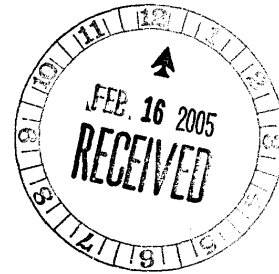


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FD_34662_0

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PETITION OF CSX TRANSPORTATION, INC. FOR DECLARATORY ORDER

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Dated: February 16, 2005



February 16, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

RE: FD_34662_0
Petition of CSX Transportation, Inc. for Declaratory Order

Dear Sir:

The National Mining Association (NMA) appreciates the opportunity to file comments in support of FD_34662_0, CSX Transportation, Inc. – Petition for Declaratory Order. This petition presents an issue with serious ramifications and precedence for the transportation of hazardous materials by rail transportation in the United States. NMA is a national trade association that includes the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. Many NMA member companies are CSXT customers and would be negatively impacted by the DC Ordinance.

CSXT is seeking an order declaring that an ordinance recently passed by the District of Columbia's City Council governing the transportation of certain hazardous materials moving by rail through the jurisdiction is preempted by Section 10501 of the ICC Termination Act of 1995 (ICCTA), and, subject to compliance with applicable federal safety and hazardous materials transportation statutes and regulation, CSXT may continue to route traffic along the routes to which the DC Ordinance would apply.

On February 1, 2005, the District of Columbia passed the "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005", which would make it illegal to transport certain hazardous commodities through what is termed the "Capitol Exclusion Zone" (defined as an area within 2.2 miles of the U.S. Capitol Building) without a permit from the District of Columbia Department of Transportation.

There is a comprehensive set of federal regulations outlined in the ICCTA and federal railroad statutes that cover hazardous materials shipments by rail. The Federal Rail Administration (FRA) is responsible for a number of rail safety regulations that address

many areas including track and roadbed conditions; signal systems; locomotive and freight specification; emergency preparedness; hours of service of railroad employees; operation practices and procedures; qualification standards for certain railroad employees; and alcohol and drug testing of railroad employees. 49 C.F.R. Parts 200-268. The Hazardous Materials Transportation Act (HMTA) covers regulations for the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. 49 U.S.C. § 5013. As required by HMTA, the Research and Special Programs Administration of the Department of Transportation (RSPA), issues regulations for the transportation of hazardous materials for all transportation modes, including rail. The regulations cover areas such as packaging, identification, handling and security requirements. 49 C.F.R. Parts 171-180.

Following September 11, 2001, the Federal Government further strengthened its role in railroad security and the transport of hazardous materials. Working in cooperation with the Federal Government, the rail industry developed a plan to upgrade the security of the national rail system. CSXT then developed its own plan specific to the needs of its system. RPSA published a final rule, HM-232, on March 25, 2003, which requires the development and implementation of security plans by persons who transport, or offer for transportation certain hazardous materials. 68 Fed. Reg. 14,510. CSXT's plan has been reviewed and approved by both the FRA and the Transportation Security Administration (TSA).

The Federal Government has determined that hazardous materials, including those covered by the DC Ordinance, may be transported by rail in interstate commerce as long as these movements are carried out in accordance with federal safety and security regulations.

Many NMA member companies are CSXT customers. Our members receive shipments by rail of explosives that are used to mine coal and minerals. Explosive costs have increased significantly due to higher natural gas costs. NMA is very concerned about the alternative routings that would be necessitated by the DC Ordinance. The routings would result in greater distances and more days of transit time with negative impacts of higher rail rates and significantly longer delivery times. The additional delivery times and costs would compound what is already a very difficult situation.

An unfortunate and we assume unintended impact of the DC Government's policy is the negative impact on non-hazardous commodities shipped by rail. CSXT states in its petition that rail cars carrying hazardous materials are transported in trains that also carry non-hazardous commodities. Any non-hazardous commodities that are on trains with hazardous materials would be subjected to the longer delivery times and additional costs that are completely unassociated with any supply and demand developments in their respective marketplaces.

As CSXT says in its petition, it operates a rail network consisting of 23,000 route miles in 23 states, the District of Columbia and two Canadian provinces. As shippers of coal and minerals on the CSX system, our members know very well that what happens in one part

of the rail system can and often does have impacts on another part of the system. For example, bad weather or an accident in one part of the system can adversely impact other parts of the system with slower velocity times and reduce the availability of locomotives and cars. We are very concerned that the routing of hazardous materials to avoid the District of Columbia will negatively impact rail service on other parts of the system. Because these trains are traveling longer distances, cycle times will be lengthened and more locomotives and cars may be needed. CSXT states in its petition that the DC Ordinance would mean 10,000-12,000 additional car days per year above its current Operating Plan. The CSX system is integrated and what happens on one part of the system, impacts the entire system. Coal demand is high and the reliability and costs for shipping coal would be negatively impacted.

As the economy has grown, rail freight has increased and U.S. railroads, including CSXT, are experiencing unprecedented demand for additional cars, locomotives and train crews. NMA is concerned that complying with the DC Ordinance will severely impact a system that is already operating under pressure.

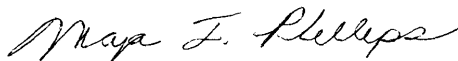
Finally, NMA understands that several cities may be considering bans similar to the DC Ordinance. If this should happen and local jurisdictions are permitted to enact bans on hazardous materials it would in all likelihood make it very difficult, if not impossible, to transport hazardous materials in the U.S. The interstate commerce of hazardous materials would for all intents and purposes cease. The patchwork pattern necessary to route these shipments would make it physically and economically impossible to transport hazardous materials by rail.

Mines, power plants, steel mills and other facilities located throughout the U.S. made business decisions based on having access to direct, reliable, efficient and cost and competitive rail transportation. To provide the U.S. economy with the tools and inputs for sustained growth, it is critical policy with national implications not be dictated on a local level.

NMA is aware of the safety and other concerns associated with the transportation of hazardous materials. These concerns have been addressed by a comprehensive scheme of federal regulation, review and oversight.

We respectfully ask the Surface Transportation Board issue an order in favor of the Petition of CSXT, Inc. for Declaratory Order.

Sincerely,



Moya F. Pheleps
Vice President, Manufacturers and Services