

Equistar asked Oxid, LP [the brake fluid manufacturer] to supply a copy of its data reporting the results of the tests it had previously conducted for \* \* \* [the brake] fluid pursuant to the test requirements of S6.7 \* \* \*. The data show that [the brake fluid] unconditionally passed the tests required by the applicable standard, including the minus 50 °C test.

Equistar stated that it had the noncompliant brake fluid further tested by another testing center, Case Consulting Laboratories, Inc. (Case), and that:

The samples tested by Case passed all of the required tests, including the minus 50 °C air bubble and appearance test, except that the tested sample \* \* \* began to form crystals. It bears note that the bubble travel time on this sample was 2.7 seconds against the standard's requirement of 35 seconds maximum. Further, the appearance of the sample after testing at minus 50 °C was the same as before the testing.

Equistar stated that "the crystals and globules" in the brake fluid "would not pose a threat to the operation of the brake fluid." Case certified that the globules formed at minus 50 °C were of a nonabrasive nature and fall back into solution upon slight agitation and warming. ABIC confirmed informally to NHTSA that Case's statement is correct.

In its petition, Equistar referred to two prior NHTSA grants of inconsequential noncompliance petitions which it claims are similar. These are Dow Corning Corporation (59 FR 52582, October 18, 1994) and First Brands Corporation (59 FR 62776, December 6, 1994). Equistar stated that NHTSA should grant its petition based on the same rationale as it used to grant the previous two petitions.

NHTSA agrees with Equistar that the noncompliance is inconsequential to motor vehicle safety. Both Case and ABIC determined that that the globules which formed at minus 50 °C were of a nonabrasive nature and fell back into solution upon slight agitation and warming. In granting both the Dow Corning and First Brands petitions

referenced above, NHTSA determined that the type of crystallization which is of a nonabrasive nature and will readily disperse under slight agitation or warming ought not have an adverse effect upon braking. Therefore the cases are analogous. However, NHTSA wants to be clear that it maintains a distinction, which it established in granting the Dow Corning and First Brands petitions, between crystals which are of a nonabrasive nature and fall back into solution upon slight agitation and warming, as opposed to crystals that are abrasive or do not fall back into solution, and that may have the potential to clog brake system components. Brake fluid which exhibits the latter characteristics do not fall under the Dow Corning and First Brands precedent.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Equistar's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: September 7, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Ex Parte No. 333]

#### Sunshine Act Meeting

**TIME AND DATE:** 9 a.m., September 15, 2005.

**PLACE:** The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

**STATUS:** The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

**MATTERS TO BE CONSIDERED:** STB Docket No. WCC-101, Government of the Territory of Guam v. Sea-Land Service, Inc., American President Lines, LTD., and Matson Navigation Company, Inc.

STB Finance Docket No. 34505, *East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*

STB Docket No. AB-441 (Sub-No. 4X), *San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ.*

STB Docket No. AB-976X, *Pittsburg & Shawmut Railroad, LLC—Abandonment Exemption—in Armstrong and Jefferson Counties, PA.*

STB Docket No. AB-600, *Yakima Interurban Lines Association—Adverse Abandonment—in Yakima County, WA.*

STB Finance Docket No. 34746, *Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Rail Line of Union Pacific Railroad Company.*

STB Finance Docket No. 34694 (Sub-No. 1), *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company.*

**FOR FURTHER INFORMATION CONTACT:** A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202) 565-1596 FIRS: 1-800-877-8339.

Dated: September 8, 2005.

**Vernon A. Williams,**  
*Secretary.*

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