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Robert T. Opal
General Commerce and FRA Counsel

July 15, 2008

Via E-Filing

The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

**Re: Ex Parte No. 677 (Sub-No. 1) Common Carrier Obligation of
Railroads – Transportation of Hazardous Materials
(Corrected UP Written Testimony)**

Dear Secretary Quinlan:

This refers to Union Pacific Railroad Company's Written Testimony filed July 10, 2008 in the above proceeding.

We have discovered that some wording was inadvertently omitted from the first bullet point on p. 16. The first sentence should read as follows:

"UP crews handling TIH cars now must perform *or soon will be required to perform* a series of tasks that previously were not required." (additional language italicized)

Rather than submitting a corrected page, we are submitting with this letter a corrected copy of the entire submission, which should be substituted for the original. We have also taken this opportunity to make made some other minor, non-substantive corrections to the document (primarily formatting and punctuation).

Very truly yours,

A handwritten signature in black ink, appearing to read "R. T. Opal".
Robert T. Opal

Att:

CORRECTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 677 (SUB-NO.1)

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

**WRITTEN TESTIMONY
OF
UNION PACIFIC RAILROAD COMPANY**

PRESENTED BY

DIANE K. DUREN

VICE PRESIDENT & GENERAL MANAGER - CHEMICALS

UNION PACIFIC RAILROAD COMPANY

Date of Submission: July 10, 2008
Date of Public Hearing: July 22, 2008

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INTRODUCTION

My name is Diane Duren. I am the Vice President & General Manager – Chemicals for Union Pacific Railroad. I am responsible for the marketing, sales and customer relationship management activities for the Chemicals Business Group at Union Pacific Railroad. Chemical products include plastics, fertilizers, soda ash, LPG and petroleum products, as well as various liquid and dry chemicals. Most Hazardous Materials and all TIH commodities fall within the jurisdiction of the Chemicals Business Group. The Chemicals Group represents over \$2 billion in annual revenue and approximately 900,000 carloads.

I began my career with Union Pacific Railroad in 1985 and have held a variety of positions in Finance and Marketing and Sales. In 1995, I was named Director of Sales for UP's Food Group; in 1997, Director of Logistics for Agricultural Products. In 2000, I became Vice President & General Manager - Agricultural Products, and performed in that role until appointment to my current

position. I earned a Bachelor's degree in Business Administration with a major in Accounting from Creighton University in 1981.

My experience in both Finance and Marketing and Sales at Union Pacific has provided me with a unique perspective on Union Pacific's role and responsibilities as a participant in the TIH supply chain. The multiple issues involved in the production, transportation, consumption and end-use of TIH are of critical importance to our nation's economy, the communities through which these commodities travel, the producers and users of TIH, the transportation industry at large and Union Pacific. As I will explain, the safe and efficient handling of TIH throughout the supply chain is one of our highest priorities, but so also is fairly apportioning and balancing the burdens of risk and liability across this supply chain. Union Pacific believes that all participants in the TIH supply chain must bear responsibility for risk and liability for surface transportation of TIH; and further, that railroads should not be disproportionately burdened with the lion's share of that risk. We accept our obligation as a common carrier to transport TIH in the absence of safer, more logical alternatives, but we should not be forced to accept the full burden of risk and liability exposure associated with TIH transportation.

I.

SUMMARY OF UNION PACIFIC'S POSITION ON COMMON CARRIER OBLIGATION OF RAILROADS TO TRANSPORT TIH

Union Pacific joins in supporting the AAR's comments. I will not address or repeat all the points made in the AAR comments but instead will focus on

Union Pacific's views of the TIH supply chain and the roles that the participants in that chain play.

To put my testimony into proper perspective, Union Pacific ranks the transportation of TIH chemicals as its most serious corporate risk. A TIH incident in the wrong place under the worst conditions, could bankrupt the company to say nothing of its effects on the public. With that in mind, my testimony will detail the following key points that are fundamental to our positions on TIH and the processes we employ (and are enhancing) to handle TIH as safely as possible and to minimize the risk and liability exposure we and the public face in transporting these commodities:

- An important set of solutions to TIH risk challenges are safer chemicals, product substitutions, improved tank cars, and actions external to railroads (use of pipelines and production of TIH commodities at the site of consumption), all of which would reduce the need for surface transportation of TIH, and the risks associated with this transportation.
- Product "Swaps" among producers could reduce TIH surface transportation by allowing TIH users to be supplied from the nearest production facility, but we cannot make them happen, and the Department of Justice will not apparently allow chemical companies to arrange them.
- Union Pacific and other railroads have taken, and continue to take, extensive actions to enhance TIH safety and security, including heavy investments in track and safety equipment. I will amplify what we have done to date, and our plan going forward.
- We communicate extensively with our customers about all facets of TIH transportation safety, process improvement, risk management and liability exposure and reduction.
- We collaborate with customers and other supply chain participants on safety process, infrastructure and equipment improvements.

- We are committed to changing behaviors - ours and that of our customers - in the name of improved safety and efficiency for the handling of TIH.

The government requires UP and other railroads to transport TIH chemicals. Even though we prefer not to carry TIH commodities, this government policy makes sense, in the absence of safer alternatives. Rail is the safest mode of surface transportation for these commodities --16 times safer -- than truck transportation. Because we are the safest mode of surface transportation for TIH bulk shipments, public policy makes us the mode of choice as long as TIH surface transportation is unavoidable. UP has an outstanding record in handling TIH. We invest heavily in time and money to improve TIH transportation safety and will continue to do so.

As context:

- In 2007, Union Pacific handled 533,765 hazardous materials loads and 31,622 TIH loads. Overall, UP handled 10 million carloads of total business.
- Of the 31,622 TIH loads, Chlorine and Anhydrous Ammonia combined for slightly more than 23,000 loads.
- 100% of the TIH loads were delivered without incident attributable to rail handling. UP did, however, experience six shipper caused releases of TIH, two of which occurred in High Density Population Areas ¹(HDPAs).

II.

PUBLIC POLICY SHOULD ENCOURAGE ALTERNATIVES TO SURFACE TRANSPORTATION OF TIH

A. Product Substitution And On-Site Production

TIH products are currently used for agriculture, water treatment, and in the

¹ This is the new term for "High Threat Urban Areas" or HTUA's

manufacturing process for thousands of products. Although some TIH transport is presently unavoidable, the marketplace demonstrates that product substitution and on-site production -- for some TIH commodities in certain markets and applications -- is in fact feasible and economically viable. It is happening today, as several noteworthy examples show.

The first involves the reduction, and in some cases elimination, of direct field application of Anhydrous Ammonia as a fertilizer. We understand that several fertilizer producers are reconstructing their production facilities to produce less hazardous forms of nitrogen (such as urea and urea ammonium nitrate solutions) for direct field application. We applaud these efforts as they contribute to a safer supply chain for all participants. The movement to less hazardous forms of nitrogen is particularly beneficial since many receivers currently using Anhydrous Ammonia for direct field application are small businesses employing less security than a major production facility and are located in remote locations on the railroad network. In cases like this, moving an alternative to TIH provides a safer and more secure supply chain, while still allowing nitrogen to be delivered to support crop growth that is critical to our economy.

Another example involves a shift from the historic use of Chlorine as a water cleansing agent in water treatment facilities to bleach, other products or processes as substitutes. This substitution is gaining traction, and we applaud it. Every carload of Chlorine that is removed from surface transportation removes an increment of risk and liability exposure from the supply chain.

We believe product substitution, even if limited in the near term, is a longer-term strategic direction that the chemical industry should pursue aggressively and that public policy should support. It will make the nation's chemical supply chain safer, and it will reduce the current risks in producing, transporting and consuming TIH. Union Pacific believes that a major reason product substitution does not occur today on a widespread basis and is not being aggressively pursued is because of cost and profit-margin motives of the producers. Public policies and economical incentives should be changed to accurately reflect risk and liability in those economic calculations.

Other feasible long-term solutions to many of the risks related to TIH transportation include improving the tank cars that carry the essential TIH shipments and co-locating production of TIH commodities near consumption. TIH can be, and often is, manufactured on the sites where it is consumed. TIH also can be, and often is, transported by pipeline without substantial risk. Ultimately and ideally, all TIH chemicals, including Chlorine and Anhydrous Ammonia, should travel by truck or train for only as few miles as is absolutely necessary.

B. Sourcing and Product Swaps

While we are willing and committed to transport TIH when alternatives are not practical or available, our experience in that TIH is often transported much longer distances over the rail network than is necessary. This occurs because producers often find it in their economic interests to market and transport TIH to distant users, and the users find it in their economic interests to purchase the

product from distant suppliers rather than closer ones. Union Pacific's view is that surface transportation of TIH should be held to the absolute minimum necessary. As such, public policy – and Board policy – should encourage TIH to be sourced from the production facility closest to the point of consumption.

One way this can be done is for chemical manufacturers to sell to closer consumers, reducing the amount of TIH surface transportation. We have worked with customers to support such arrangements when we learn about these opportunities. Only the chemical manufacturers, though, can decide where and how to market and move their chemical products.

We have also tried to encourage product swaps among TIH producers. Under a "swap" arrangement, each manufacturer continues to make its own deals with end users, regardless of the distance of the users from the producer's manufacturing facilities. However, the product is actually supplied from the production facility closest to the user, regardless of the manufacturer which owns that facility. The convening, in 2007, of the FRA's Section 333 conferences, which were intended to help arrange swaps and eliminate unnecessary shipments, was a railroad industry initiative. The nation's railroads pushed aggressively for more than a year before government agencies agreed to conduct the conferences. The railroads met with the agencies to review our routes and look for route improvement opportunities. The chemical industry, however, never met with government agencies to discuss swaps, because the Department of Justice objected. We therefore must defer to the chemical

manufacturers and the Department of Justice to explore the promising opportunities for product swaps on an industry-wide basis.

Union Pacific's view, again, is that producers protect their respective customer bases and perpetuate unnecessarily long, and high risk TIH movements for cost and profit motives. And the railroad and the public are left to bear the burdens of the risk and liability exposures.

Surprisingly to us, chemical producers continue to develop new, long distance TIH movements in spite of public and governmental concerns within the last eighteen months. One new plant in particular will require a large new, long-haul TIH movement. The site was selected because of the abundant, low-cost supply of other raw materials needed in the production process. There was no economic incentive for the producer to factor in the TIH transportation liability risk, and the attendant risks to the public, because the railroad and the public are expected to bear the full burden of risk and liability. We are willing to serve this plant, and accept our obligation to do so, but are not willing to accept the full burden of risk and liability exposure associated with it.

III. RAILROADS BEAR DISPROPORTIONATE RISKS IN TIH TRANSPORTATION

For railroads, real, generally unavoidable, and possibly staggering economic consequences are associated with our common carrier obligation to transport TIH. The risk and liability exposure that goes with transporting TIH is borne largely by the railroads and, to some degree, by the communities the TIH

moves through. Very little transportation related risk is shouldered today by TIH producers. Yet it is the producers and their customers who effectively make the decisions as to where TIH will be shipped. Without responsibility for transportation risk and liability exposure, producers underestimate true TIH supply-chain costs and, without accountability or responsibility for those costs, have no incentive to improve efficiency and safety by working to minimize the surface movements of TIH.

As previously discussed, Union Pacific experienced six shipper-caused, non-accident releases of TIH in 2007, two of them occurring in HDPAs. Each was a loading or equipment failure incident that was the responsibility of the shipper. Fortunately, no injuries or deaths resulted, but if they had, UP would likely have faced significant liability for failures that we did not cause.

In addition, we have experienced incidents where no member of the supply chain – not the producer, the railroad, the consumer, or the communities enroute – was responsible or at fault for an incident that could have been catastrophic. For example, in January, 2008 a train outside of Chicago was struck by a tornado, derailing 12 cars. One was a loaded Ethylene Oxide car. It landed on its side, was badly damaged, and had its steel jacket and body bolsters torn off. It did not leak, but a 1.5-mile evacuation was implemented. The point here is that UP handled a TIH car safely and according to all rules, yet came close, for reasons beyond our control, to a catastrophic incident that could have harmed the public

We are not, of course, saying that railroads are never responsible for an accident involving a TIH release. But even where the railroad may be responsible for the accident, it is the presence of TIH which can transform what otherwise would be solely a property damage event into a catastrophe.

Additional liability protection for handling TIH in situations such as these seems to be not only reasonable but intuitively just, given our common carrier obligation. Union Pacific feels strongly that all participants in the TIH supply chain should be responsible for their involvement and should share risk and liability exposure. Going forward, UP will institute new procedures intended to incent consistently safe and accident free behavior. I will elaborate further on this later in my testimony.

IV. ACTIONS TAKEN BY UNION PACIFIC TO MAXIMIZE THE SAFE AND EFFICIENT HANDLING OF TIH

As one of the world's largest transporters of hazardous materials and TIH, Union Pacific has always been active in creating and promoting awareness about safety, both internally with its employees and externally in the communities and industries it serves. In 2007, we increased our public safety training and outreach programs and will continue this ramped-up involvement into the future.

- In reaching out to the communities we serve, we trained 6,055 emergency responders across 23 states during 2007 on hazardous material emergency management processes and procedures.
- Responsible Care, a well known American Chemistry Council Safety and Quality initiative, is a Continual Improvement Management System to which UP is committed. UP was the first railroad to be certified under the

ACC Responsible Care program and continues to be a leader in the program.

Internally, Union Pacific has a well established history of continuously refining and improving its safety practices. Consistent with that history and in response to the efforts of DHS/TSA and DOT/PHMSA to improve the security and safety of the nation's transportation infrastructure, we have taken additional steps over the past twenty-four months to ensure that all hazardous materials are handled on our network as safely, securely, and efficiently as possible. We have proactively implemented operational safety and security processes and practices that we feel will put us in full compliance with the new DOT/PHMSA regulations and with the anticipated DHS/TSA regulations when they become effective. Our intent is to comply fully with all regulations. Several examples of the many safety improvement initiatives that we have recently completed or currently have in progress are:

- Strict adherence to a "no bill, no pull" policy. Under this policy Haz Mat cars are not pulled from a customer facility unless proper billing and shipping documentation is in our internal systems. We will not pull Haz Mat cars on informal instructions or documentation, such as handwritten switch lists from customer personnel. This assures that shipping documentation required by PHMSA rules is available in a form which will allow both railroad personnel and emergency responders to quickly determine a car's contents as it moves over the rail network. It has also reduced the number of Haz Mat cars sitting in yard awaiting billing instruction. Union Pacific now only moves Hazardous Material cars having waybills and is working with customers to facilitate this process.
- Reduction of TIH dwell time and substantial increases in the time that loaded TIH cars are under observation.
- Daily monitoring of all TIH movements for excess transit time, with appropriate corrective action.

- Installation of a customer Inventory Management System (CIMS), specifically for TIH, to manage inventory levels and avoid cars sitting in our terminals.²
- Requirement for positive hand-offs of TIH cars at points of interchange and with shippers and receivers. All customers that ship or receive TIH in a High Density Population Area (HDP) are being contacted by a UP team to assess facility security and to discuss positive hand-off protocols.

In 2005, to further heighten our internal awareness of, and attention to, the safest possible handling of TIH, Union Pacific implemented a TIH Transportation and Compliance Program. Led by a Vice President and reporting quarterly to the Board of Directors through the railroad's Chief Compliance Officer, this initiative's purpose is to recognize and manage the inherent risks associated with TIH to achieve and maintain safe, reliable and efficient operations. This is accomplished by continually evaluating, documenting and improving our TIH transportation processes and mapping compliance versus plan for over twenty safety and process improvement projects.

To date, scores of new TIH related procedures have been implemented.

Currently, TIH management process modifications are underway for:

- Consist accuracy improvements
- Hazardous material & emergency response plan revisions
- TIH dwell time reduction and process improvement
- Transportation plan review and modification
- Chemical facility inspections and security audits
- Chemical facility track and derail inspection procedures
- Positive handoff testing and deployment
- Compliance Assurance/Audit Process

² See UP's Comments in Ex Parte No. 677, April 17, 2008, pp. 17-19 for a description of how the CIMS system was developed and how it operates.

Additionally, Union Pacific has participated for years in refining and developing safety procedures with federal, state and local law enforcement agencies and has been recognized repeatedly as a model for transportation safety analysis and improvement. Because the government requires us to transport TIH chemicals, and we regard this transportation as our top enterprise risk, we have taken extraordinary precautions to enhance security and safety. And more are under development.

Almost immediately after the September 11, 2001 attacks, and before the Department of Homeland Security (DHS) and TSA were created, Union Pacific participated with other railroads in establishing a Railroad Security Task Force. A primary goal of this task force was to help ensure the safety of rail employees and the communities in which railroads operate. Over the next several months, the task force conducted a comprehensive risk analysis of the freight rail industry. Using intelligence community "best practices," five critical action teams (consisting of more than 150 experienced railroad, customer, and intelligence personnel) examined and prioritized railroad assets, vulnerabilities, and threats. Separate critical action teams covered information technology and communications; physical infrastructure; operational security; hazardous materials; and military traffic needs.

These analyses generated the industry's Terrorism Risk Analysis and Security Management Plan, a comprehensive, intelligence-driven, priority-based blueprint of actions designed to enhance freight railroad security. The AAR adopted the plan in December, 2001. The rail security plan is robust and

dynamic and has now been in effect for more than five years. It is evaluated and modified as necessary on an ongoing basis, and it has substantially raised the baseline of railroad security. We conduct exercises and tests to verify that it operates effectively. Union Pacific and the other railroads took this action without waiting for legislation or regulators to tell them what to do.

V. THE INCREMENTAL COSTS OF HANDLING TIH

The costs associated with handling TIH in the safest manner possible, and in continuing to make the process, infrastructure and equipment improvements are significant. And they continue to escalate. We are initiating new improvement projects constantly and will continue to do so. Some of these costs are for improvements made solely for supporting TIH transportation and, as such, are well documented and can be easily quantified as TIH costs; others are still under development and/or analysis and are as yet not fully determined.

Additionally, some improvements serve the rail enterprise as a whole and have an incremental impact on TIH, although the TIH-related cost portions of these are more difficult to quantify. Although we have not captured all costs, and our efforts continue to expand some examples of the costs associated with our commitment to be as safe as possible in moving TIH include:

- UP crews handling TIH cars now must perform or soon will be required to perform a series of tasks that previously were not required. The additional tasks include: verifying billing for no bill/no pull procedures; making a security inspection of each car; complying with positive handoff procedures at receipt, interchange and delivery; shoving all TIH cars to rest rather than allowing cars to roll to a stop; and entering additional information in the computer. We estimate the average time to perform

these tasks to be one hour per car handled. A three person crew's hourly cost is \$97.59. Applied to an annual volume of 31,622 TIH cars, the incremental increase in crew costs is \$3.1 million.

- Capital investments designed for TIH accident prevention and spent on locomotive safety equipment and car failure detection technology have totaled \$34.5 Million. Assigned to an annual volume of 31,622 TIH cars, this equates to a capital cost of \$1,091 per TIH car handled thus far.
- More than \$10 million has been spent to modernize signaling on a line between Shreveport and Houston because the line handles significant TIH volumes.

The examples of TIH-related improvement costs cited above represent money spent exclusively to support TIH transportation. Were it not for TIH, these improvements and expenditures would not be made. Therefore, the allocation of these costs is appropriately applied to TIH volumes only and not to the railroad's overall volumes. In addition, several other capital projects have been completed for infrastructure, equipment and technology improvements that, while not exclusively dedicated to TIH movement, will contribute to the safer handling of TIH. While these improvements are not exclusively dedicated to TIH movements, the investment made and standards of maintenance achieved in these cases would not have been as high had there not been TIH moving on these routes. These include:

- Improvement of rail and track materials on routes that carry TIH.
- Increased maintenance on routes that carry TIH.
- Pilot program to test Positive Train Control on a route selected because of its TIH volumes.

The Board must allow UP to recover the incremental costs of handling TIH traffic from the shippers and receivers of this traffic by recognizing them when

rate cases are brought against TIH rates. There is no public policy reason for requiring railroads to absorb these costs or for requiring a railroad's other customers to cross-subsidize them.

VI. WORKING WITH OUR CUSTOMERS AND OTHER TIH SUPPLY CHAIN PARTICIPANTS

I have referred repeatedly in my testimony to the TIH supply chain. It includes chemical producers, shippers, receivers, transportation carriers, equipment manufacturers and any other people (groups or individuals) involved in the production, consumption, purchasing, selling or transportation of TIH. Many members of the TIH supply chain are our customers; others are partners in some form or another and still others are competitors.

Over the past several years, all members of the TIH supply chain have, of course, been focused on their own individual interests as the world of TIH around them was changing. UP realized shortly after 9/11/01 that communication and collaboration with some key members of the supply chain – particularly customers and partners – would be critical to our successes going forward. Since, we have worked hard to strengthen relationships and encourage dialogue. A continuum has evolved that integrates our internal activities regarding TIH with those of our customers and partners:

- We communicate to create awareness.
- We collaborate with customers and other stakeholders to create new and safer technologies and processes.
- We continually improve our internal processes and procedures which drive customer behavior changes.

- We institutionalize change and then seek further improvement.

A. Communication and Awareness

We communicate extensively with our customers about all facets of TIH transportation safety, process improvement, risk management and liability exposure and reduction. Frank and honest exchanges are most important. Differences of opinion and view can often lead to creative solutions. But open and regular communication is most important.

We regularly brief customers and other members of the supply chain on developments within our company and industry that we feel will have impact on what we do together. Letters to customers containing TIH related information and "what to expect" updates go out regularly.

We also engage aggressively in direct communication with our TIH shippers and receivers – the customers. Every one of our customers is assigned an individual Union Pacific Marketing & Sales representative; that person meets regularly with the customer and arranges additional contacts within our company as needed, with whomever is needed. We also arrange customer forums and discussions where common issues and concerns can be vetted and addressed. We conduct these on an as-needed basis, and the feedback is positive. We host an Annual Safety Conference that is always well attended; last year, an entire section of the agenda focused on TIH, and a guest speaker from TSA participated on a TIH Awareness Panel.

We meet whenever necessary, or invited, with industry groups. We have found it productive to meet with industry groups to exchange views on a variety of topics and issues.

We have been willing, at the industry level, to exchange proposals with ACC for many months. The ACC's leadership has told us several times that they will deliver, in return, a proposal within as little as a few days, but they have never delivered. We do not see eye to eye with ACC on the several policy issues, but seek to keep channels open and dialogues alive.

We have a progressive and constructive dialogue ongoing with TFI (The Fertilizer Institute) concerning insurance coverage and liability caps. These issues are of prime importance to the railroads and the fertilizer industry. There is value in these discussions and hope that significant progress may be achieved.

While we hope to reach a mutually beneficial outcome to our negotiations with TFI, we believe a broader, more comprehensive solution that addresses all TIH commodities is necessary.

B. Collaboration

We have had significant success in recent years collaborating with customers and other partners within the industry on a variety of process, equipment and infrastructure issues. Some examples:

- Dow Memorandum of Cooperation: Dow Chemical and UP agreed to a Memorandum of Cooperation that establishes goals to enhance chemical transportation safety and security, ensure the long-term viability of both the railroad and chemical industries, and direct personnel from each organization to work together in a cooperative partnership to achieve critical goals.

- **Tank Car of the Future:** Union Tank Car Co., Dow, FRA and UP collaborated on a design for the “next generation tank car.” By 2017, the goal is to develop and implement a new rail tank car design for the transportation of highly hazardous chemicals, achieving a 5 to 10 fold improvement in safety and security performance over existing fleets.
- **AAR Tank Car Committee:** Union Pacific took the lead in encouraging the AAR’s Tank Car Committee to evaluate new tank car designs. Several hundred of the new tank cars are now in service. Additional investment is on hold pending action on FRA’s proposed tank car standard and uncertainty about whether the new cars will be grandfathered. Experts estimate that the new cars reduce risks of a release by approximately 65%.
- **Transcaer Training on TIH Routes:** In cooperation with community leaders across our system, in 2007 we trained 6,055 emergency responders in 23 states on hazardous material emergency management processes.
- **Site Surveys:** In 2007 and 2008, UP Operating, Customer Service, Marketing and Security personnel have made over 75 site visits to customer facilities receiving TIH in HDPA’s to ensure that safety practices and protocols are in place and effective.

C. Internal Operating Practice Improvements Drive Customer Behavior Changes

Over the past several years, UP has made multiple operating practice changes that have significantly improved the safety of TIH handling and management. Many of these changes have required customers to change their own practices. Railroad crews and managers, as well as our customers, are united in believing that these changes have improved safety and reduced the risk of handling TIH. These changes include:

- **No Bill/No Pull:** If a car coming out of a Hazardous Material producing facility does not have proper railroad billing, UP crews will not take the car.
- **CIMS for TIH:** A Car Inventory Management System, built specifically for TIH loads, monitors inbound TIH cars and capacity for cars at the receiving location. It allows a customer to manage their inbound flow of TIH cars.

- Dwell Time Reductions – Cars Accepted on Arrival: Consistent with TSA's policy that railroads reduce dwell times for TIH cars, TIH cars must be accepted at the receiving location as soon as the railroad can deliver it. The railroad's intent is not to hold TIH cars.
- Positive Hand-offs: When custody of TIH cars is transferred between railroads or between the railroad and a customer, the exchange must be monitored.
- In-terminal TIH Car Handling Improvements: Cars are switched more carefully and safeguards that prohibit TIH cars from rolling free are in place.
- Heightened Crew Awareness: We have increased the frequency of TIH rules, training and testing.

D. Institutionalizing Behavior Change – Customer Responsibilities

Having successfully implemented the operating practice changes detailed above, and discussed them with our customers so that there is full understanding about not only the reason for the changes, but also how they work, we plan additional steps to strengthen them. In keeping with our focus on the efficient handling of Hazardous Materials and TIH, and the safety of our employees, customers and the communities we serve and operate through, Union Pacific plans to implement six new Hazardous Material Policies and Procedures, with a particular focus on TIH commodities.

Over the near term, we will institute four new policies and procedures. These are intended to promote and ensure safe practices. Our customers are familiar with these practices. There will be charges associated with failure to comply. The initiatives are:

- Compliance with DOT Regulations (DOT Exceptions) – Covers customer responsibility DOT Exceptions discovered by UP, Federal or state inspectors.

- Safe Securement of Tankcars – Covers customer responsibility non-accidental release (NARS) occurring while a car is in UP's possession or on UP's property.
- No Bill/No Pull – Covers tendering of cars to UP from a hazardous material producing facility without proper railroad billing.
- Spot on Arrival – Covers a receiving location unable to accept a TIH car when the car is first available for delivery and UP must then hold the car.

Over a more extended term, we plan to institute two new policies and procedures. These also are intended to promote and ensure safe practices. Again, our customers are familiar with these practices, and there will be charges associated with failure to comply. The initiatives are:

- Tank Car Design – Will cover shipments of TIH shipped in pre-1989 non-normalized steel tank cars.
- Master Track Agreements – Will cover TIH shipments moving to, from or through a UP served industrial facility not covered by a UP Master Track or Industrial Track Agreement.

The purpose of the above measures is to provide customers with economic incentives for safer behavior. They are not revenue enhancement measures. Our objective is to change customer behavior so that the charges do not need to be imposed. We hope we will never have to charge a customer for failure to comply.

VII CONCLUSION

Union Pacific is not asking to be relieved of its common carrier obligation to transport TIH. We recognize that, where TIH must move by surface transportation, railroads are the safest way to handle it. Accordingly, we are spending heavily to move TIH safely and plan to spend more. We are doing our part to make the TIH supply chain as safe as possible.

However, the current allocation of risks and incentives is unreasonable, both from the standpoint of the railroads and of the public. It requires railroads like UP to transport TIH regardless of the risk and liability exposure this service entails. It actually encourages unnecessary shipment of these highly dangerous materials by allowing shippers and receivers to shift the risk of their distribution decisions to the railroads. The Board's ratemaking methods also encourage unnecessary TIH transportation by preventing railroads from recovering their unusual costs. This is not sound public policy.

Accordingly, Union Pacific respectfully requests that:

- The Board issue a general policy statement recognizing that a railroad may, consistent with its common carrier obligation under 49 U.S.C. § 11101 and its obligation to establish reasonable practices under § 10702, require that a TIH shipper provide the railroad with an indemnity covering liability from a release of the materials, above reasonable railroad liability as proposed in the separately filed comments of the Association of American Railroads. This would not only give railroads some protection against the enormous liability they face from the carriage of these highly dangerous materials, but place incentives on shippers and receivers of these materials to minimize use of surface transportation whenever possible;
- The Board allow railroads to reflect in their rates for TIH the incremental costs they incur in handling this traffic. This means that, in rate cases involving TIH, the Board would allow the use of adjusted costs that properly reflect the costs of TIH transportation; and

- The Board encourage the exploration of legislative and policy solutions to address the liability issues in TIH transport and also to create incentives to eliminate the transport of TIH over the long term, through measures such as product substitution and on-site manufacture of these commodities.

Respectfully submitted,

Diane Duren