

222775

Before the
Surface Transportation Board
Washington, D C

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

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

**NOTICE OF INTENT TO PARTICIPATE
AND TESTIMONY OF
THE CITY OF ALEXANDRIA, VA**

**STATEMENT OF
REDELLA S. PEPPER, VICE MAYOR
OF THE CITY OF ALEXANDRIA, VA**

I am Redella S Pepper, the Vice Mayor of the City of Alexandria, Virginia, and I am speaking on behalf of the City. We in the City of Alexandria appreciate this opportunity to testify before this Board with respect to issues presented by the transportation of hazardous materials to, from and through the City. The questions raised by the Board's Notice of June 4, 2008, touch on questions of liability for personal injury and death of affected persons in the event of an accident involving hazardous materials. The City is concerned with issues of liability but believes the Board should broaden its consideration of the transportation of hazardous materials to address procedures for locating facilities for the loading, unloading and transloading of hazardous materials.

The inherent danger associated with the handling of hazardous materials raises fundamental issues of health and safety that extend well beyond concerns about liability. As a local government with responsibility for the health, safety and welfare of its citizens and as host to two major rail lines, the City brings a unique perspective to this issue that differs substantially

from that of the railroads and shippers from whom you will hear. While the City recognizes the value to interstate commerce of moving hazardous materials by rail, the location of rail lines and facilities for loading, unloading and transloading hazardous materials adjacent to homes, schools and parks, raises critical questions about the safety and propriety of the location of those facilities

Recent events in the City in such locations underscore the need for the Board to address this issue. Earlier this year one of the two freight railroads that operate in the City decided to open a facility for transloading ethanol at a former intermodal yard in the City. Ethanol is extremely flammable, and moves in tank cars on rail lines around the country. In Alexandria, the Norfolk Southern Railway Company moves tank cars laden with ethanol to a facility on the west end of the City. At that facility, it has arranged for a third party to operate and manage a transloading operation by which the ethanol is unloaded into trucks that then move the product to tank farms located in Fairfax City and Lorton, Virginia.

Until Norfolk Southern began this relationship with the trucking company that manages the transload operation, the City of Alexandria has been pleased to play host to the railroad. Now, however, the situation has changed. On or about April 9, 2008, ethanol transloading operations commenced at that facility. The operation is conducted at a location within one half-mile of the Samuel Tucker Elementary School, extensive residential communities, major local and interstate roadways, including the Capital Beltway and I-95, and a METRO line and station. The transloading facility proper can accommodate 20 rail tank cars, the associated trackage can accommodate the storage of at least 30 additional rail tank cars. Each tank car holds between 29,000 and 30,000 gallons of ethanol. The facility has the capacity to generate well in excess of

50 full tank truck trips leaving from the site each day Norfolk Southern claims the right, and has expressed the intent, to operate 24 hours per day, seven days per week

Norfolk Southern tells the City that because the facility is owned by the railroad and is used as part of its interstate rail operations, it requires no pre-clearance from the City to conduct this operation, and that the City can not regulate in any way the operation of the facility

According to Norfolk Southern, this includes the hours of operation, the frequency or routes used by the trucks that move to and from the facility, and any other aspect of that operation, despite the danger to neighboring homes, recreational facilities and the elementary school posed by the presence of these massive amounts of ethanol so nearby

The City acknowledges the importance of the free flow of interstate commerce, and acknowledges the important role played by the rail industry nationwide in moving commodities that are essential to the functioning of this country's economy from source to market

Alexandria was founded as a port along the tidal Potomac, and throughout its history its growth and its economy have been fueled by the availability of water and rail, and more recently highway and air, transportation alternatives

However, there comes a point where even the most ardent supporter of the importance of rail traffic to the nation's economy has to stop and question the railroads' view that they have, and that there should be no limit on, an unfettered right to place facilities for the handling and transloading of hazardous materials wherever they see fit along their right-of-way This Board is charged with the responsibility for protecting the interests of the public, and the interests of the public in the City of Alexandria and in communities around the country lie squarely in ensuring that railroads must face some scrutiny before making decisions about the placement of facilities that will enhance the danger to nearby citizens. The Rail Transportation Policy set out in the

statute that creates and governs the operation of this Board is intended to promote a safe and efficient rail transportation network and to reduce regulatory interference with the smooth and competitive functioning of the network where possible. However, the flexibility and freedoms granted to the railroads by that policy and under the terms of the statute are tempered by another element of that policy - - to operate transportation facilities and equipment without detriment to the public health and safety.¹

The City believes that the unfettered discretion of railroads should be restricted in an appropriate manner when operations involve large numbers of cars carrying potentially explosive material, parked and handled in a transloading operation in the midst of a community of inconsistent uses, particularly when the transloading operation also involves the movement of ethanol-filled tank truck on City streets.

Specifically, there needs to be a forum where the needs and interests of the communities affected by facilities like the one in Alexandria can be addressed. The City believes that the particular facts of the operation and management of the ethanol transloading facility in Alexandria render that operation subject to City regulation of the location, movement of trucks to and from, property use and other aspects of the operation. However, that question is currently in litigation both before this Board and in federal district court in Alexandria and I will not address it further today.

But in the event that Norfolk Southern or CSX Transportation, Inc. decides that it wishes to locate and operate a facility in Alexandria, and establishes it in a way that would not be subject to local regulation, there needs to be a forum in which the local government can raise questions and require a review of that decision. This Board, as the agency with expertise in regulating the construction and operation of rail facilities, is the best candidate to hold a hearing

¹ 49 U.S.C. §10101(8)

to review such proposals. The City recommends that this Board adopt regulations that establish a procedure for seeking this Board's review and approval of the location of a facility for the storage and/or transload of hazardous materials. In such a proceeding, the applicant railroad should

- (1) advise the Board and the affected local and state jurisdictions of its plans, including location, size and materials to be handled
- (2) submit documentation of alternatives considered and rejected, along with a rationale for the selection of the proposed site and the rejection of others,
- (3) describe the actions the railroad will take to minimize the risk to the surrounding community from the storage and handling of hazardous materials at that site, and
- (4) describe the potential environmental impacts, including environmental justice considerations

As part of that process, the Board should provide an opportunity for the affected communities to comment on the proposal and to propose alternative locations and appropriate mitigation of environmental, health and safety risks. At the conclusion of the process, the Board would then be able to make a decision whether to permit the railroad to locate the facility at that location and if so, what mitigation of environmental, health and safety risks is required.

I want to repeat how much the City of Alexandria appreciates having the opportunity to address the Board with respect to this important issue. The City will be happy to answer any questions you might have.