

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 677 (Sub-No. 1)

***COMMON CARRIER OBLIGATION OF RAILROADS—
TRANSPORTATION OF HAZARDOUS MATERIALS***

**MOTION OF THE FERTILIZER INSTITUTE
TO EXTEND PROCEDURAL SCHEDULE**

In a Notice of Public Hearing ("Notice") served on June 4, 2008, the Surface Transportation Board ("Board") announced that it would hold a public hearing on July 16, 2008 to examine issues related to the common carrier obligation of railroads with respect to the transportation of hazardous materials. Written testimony is due on July 2, 2008.

The Fertilizer Institute ("TFI"), which is the national trade association for the fertilizer industry, including producers and user of anhydrous ammonia, which is a toxic-by-inhalation ("TIH") material, desires to participate in that hearing. TFI, however, requests that the Board to extend the procedural schedule in this docket by sixty days for the following reasons:

1. At the Board's April 24-25 hearing on the common carrier obligation, TFI informed the Board that it had initiated discussions with the rail industry to develop a private industry initiative to address the liability issue that railroads face when they haul TIH materials. Due to antitrust concerns, the Association of American Railroads instructed TFI to hold discussions with each Class I railroad individually. To date, TFI has met with two Class I

railroads, and intends to meet with all of the other Class I carriers within the coming months. A sixty day extension would permit TFI to complete these meetings, and update the Board on their progress as part of its hearing testimony on potential policy solutions to the liability issue.

2. The complexity and importance of the hearing topics both require and merit more advance preparation. The Board has raised difficult and significant legal and policy questions that must be carefully researched, weighed and considered. For example, what, if any, role does the Board legally have to develop a public policy solution to the liability issue? What actions may the Board take within its legal authority? How should the Board exercise its authority relative to other federal agencies and the Congress? What are the positive and negative implications of various public policy options relative to one another and to the status quo? Moreover, as a trade association, TFI must develop and coordinate its positions through consensus, which requires substantial time and effort to bring together numerous members. This process becomes even more difficult over the traditional Summer vacation period. The month allotted in the Notice for the preparation of written testimony would be extremely short even in the best of circumstances.

3. The hearing date conflicts with the Southwestern Fertilizer Conference, held on July 14-16 in San Antonio. The Conference is the major fertilizer marketing meeting of the year, attended by 1500 persons or more, including all major anhydrous ammonia producers and users. Not only will TFI staff be attending, but so will most individuals who would be likely to testify at the Board's hearing on behalf of individual companies. At the present time, Mr. Ford West, President of TFI, would testify at the hearing, and it is possible that one or more other fertilizer producers and users would testify as well, either with Mr. West or separately on behalf of their own companies. However, Mr. West will be attending the Southwestern Fertilizer Conference

and is scheduled to speak at the meeting, and other companies with an interest in the subject matter will be attending the San Antonio meeting as well.

4. TFI is aware of no statutory or regulatory deadline, or other time-sensitive condition, that would require the holding of this hearing on less than 30 days' notice from the time that written comments are due.

For the foregoing reasons, TFI asks the Board to extend its hearing schedule by sixty days, such that the hearing would be held during the week of September 15, 2008.

Respectfully submitted,



Nicholas J. DiMichael
Jeffrey O. Moreno
Thompson Hine LLP
1920 N St. N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4107

Ford B. West
President
The Fertilizer Institute
820 First Street, N.E.
Suite 430
Washington, D.C. 20002
(202) 515-2704

Attorneys for The Fertilizer Institute