

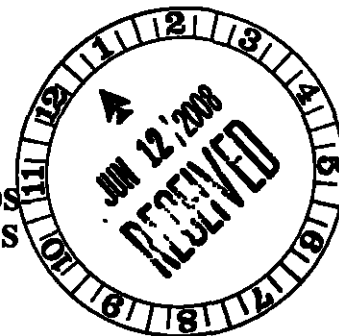
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**MOTION OF THE CHLORINE INSTITUTE, INC. FOR
AN EXTENSION OF TIME TO FILE WRITTEN TESTIMONY**



**ENTERED
Office of Proceedings**

JUN 12 2008

**Part of
Public Record**

I Introduction

In its Notice of Public Hearing instituting this proceeding, the Board indicated that it seeks to have information presented with respect to the “many issues involving the obligation of railroads to haul hazardous materials, including toxic by inhalation hazards (TIH).” The Board also notes that according to the railroads “the transportation of these [TIH] materials subjects them to ruinous liability in the event of an accident.” The members of the Chlorine Institute, Inc. (“CI”), ship more than 40 percent of the TIH materials offered for transportation each year by rail. Accordingly, CI and its members are vitally involved in the policy and factual questions raised by the Board, and to be addressed at the Public Hearings now scheduled for July 16, 2008. The time provided by the Board, however, for the submission of testimony including the evidentiary materials supporting such testimony is woefully inadequate to permit the proper preparation and presentation of materials that are necessary to permit the Board to make a reasoned decision with respect to the issues it seeks to address. Thus, CI requests that the time for

filing testimony be extended from the current July 2, 2008, to September 10, 2008, and the Public Hearing extended accordingly to September 24, 2008.

II Statement In Support of the Motion

On its face, the Board's Notice raises at least three questions to which CI and its members will be required to respond. First, and foremost of course is whether the Board has the legal authority to arrive at the conclusion that the common carrier obligation may not apply to the tender of TIH materials. That purely legal question should not require any factual support. CI believes that the intent of Congress is very clear on this point. However, the Board seems, at least in part, to hold a different view. The Board's Notice implies that if the railroads face the potential of "ruinous liability" by being required to haul TIH materials perhaps offering those materials for shipment by rail may be unreasonable. What is wholly unclear, however, is what is the real potential liability that the railroads may face, and how is that potential liability any different from the potential liability face by any other enterprise doing business today? Therefore, in order to address the issue of what potential liability the railroads actually face, data must be gathered, analyzed and conclusions drawn from that data not from mere suppositions.

The second question raised by the Board's Notice is also complex and requires analysis. Are there unique costs associated with the transportation of hazardous materials, and if so how are those costs recovered by the railroads? Efforts by various CI members to gain access to information regarding railroad costs for transporting TIH materials and for purchasing insurance to cover liability regarding the movement of those materials have been unsuccessful. Accordingly, it will be necessary for CI to retain expert witnesses to assess the real costs associated with TIH transportation by rail, and to

assess whether the extraordinarily high rates already paid by TIH shippers cover or more than cover those additional costs, if any

Finally, the Board seeks comment on "specific potential solutions to the liability issue, including solutions modeled on the Price-Anderson Act of 1957." Since the Board obviously lacks the authority to enact legislation, it must be assumed that the Board is seeking some consensus among the affected parties regarding possible legislative action by Congress. While CI commends the Board for trying to achieve such a consensus, it is very clear that nothing has yet been proposed, there is no legislation pending and the parties would require real and substantial negotiations before such a common position could be developed and approved by the very interests. We fear that moving this proceeding along on the current schedule will not have the result of causing dialogue. To the contrary, an accelerated schedule is much more likely to cause the parties to harden their respective positions, and rely upon the obvious legal recourse that would follow any adverse Board interpretation of the common carrier obligation.

III. Conclusion

In view of the foregoing, the Chlorine Institute, Inc requests that the Board extend the time for filing testimony in this matter until September 10, 2008, and defer the Public Hearing until September 24, 2008

Respectfully submitted,



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