

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

**MOTION TO EXTEND PROCEDURAL SCHEDULE OF
THE DOW CHEMICAL COMPANY**

The Dow Chemical Company ("Dow") hereby requests a 60-day extension to the procedural schedule announced by the Surface Transportation Board ("Board") in a Notice of Public Hearing ("Notice") served on June 4, 2008, in the above-captioned docket. The Notice states that the Board will 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. In addition, written testimony must be submitted to the Board by July 2, 2008.

Dow, as a significant producer and consumer of hazardous materials including toxic inhalation hazard ("TIH") materials, is a major stakeholder in this proceeding. Dow submitted both written and oral testimony in the Board's previous hearing on the common carrier obligation held on April 24-25. Dow also intends to participate in this recently-announced hearing to address the issues raised in the Notice.

The Board has raised complex legal and policy questions that must be carefully researched and considered. At the April 24-25 hearing, numerous participants testified to the tremendous importance of TIH materials to our national economy, health and welfare, and

standard of living. The ability to transport these materials is vital to the public interest. The rail industry, however, complained that the common carrier obligation to transport TIH materials imposes unreasonable liability risks. Through this proceeding, the Board seeks input as to potential policy solutions to these seemingly conflicting concerns and as to the proper role of the Board in developing such policy solutions. The Board also asks whether and when, despite the substantial public interest in the transportation of TIH materials by the safest mode, a request to transport TIH materials by rail might be unreasonable.

In order to respond to these questions, Dow and other participants must research the legal foundations of the Board's authority, evaluate that authority in the context of other federal agencies with overlapping jurisdiction, and then consider how the Board can and should exercise its authority. In addition, careful consideration must be given to the costs and benefits of various public policy solutions to the liability issue, the interplay of that issue with tort reform, and the inherent public interest trade-offs associated with any public policy solution.

It is a tall order for any party to prepare thorough and reasoned testimony on these complex issues in just the four weeks provided in the Notice. This process becomes even more difficult because it occurs at the beginning of the traditional Summer vacation period. The complexity and importance of the hearing topics both require and merit more advance preparation.

In addition, although TIH materials received most of the attention at the April 24-25 hearing, the Board has included all hazardous materials within the scope of the Notice. There are literally hundreds of hazardous materials, and they do not all pose the same degree of hazards. Consequently, the issues posed by the Board in the Notice are likely to differ across many categories of hazardous materials. This also warrants additional time to prepare for the Hearing.

For the foregoing reasons, Dow asks the Board to extend its hearing schedule by sixty days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', with a long horizontal flourish extending to the right.

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