

February 16, 2005

213309

FEB 16 2005

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

Re: STB Finance Docket No. 34662
Petition of CSX Transportation, Inc. for Declaratory Order

FEB 16 2005

Part of
Public Record

Dear Mr. Williams:

Enclosed are the original and 10 copies of the Comments of the American Chemistry Council in the above-captioned docket. These Comments are being filed today in accordance with the procedural schedule that was served on February 8, 2005.

If there are any questions about this submission, please contact me at 703-741-5172.

Sincerely,

Thomas E. Schick

Thomas E. Schick
Assistant General Counsel

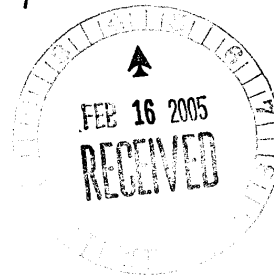
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Responsible Care®

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Finance Docket No. 34662

PETITION OF CSX TRANSPORTATION, INC. FOR DECLARATORY ORDER

**COMMENTS OF THE
AMERICAN CHEMISTRY COUNCIL**

**ENTERED
Office of Proceedings**

FEB 16 2005

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Public Record**

The American Chemistry Council ("ACC") appreciates the opportunity to comment to the Surface Transportation Board ("Board") in this important proceeding. ACC strongly supports the pending petition that CSX Transportation, Inc. ("CSX") filed on February 7, 2005. CSX has requested that the Board issue a declaratory order preempting an ordinance that was passed on an emergency basis by the Council of the District of Columbia.

If implemented, the District of Columbia's "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005" ("DC Ordinance") would have the practical effect of prohibiting the transportation of certain classes of hazardous materials by rail through the defined "Capitol Exclusion Zone." ACC urges the Board to grant CSX's petition and to declare that the DC Ordinance is preempted under the provisions of 49 U.S.C. § 10501(b).

ACC and the Business of Chemistry

ACC represents the leading companies engaged in the business of chemistry. Member companies of ACC apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through its Responsible Care® initiative; by means of common-sense advocacy designed to address major public policy issues; and with health and environmental research and product testing. The business of chemistry is a \$504 billion enterprise (based on preliminary data for 2004) and a critical element of the nation's economy. It is the nation's largest exporter, accounting for \$109

billion in exports (about ten cents out of every U.S. export dollar) last year. Chemistry companies invest more in research and development than any other business sector.

Among ACC's component organizations there are several that specialize in chemical products that depend on safe and efficient rail transportation. Those include the Chlorine Chemistry Council, the American Plastics Council, and a number of "CHEMSTAR" Panels that represent the producers of specific hazardous materials.

Rail Transportation of Chemicals and Allied Products

The safe and secure shipment of chemical products that are regulated as hazardous materials ("hazmat") is indispensable to the economic and physical well-being of our nation: from the products that go into pharmaceuticals to those that keep our food and water safe. Because chemicals are produced in – and move through – communities across the United States, transportation is a responsibility that ACC and its members take seriously, with regard not only to safety in the normal rigors of transportation but also to concerns about possible terrorist attacks.

Although chemicals are carried by various modes, in many instances they must move by rail due to product characteristics, distance, customer preference, shipment size, and other factors. The chemical industry therefore depends on the railroads for the safe and efficient delivery of a wide array of raw materials and finished products, including many hazardous materials. Each year, about 150 million tons of chemicals and allied products are shipped by rail, providing railroads with \$5 billion in freight revenue. The Council's members also invest directly in the nation's rail infrastructure by maintaining their own tank car fleets (with an estimated replacement value of \$7 billion) as well as hopper cars and other types of specialized rail equipment and facilities.

The U.S. Department of Transportation (DOT) estimates that 800,000 hazmat shipments are made each day in this country. About 4,300 of those hazmat shipments are by the rail mode, and approximately 3,700 of them consist of chemicals. These data are reported in a special study of hazmat shipments that DOT conducted in 1998 (available online at <http://hazmat.dot.gov/pubs/hms/hmship.pdf>).

Hazmat Safety and Security

ACC and its members, whose businesses represent about 90 percent of the productive capacity of basic industrial chemicals in the United States, have a long-standing interest in hazmat safety. The chemical industry works cooperatively with government agencies, railroads (and other carriers), tank car builders (and other packaging manufacturers), and the industries that manufacture and ship hazardous materials other than chemicals. The business of chemistry also works with the nation's

first responders, who are a key resource to the public. Together we learn from experience to continually improve the safety of moving our products.

Strict Federal regulations cover every aspect of hazmat transportation, from packaging and labeling to security planning and employee training. ACC strongly supports the comprehensive hazmat regulatory program administered by DOT's Research and Special Programs Administration under Subchapter C of Title 49 of the Code of Federal Regulations. In addition, ACC cooperates with both DOT and the U.S. Department of Homeland Security (including the Transportation Security Administration) on a variety of issues that affect hazmat transportation security.

With safety being of paramount concern, ACC is proud that CSX (and each of the other Class I railroads) is a Responsible Care® Partner Company. While safety has long been the focus of attention by government and industry, security became an added concern following the tragic events of September 11, 2001. As summarized by CSX (see page 6 of its petition), the railroad industry and the Federal Government have addressed rail security, including hazmat transportation, not only in broad terms, but also with respect to CSX's operations through the District of Columbia.

Because "terrorism prevention" is the focus of the DC Ordinance, the Board should be aware that in 2002 ACC adopted the Responsible Care® Security Code. The Security Code's purpose is to help protect people, property, products, processes, information and information systems by enhancing security, including security against potential terrorist attack. The Security Code applies throughout the chemical industry's "value chain," which encompasses activities associated with the design, procurement, manufacturing, marketing, distribution, transportation, customer support, use, recycle and disposal of chemicals. The Security Code facilitates continuous improvement in security performance using a risk-based approach to identify, assess and address vulnerabilities, prevent or mitigate incidents, enhance training and response capabilities, and maintain and improve relationships with key stakeholders. Implementation of the Security Code by June 30, 2005, is mandatory for all members of the ACC and for all Responsible Care® Partner Companies.

As noted above, ACC maintains cooperative relationships with many other industry organizations whose members are involved in all aspects of domestic and international hazmat transport. To the extent such organizations – as well as individual companies that are members of ACC – have participated in this proceeding, ACC commends their comments to the Board's attention.

Preemption under ICC Termination Act

Under 49 U.S.C. § 10501(b), the Board clearly has "exclusive" jurisdiction over "transportation by rail carriers ... with respect to ... practices, routes, services, and

facilities of such carriers. Further, "[e]xcept as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." The Board thus has the authority to grant CSX's petition and to preempt the DC Ordinance.

ACC understands that the residents and government of the District of Columbia are concerned about hazmat shipments. But the business of chemistry also understands that people throughout the country depend on the safe delivery of these products for a wide array of critical uses every day. Properly seen from a national perspective, to allow local governments to prohibit or interfere with hazmat transportation would not improve overall safety and security. Interstate commerce depends on states and local jurisdictions not banning hazmat rail shipments. In fact, such actions would make transportation of vital products less safe, less secure, and less reliable.

Congress has clearly recognized the importance of maintaining a national system of rail transportation, not only in the ICC Termination Act, but also in the Federal Rail Safety Act (see 49 U.S. Code § 20106). The same fundamental principle of interstate commerce applies to safety and commercial legislation governing other modes of transportation, as well as to the Hazardous Materials Transportation Act (see 49 U.S. Code § 5125). Uniform national rules enhance safety and security while promoting commerce.

Conclusion

The American Chemistry Council thanks the Surface Transportation Board for establishing an expedited schedule in this proceeding and for seeking comments from interested parties. ACC requests that the Board grant CSX's petition and declare the DC Ordinance to be preempted by 49 U.S.C. § 10501(b).

Respectfully submitted,



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February 16, 2005