



## National Association of Chemical Distributors

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July 10, 2008

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**Attention: STB Ex Parte No. 677 *Sub 1***  
**Common Carrier Obligation of Railroads – Transportation of Hazardous Materials**

Dear Secretary Quinlan,

This written testimony is submitted for consideration in conjunction with the July 22, 2008 public hearing to examine issues related to the common carrier obligations of railroads with respect to the transportation of hazardous materials. The National Association of Chemical Distributors (NACD) appreciates the opportunity to submit testimony on this important issue.

NACD is a trade association headquartered in Arlington, Virginia, with approximately 250 chemical distribution companies throughout North America. These companies represent between 80% and 90% of the chemical distribution facilities in the nation and more than 90% of the industry's gross revenue. Members of NACD operate in every region of the country through more than 1500 facilities. The membership includes small businesses as well as regional and national companies. Hazardous materials transportation is an integral part of the chemical distribution business. In 2007, NACD members made 5.3 million chemical distribution shipments, were responsible for 71.7 billion pounds of delivered product, and drove 175 million miles while distributing chemicals.

NACD strongly urges the federal government to maintain the common carrier obligation of the railroads to transport hazardous materials. Chemical distributors and manufacturers depend on rail service to send and receive shipments of certain hazardous materials as safely as possible. For some materials, including toxic inhalation hazards (TIH) such as chlorine and anhydrous ammonia, rail is the safest and most efficient mode of transportation because of the large volume capacity of rail cars and a strong rail safety record. In fact, the June 10 notice for this hearing expressly states, "For many hazardous materials, including TIH, rail is the safest and most efficient mode of transportation."

A single rail car can hold the same volume as between four and eight tank trucks. If rail service were to become unavailable, transportation of these materials would be shifted to truck, which

would not only cause major delays, but would also increase cost of transportation, the opportunity for loading and unloading incidents, and the volume of hazardous materials on the nation's highways.

The railroads themselves admit that hazardous materials transportation by rail is safer than by truck. On its Web site, Jacksonville, Fla.-based CSX Transportation Inc., a Class I Railroad, says "Railroads continue to be the safest mode of ground transportation for transporting hazardous materials. For every billion ton-miles of hazardous materials transported, trucks (which operate over inherently more dangerous public highways) are involved in more than 10 times as many accidents as the railroads." In addition, in its April 24 written testimony to the SIB, the Association of American Railroads (AAR) stated, "The rail hazmat safety record is extremely favorable. In 2005 (the most recent year for which data are available), 99.997 percent of rail hazmat shipments reached their final destination without a release caused by an accident."

On a large scale, the well-being of the United States economy and health of its citizens depends on rail transportation of TIH materials. For example, not only is chlorine essential to treat water for safe drinking, it is also a basic material needed to produce thousands of products people need ranging from pharmaceuticals to computer chips to everyday household items. Another example is ammonia, which is necessary not only to grow food but also for the refrigeration needed to safely store and transport food products. Ammonia is also a critical material power plants use to reduce their emissions, minimize pollution, and even operate within their air permit limits.

Because TIH materials are building blocks for so many products that are essential to Americans' health and well-being, the economic impact of a lack of rail service to transport these materials would be severe. Shifting the transportation of these products to truck would result in the need for more personnel to safely load and unload the products and to drive the tank trucks. It would also require more fuel for all of the additional trucks on the road. With fuel prices continuing to increase, with no signs of dropping any time soon, this would substantially increase the costs of essential goods, ranging from food to medicine to clothing for all Americans. With fuel prices so high, it would be devastating to remove such an efficient mode of transportation for materials that are essential to so many aspects of the economy and public health. In fact, the AAR is currently running a timely campaign to advertise the fact that railroads can haul one ton of freight for 436 miles on just one gallon of fuel.

Another problem with shifting the transportation of these materials from rail to truck is that the nation's highways are becoming more congested, increasing the time the shipments spend in transit. A 2005 Federal Highway Administration report, *An Initial Assessment of Freight Bottlenecks on Highways*, found that 2110 bottlenecks throughout the United States caused more than 243 million hours of delay to truckers annually at a cost of about \$7.8 billion per year. The Department of Transportation (DOT), in a later report to Congress, *2006 Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance*, stated, "Highway congestion affects motorists, freight carriers, and freight shippers. Shippers are affected through an increase in logistics costs made up of transportation costs, inventory costs, and order costs. Slower and more unreliable transportation increases transportation costs directly, but also increases order costs and inventory costs." This problem is only expected to intensify as DOT also states in this

report, "Freight tonnage is forecast to increase by 70 percent between 1998 and 2020, and trucking is expected to account for the majority of the projected increase."

The major railroads enjoy monopolies in their service areas and are able to charge high prices and dictate service terms to their customers, including chemical manufacturers and distributors. In recent years, the railroads have increasingly expressed concerns about potential liability exposures involved with the transportation of TTH materials and have argued that without liability relief, they should be relieved of their common carrier obligation to transport TTH materials.

NACD urges the federal government to maintain the railroads' common carrier obligation to transport hazardous materials and to refrain from shifting their potential liability to the shippers. Transferring the liability to the shippers would do nothing to create an incentive for the railroads to run safer operations. While the railroads have a strong safety record, there is room for improvement. The National Transportation Safety Board found that the two most recent rail incidents involving the release of hazardous materials in Minot, ND, and Graniteville, SC, were both the result of railroad infrastructure and operational failures. If liability for this type of incident were to be transferred to the shippers, the railroads would have less incentive to enhance safety.

Despite being subject to the common carrier obligation, railroads continue to make money. Because of their monopoly situation in many areas, railroads have been able to substantially increase prices for their shipper customers. According to the AAR Class I Railroad Statistics, net income increased from \$4.9 billion in 2005 to \$6.5 billion in 2006 to \$6.8 billion in 2007. For the first quarter of 2008, CSX reported a 63 percent increase in earnings per share. The other major railroads also reported substantial increases, including Norfolk Southern, who reported a 7 percent increase even after accounting for settlement costs related to the Graniteville incident.

Chemical transportation is a substantial part of the railroads' business and profitability. In 2006, 11.6 percent of the Class I Railroads' gross revenue came from chemicals and allied products, second only to coal. In recent months, rail car shipment volumes of several products including crushed stone and motor vehicles have decreased, while shipments of chemical products have continued to increase. According to the AAR, overall freight rail traffic decreased 3.6 percent in June 2008 compared with June 2007, however, shipments of five of the 19 major commodity categories, led by grain and chemicals, actually increased during this period. This demonstrates that even in a slow economy, there is continued strong demand for chemicals such as chlorine and anhydrous ammonia, which are critical to so many essential products. It is curious that the railroads are advocating the elimination of their common carrier obligation to transport hazardous materials even though these products remain one of their strongest and most consistent sources of profit.

The common carrier obligation has been in place for generations and has served shippers and the general public well. Given the monopolies that the major railroads enjoy in many areas, the common carrier obligation is the only recourse that shippers have to ensure they are able to receive rail service they need to efficiently transport their products, particularly hazardous materials. It is difficult to make a credible case that the common carrier obligation should be

removed given the profitability of the railroads, particularly in recent years. In addition, with the skyrocketing costs of fuel and the fact that rail transportation is so fuel-efficient, as described in the AAR's advertising campaign, eliminating the railroad's common carrier obligation to transport hazardous materials would exacerbate the current national inflationary trend because it would be so much more expensive and inefficient to transport by truck these materials that are needed in the development of so many essential products.

NACD appreciates the opportunity to submit testimony on this important issue and again urges the federal government to maintain the railroads' common carrier obligation that is so essential to the safe transport of materials that all Americans need for their health and well being.

Sincerely,

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