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September 3, 2004

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Pennsylvania Department of Environmental Protection
2 East Main Street
Norristown, PA 19401

**Subject: Notice of Violation
CSX Transportation's South Street Siding - July 16, 2004**

Dear Ms. Roncetti,

This letter responds to the Notice of Violation dated July 28, 2004, for a complaint investigation of July 16, 2004 regarding rail cars spotted at CSX Transportation's South Street Siding in Philadelphia, PA.

The Pennsylvania Department of Environmental Protection (PADEP) informed CSX Transportation that it was in violation of Pennsylvania's Solid Waste Management Act of the Commonwealth of Pennsylvania Act of July 7, 1980, P.L. 380, as amended, 35 P.S. 6018.101 et seq. PADEP alleges that on July 16, 2004, it observed "a strong putrescent odor" when it inspected a number of rail cars that were spotted at South Street along the Schuylkill River in Philadelphia. In the interest of amicably resolving this investigation and without waiving any of its legal defenses, CSXT provides the following information.

The rail cars that were spotted at this location were awaiting a connection to K277, a southbound train. They originated in Elizabeth, New Jersey and were destined for Waverly, Virginia.

The Municipal Solid Waste (MSW) cars, containers, and contents were owned or leased by a shipper. The shipper was responsible for packaging the MSW in containers at its facility at Elizabeth, New Jersey. The packaging process includes spraying odor-reducing enzyme onto the MSW and in the containers to substantially reduce and control any odors that may be present. The shipper takes considerable care to ensure that the MSW is properly packaged for transportation.

CSXT took immediate action in response to this Notice of Violation. The business manager responsible for this commodity contacted representatives from the shipper and requested that they add additional odor fighting enzyme to prevent or mitigate any potential odors from the containers. The shipper agreed and increased the percentage of active materials (odor enzyme) that is applied to the MSW.

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Page 2

Nancy Roncetti, Esq.

Also, going forward, the trainmaster that is responsible for the movement of these rail cars spots them (when operational considerations allow) at locations that are not adjacent to residential neighborhoods.

While CSXT makes every effort to avoid problems of the sort noted in PADEP's Notice of Violation, and will continue to make such efforts in the future, it is important to note that 49 U.S.C Section 10501(b) provides a broad statement of Congress' intent to preempt state regulatory authority over railroad operations.¹ As such, CSXT believes that this Notice of Violation is preempted by the application of 49 U.S.C. Section 10501(b).

CSXT hopes that this information is sufficient to allow the PADEP to close this investigation. In the event that additional information is required, please do not hesitate to contact the undersigned at (215) 209-5021.

Sincerely,



Bill Pinamont
Assistant General Counsel

¹ See, *CSX Transportation v. City of Plymouth*, 92 F. Supp.2d 643 (E.D.Mich., 2000), *aff'd*, 283 F.3d 812 (6th Cir. 2002); *Boston and Maine Corp. v. Town of Ayer*, 191 F.Supp.2d 257 (D. Mass 2002); *CSX Transportation, Inc., v. Georgia Public Service Commission*, 944 F. Supp. 1573 (N.D. Ga. 1996); *City of Auburn v. United States*, 154 F3d 1025 (9th Cir. 1998), *cert. denied*, 527 U.S. 1022 (1999).