

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:08-CV-618
)	
CITY OF ALEXANDRIA <i>et al.</i> ,)	
)	
Defendants.)	

CITY OF ALEXANDRIA,)	
)	
Counterclaim Plaintiff,)	
)	
v.)	Case No. 1:08-CV-618
)	
NORFOLK SOUTHERN RAILWAY COMPANY,)	
)	
Counterclaim Defendant, and)	
)	
RSI Leasing, Inc.,)	
)	
Third Party Defendant.)	

THE CITY OF ALEXANDRIA’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure Rule 56, Defendant, Counterclaim Plaintiff, and Third Party Plaintiff the City of Alexandria, Virginia (the “City”), by its undersigned counsel, respectfully moves for summary judgment in favor of the City and against Plaintiff and Counterclaim Defendant Norfolk Southern Railway Company and Third Party Defendant RSI Leasing, Inc. As grounds for this motion, the City submits that there is no genuine issue as to

any material fact and the City is entitled to judgment as a matter of law as to all of the claims in the case. More specifically, the City is entitled to:

1. A declaratory judgment that the City is not preempted from issuing permits and otherwise regulating the use of City streets by trucks going to and coming from the ethanol transloading facility at the Van Dorn Yard.

2. A declaratory judgment that the City has the legal power to issue permits and otherwise regulate the use of City streets by trucks going to and coming from the ethanol transloading facility at the Van Dorn Yard.

3. A permanent injunction prohibiting trucks going to and coming from the ethanol transloading facility at the Van Dorn Yard from operating in a manner inconsistent with City permits and/or other regulations.

This motion is based upon the City's Memorandum of Points and Authorities in Support of Motion for Summary Judgment, the Parties' Stipulated Facts, and the City's Statement of Undisputed Material Facts, all of which are all filed concurrently herewith and incorporated herein, upon the pleadings, papers, and records on file herein, and on any other and further evidence and argument that may be presented at or before the time of the hearing of this Motion.

CONCLUSION

For the foregoing reasons, the Court should enter summary judgment in favor of the City and against NSRC and should deny NSRC and RSI's Motion for Summary Judgment.

Respectfully Submitted,

CITY OF ALEXANDRIA, a municipal
corporation of Virginia
By Counsel

_____/s/_____
Ignacio B. Pessoa, Esq.
Christopher P. Spera, Esq.
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314
(703) 838-4433

Charles A. Spitulnik, VSB No. 20644
W. Eric Pilsk, VSB No. 29291
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600
(202) 955-5616 facsimile

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of November, 2008, the foregoing document was electronically filed pursuant to the Court's ECF , which will provide notice of such filing to the following counsel of record:

Gary A. Bryant, Esq.
Wilcox & Savage, P.C.
One Commercial Place
Suite 1800
Norfolk, Virginia 23510

J. Frederick Sinclair, Esq.
J. Frederick Sinclair, P.C.
100 N. Pitt Street
Suite 200
Alexandria, Virginia 22314

_____/s/_____
W. Eric Pilsk, VSB No. 29291
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Avenue, N.W.
Suite 905
Washington, DC 20036
(202) 955-5600
(202) 955-5616 facsimile