

**UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 677

COMMON CARRIER OBLIGATION OF RAILROADS

**COMMENTS OF
NORFOLK SOUTHERN RAILWAY COMPANY**

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Dated: April 17, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte 677

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NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company ("NS") submits these comments in the above captioned proceeding. NS joins in the submission of the Association of America Railroads, and submits these additional comments. These comments primarily address one of the questions proposed in the Board's order announcing this hearing: how the common carrier obligation relates to cost and safety issues with respect to the transportation of hazardous materials, especially toxic inhalation hazards ("TIH").

I. TIH commodities.

- A. These commodities are extremely dangerous because of their innate characteristics
- B. The shippers' goal is to manufacture these toxic products and hand them off to someone else – usually a railroad – and be absolved of any responsibility for the dangers stemming from a release of their products.
- C. Transportation risks fall entirely on railroads. But the risks associated with these types of incidents increases astronomically because of the characteristics of TIH commodities.
- D. But transportation risks can now be substantially reduced or eliminated.
 - 1. Alternative products exist.
 - 2. Changes in end use processes are possible.
- E. Government has special rules for TIH transportation.
- F. Government proposing more rules regarding TIH transportation.
 - 1. TSA has proposed new rules
 - 2. PHMSA has several rulemakings that are ongoing.

3. None of the proposed rulemakings consider the impacts on the rail network and the cascading impacts on shippers of all commodities, including coal, intermodal, automotive, steel, paper, lumber, military equipment, and grain.
4. The proposed rules focus on trying to increase the security and safety of transportation, but they have done little to address the risks that arise from the characteristics of these commodities

II. The common carrier obligation and STB regulations.

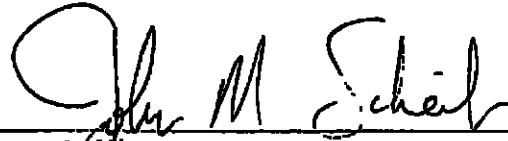
- A. Common carrier obligation is a two-sided coin:
 1. Shipper's request must itself be reasonable.
 2. Railroad must act reasonably in response – not perfectly, not equally, just reasonably.
- B. What is a reasonable request may need to change in light of:
 1. Changing facts – existence of alternative products and new end use processes; and
 2. What is a reasonable request may need to change in light of changing Government rules.
- C. The Board's rate regulatory regime must account for the added costs (direct costs and costs to the rail network) that will result from greater government regulation of transportation of TIH commodities.

III. STB should conduct a hearing regarding TIH commodities.

- A. What are the current (and future) alternative products?
- B. How can these alternative products be used?
- C. What are the alternative processes available to current receivers/users of TIH's?
- D. How long would it take to eliminate or reduce need to transport TIH's by rail?
- E. How much will it cost to make such changes?
- F. Is it reasonable for a customer to request rail service for these commodities without providing the rail carrier full, realizable indemnification from all risks associated with a release of the commodity – in light of the alternative products that are available and alternative methods that exist?
- G. Should the railroad now be allowed to require the producer to share the risks of a TIH release?

- H. Should the railroad now be allowed to require the receiver to share the risks of a TIH release?
- I. If producers, receivers, or both fail to avail themselves of alternate products and end processes that eliminate or significantly reduce the need to transport TIH commodities, should such a producer, receiver, or both be required to assume the full risk involved with a potential release of TIH commodities?
- J. Should the Board's rate regulatory regime be modified to account for the added costs (direct costs and costs to the rail network) that will result from greater government regulation of transportation of TIH commodities?

Respectfully Submitted,



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