

FILE

**EASTMAN & SMITH LTD.**

ATTORNEYS AT LAW

Established 1844

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October 6, 2011

RECEIVED-DOCKETING DIV  
2011 OCT -7 PM 3:07  
PUCO  
One SeaGate, 24<sup>th</sup> Floor  
P.O. Box 10032  
Toledo, Ohio 43699-0032  
Telephone: 419-241-6000  
Facsimile: 419-247-1777

**Via Overnight Mail**

Docketing Clerk  
c/o Public Utilities Commission of Ohio  
Attention: Docketing Division, 13<sup>th</sup> Floor  
180 East Broad Street  
Columbus, OH 43215-3793

**Re: In the Matter of the Complaint of Ohio State Legislative Board and United Transportation Union vs. Norfolk Southern Railway Co. and CSX Transportation for the Alleged Excessive Growth of Weeds and Vegetation at Mansfield Rd. MP Q1 122.55 at the Location of 1221 Westward Facing Signal in the Vicinity of Mt. Victory – Hardin County.  
PUCO Case No. 11-5238-RR-CSS  
Our File No. N1432/176349**

Dear Docketing Clerk:

Enclosed for filing are an original and seven (7) copies of Respondent Norfolk Southern Railway Company's:

1. Motion to Dismiss; and
2. Answer

Pursuant to Rule 4901-5-05(B)(3) of the Ohio Administrative Code, please file the Motion to Dismiss first, and then the Answer; also, please return a file-stamped copy of each pleading to me via the enclosed, stamped envelope.

Please call me – at 419-241-6000 – if you have any questions or concerns.

Thank you.

Very truly yours,

EASTMAN & SMITH LTD.

D. Casey Talbott

DCT/kml

Enclosures

cc: Leah Thomas-Dalton (w/enc.)  
Luther G. Newsom (w/enc.)  
Rusty Orben (w/enc.)  
Thomas C. Wood (w/enc.)

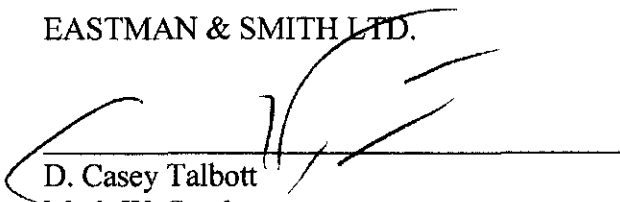
This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician JD Date Processed 10-07-11

Columbus • Toledo • Findlay • Novi

PUCO

Respectfully submitted,

EASTMAN & SMITH LTD.



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Attorneys for Norfolk Southern  
Railway Company

**MEMORANDUM IN SUPPORT**

Via letter of September 16, 2011, the Ohio State Legislation Board, United Transportation Union (“UTU”) purported to file a Complaint against CSX Transportation (“CSX”), alleging excessive weed and vegetation growth on certain property in the vicinity of Mount Victory, Hardin County, Ohio.

Via letter of September 23, 2011, the Commission served the Complaint upon Norfolk Southern, directing it to move, plead, or otherwise respond to the UTU’s Complaint within fifteen days after September 22, 2011 – *i.e.*, on or before October 7, 2011.

The Complaint purports to state a claim against CSX, as opposed to Norfolk Southern, and upon information and belief involves property and/or conditions which are not within Norfolk Southern’s possession and/or control.

Accordingly, and as the Complaint appears to have been misdirected to Norfolk Southern, the Complaint should be dismissed at least as against Norfolk Southern.

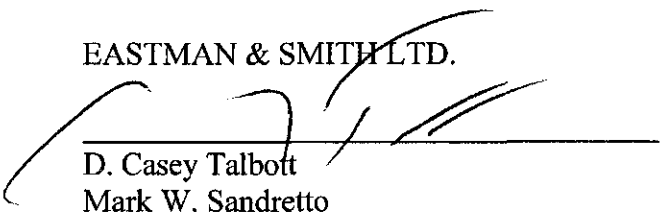
Further, complaints relating to the elimination of alleged weed and vegetation growth are governed by OAC 4901-5-07 and, accordingly, are to be handled initially pursuant to

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, and Norfolk Southern is not aware that any such effort was made.

Accordingly, and even assuming directed against the proper-party respondent, the Complaint should be dismissed for want of jurisdiction.<sup>1</sup>

Respectfully submitted,

EASTMAN & SMITH LTD.



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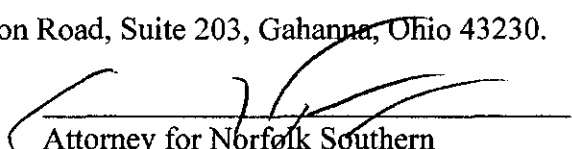
Attorneys for Norfolk Southern  
Railway Company

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<sup>1</sup> Norfolk Southern reserves the right to contest subject matter jurisdiction as well; further, and assuming jurisdiction, Norfolk Southern reserves the right to contest the merits of the Complaint.

**PROOF OF SERVICE**

A copy of the foregoing *Respondent Norfolk Southern Railway Company's Motion to Dismiss* was mailed this 6<sup>th</sup> day of October, 2011, to: **Leah Thomas-Dalton**, Chief, PUCO Rail Division, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215; **Luther G. Newsom**, Chairman & State Legislation Director, Ohio State Legislative Board, 2021 East Dublin-Granville Road, Suite 245, Columbus, Ohio 43229-3522; **Rusty Orben**, Designated Agent, CSX Transportation, 137 E. State Street, Columbus, Ohio 43215; and **Thomas C. Wood**, UTU Legal Counsel, 501 Morrison Road, Suite 203, Gahanna, Ohio 43230.

  
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Attorney for Norfolk Southern  
Railway Company