake Charles, LA; and Beauharnois, Canada. PPG ships chlorine to a variety of customers in the U.S. utilizing all Class I railroads. In addition, PPG ships product over many short-lines, including RailAmerica properties that directly service its customers or serve as a bridge carrier between railroads. PPG currently ships chlorine to a customer that receives chlorine via the AGR, a RailAmerica short-line rail carrier.

5. AGR is a common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Monroeville, Alabama. AGR is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

6. RailAmerica is a railroad holding company owning and controlling 40 short-line and regional common and contract railroads, including AGR, that engage in the transportation of property in interstate and intrastate commerce. Its headquarters are in Jacksonville, Florida. RailAmerica, together with its rail subsidiaries, is subject to the

Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

The Challenged Practices

7. Effective March 11, 2011, AGR issued a Tariff 0900 applying on all TIH materials shipped on its rail lines. This Tariff applies when shipments are from connections at all AGR interchange points on an AAR Accounting Rule 11 basis, to all AGR served stations.

8. AGR Tariff 0900 provides, in part that: all TIH commodities will be moved only in dedicated train service; all TIH movements will be handled only by special permit that must be requested and tendered to AGR no less than 5 days prior to interchange; and no more than 3 cars loaded with TIH commodities will be transported in the same dedicated train at any time.

9. AGR Tariff 0900 incorporates rates found in AGR Tariff 7006-Series, Item 1070 that imposes a minimum fee for special train service of \$15,000 per train.

10. The special train service provided for in the AGR Tariff 0900 is set forth in the RailAmerica “TIH/PIH Standard Operating Practice (SOP).” The SOP provides that all railroads owned by RailAmerica, including AGR, shall move all TIH shipments in dedicated train service at no more than 10 miles per hour.

11. The SOP requires that a qualified mechanical employee of the RailAmerica railroad accepting a TIH shipment for interchange inspect every TIH car before pulling the car from the interchange track as is already required pursuant to 49 C.F.R. § 174.9.

12. The SOP requires that employees of the RailAmerica subsidiary railroad, including AGR, accompany the TIH shipment at all times, “even outside of a High Threat Urban Area” as long as the shipment is on RailAmerica property and until the receiving entity acknowledges receipt of the shipment.

13. The SOP requires that all RailAmerica subsidiary railroads, including AGR, implement a permitting process “to manage the movement of each TIH shipment.” This permitting process requires that any party seeking to tender a TIH shipment for transportation on a RailAmerica subsidiary railroad fill out and submit a specific form developed by RailAmerica requesting transportation by the RailAmerica subsidiary railroad at least five days prior to tendering the TIH shipment for transportation.

14. The requirements of the SOP regarding dedicated train service violate the provisions of 49 C.F.R. § 174.14 (a) that require that a shipment of any hazardous material must be forwarded on the first available train.

15. The requirements of the SOP regarding dedicated train service and requiring that cars be held to assemble such a dedicated train violate the provisions of 49 C.F.R. § 174.14 (b) that prohibit the holding of any TIH subject to forwarding orders.

16. The United States Department of Transportation (“DOT”) through the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and the Federal Railroad Administration (“FRA”) provides a comprehensive regulatory structure for all facets of the rail transportation of TIH materials. These comprehensive regulations have been in effect in one form or another for nearly one hundred years, and have been updated, subject to the Rulemaking Procedures of the Administrative Procedures Act on nearly a constant basis. Any change or addition to these regulations can only be made

through the Rulemaking process with Notice, Comment and, where necessary, legal review.

17. The SOP procedures and requirements that RailAmerica would impose on TIH shipments are wholly inconsistent with the federal regulations that govern the movement of TIH materials by rail, and are being imposed without any regard for the Rulemaking Procedures that govern all Hazardous Materials Regulation, including those governing the movement of TIH commodities.

18. The SOP procedures and requirements impose very substantial, unnecessary and wasteful operational burdens on the movement of TIH materials in interstate and intrastate commerce without any justification for such burdens. Shippers and receivers of the TIH shipments tendered to RailAmerica subsidiary railroads, including AGR, would be required to bear the additional unjustified burdens imposed by the SOP.

19. The SOP procedures and requirements impose very substantial, unnecessary and wasteful additional costs on the movement of TIH materials in interstate and intrastate commerce without any justification for such costs. Shippers and receivers of the TIH shipments tendered to RailAmerica subsidiary railroads, including AGR, would be required to bear the additional unjustified costs imposed by the SOP.

20. Once the unjustified burdens are imposed on TIH shipments and once the unjustified costs are expended in the movement of TIH shipments, there will be no practicable way for the shippers and receivers of these TIH commodities to avoid the burdens or recover the costs incurred. Thus, the injuries suffered by both shippers and receivers of TIH commodities under the RailAmerica SOP and related subsidiary railroad

tariffs will be irreparable and subject to orders in the nature of injunctive relief pursuant to 49 U.S.C. § 721 (b)(4).

Jurisdictional Allegations

21. The Board has jurisdiction over RailAmerica and its railroad operating subsidiaries, including AGR, and jurisdiction over the unreasonable practices that RailAmerica and its railroad operating subsidiaries, including AGR, are imposing on TIH shippers and receivers under 49 U.S.C. § 10702, and has jurisdiction to require that RailAmerica and its railroad operating subsidiaries, including AGR, provide common carrier service upon reasonable request and without imposing unnecessary, burdensome and costly special train service under 49 U.S.C. § 11101.

22. The Board has jurisdiction to enjoin the unreasonable practices and refusal to provide common carrier service upon reasonable request under 49 U.S.C. § 721 (b)(4) when, as here, such injunctive type relief is necessary to prevent irreparable injury.

Requested Relief

23. The Board should order that RailAmerica, and its railroad operating subsidiaries, including AGR, immediately cease implementing the SOP and cease demanding unnecessary, burdensome and costly special train service.

24. The Board should also act to prevent the irreparable injury and maintain the status quo that has existed with respect to the movement of TIH commodities by issuing an order under 49 U.S.C. § 721 (b)(4) prohibiting the imposition of the SOP and special train service requirements until such time as RailAmerica and its subsidiary railroads, including AGR, demonstrate that there is a need for and a justification for those extraordinary measures.

WHEREFORE, Plaintiffs, ACC, CI, TFI and PPG pray that the Board:

- (1) require that Defendants, RailAmerica and AGR, answer the charges alleged herein;
- (2) issue an order under 49 U.S.C. § 721 (b)(4) prohibiting RailAmerica and any RailAmerica subsidiary railroad, including AGR, from imposing the Standard Operating Practice and/or special train service as described herein until such time as such Practices and special train service have been justified by persuasive and compelling evidence;
- (3) assign this Complaint for hearing under 49 C.F.R. Part 1111;
- (4) after due hearing and investigation find that the RailAmerica Standard Operating Practice and special train service are unreasonable;
- (5) after due hearing and investigation find that the RailAmerica Standard Operating Practice and special train service violate the common carrier obligation set forth at 49 U.S.C. § 11101; and
- (6) grant such other and further relief as the Board may deem just and proper under the circumstances.

Respectfully submitted,



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Counsel for The Fertilizer Institute

April 15, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of April 2011 the foregoing
Complaint has been served by express overnight courier to:

Scott Williams
Senior Vice President and General Counsel
RailAmerica
7411 Fullerton Street Suite 300
Jacksonville, Florida 32256
(904) 538-6100

Todd Bjomstad
General Manager
Alabama Gulf Coast Railway
734 Hixon Road
Monroeville, AL 36460
(251) 575-8912


Paul M. Donovan