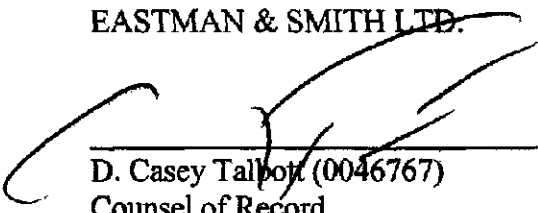




A memorandum in support is attached.

Respectfully submitted,

EASTMAN & SMITH LTD.



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**MEMORANDUM IN SUPPORT**

**Background:**

On September 1, 2010, UTU (apparently by and through its Chairman and Legislative Director) filed a written Complaint against Norfolk Southern in the form of a letter dated August 30, 2010. In sum, the Complaint alleges that excessive weed and vegetation growth exists at Carastar in the vicinity of Cleveland, Cuyahoga County, Ohio, and requests that an investigation be conducted to determine whether Norfolk Southern is in violation of an existing "Weed Order" and, assuming so, then the Commission is requested to issue an order requiring the elimination of the growth and the establishment of a vegetation control program.

**Law and Argument:**

The UTU's Complaint is deficient on its face, for two separate reasons, and should be dismissed.

First, complaints related to the elimination of alleged weed and vegetation growth are governed by OAC 4901-5-07<sup>1</sup> and, accordingly, are to be handled initially pursuant to the informal procedure outlined in OAC 4901-5-05. As a jurisdictional prerequisite, OAC 4901-5-05(A)(4) states in pertinent part that a formal weed and vegetation complaint "shall aver that a reasonable but unsuccessful effort has been made by the parties to reach an amicable agreement." The instant Complaint makes no such averment, as no such effort was made.

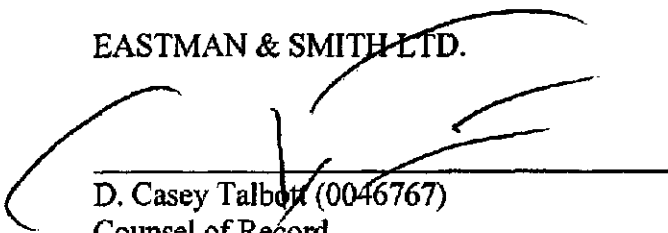
Second, the Complaint requests an investigation to determine whether Norfolk Southern is in violation of an existing "Weed Order." No such Order was attached to the Complaint and, to Norfolk Southern's understanding, no such Order exists.

**Conclusion:**

The UTU's Complaint is deficient on its face, and should be dismissed.<sup>2</sup>

Respectfully submitted,

EASTMAN & SMITH LTD.



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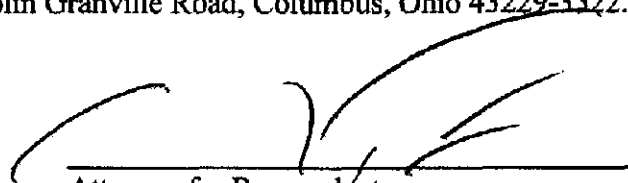
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<sup>1</sup> The UTU inaccurately states that the Complaint is brought pursuant to OAC 4901-5-22; this section was rescinded in 2006.

<sup>2</sup> Norfolk Southern reserves the right to contest subject matter jurisdiction; further, and assuming jurisdiction, Norfolk Southern reserves the right to contest the merits of the Complaint.

**PROOF OF SERVICE**

This is to certify that a copy of the **Motion to Dismiss of Respondent Norfolk Southern Railway Company** was sent by ordinary U.S. mail this 21<sup>st</sup> day of September, 2010 to Luther G. Newsom, Chairman and State Legislative Director, Ohio State Legislative Board, United Transportation Union, Suite 245, 2021 East Dublin Granville Road, Columbus, Ohio 43229-3522.

  
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Attorney for Respondent  
Norfolk Southern Railway Company