

NACD KEY ISSUE: RAILROAD COMMON CARRIER OBLIGATION

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Maintaining the railroads' common carrier obligation to transport hazardous materials.

BACKGROUND

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.

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 TIH materials and have argued to Congress and the Surface Transportation Board (STB) that they should either receive liability relief or be relieved of their common carrier obligation to transport TIH materials.

STATUS UPDATE

On April 24-25, 2008, the STB held a public hearing on the Common Carrier Obligation of Railroads (STB Ex Parte No. 677). On July 22, 2008, the STB held a second hearing specifically on the Common Carrier Obligation of Railroads to Transport Hazardous Materials. NACD submitted written testimony for both of these hearings, urging the STB to maintain the common carrier obligation and to refrain from shifting liability to shippers.

On February 18, 2009, Union Pacific Railroad Company (UP) filed a petition with the STB requesting limits on railroads' common carrier obligation. Specifically, UP requested the STB to determine the extent of the common carrier obligation to quote rates for the movement of chlorine, where this transportation would require movement through High Threat Urban Areas (HTUAs), to destinations where an ample supply of chlorine is available from nearby sources, according to the railroad. In response, the STB issued a declaratory order proceeding and invited comments from interested parties. On March 31, NACD submitted comments in opposition to UP's request, arguing that if the railroad is granted this exception, the entire common carrier obligation to transport TIH materials will be threatened.

NACD POSITION

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. 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 shippers have to ensure the availability of rail service needed to efficiently transport products, particularly hazardous materials.

For TIH materials 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. 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, states, "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."

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.

Proposals to transfer liability to 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.

NACD also opposes specific limits on the common carrier obligation, such as the one proposed in the February 2009 UP petition. Such an exception would be a threat to the entire common carrier obligation to transport TIH materials. If granted, this would set a precedent for many additional grants of service denials in the future, which would ultimately make the common carrier obligation meaningless. The common carrier obligation exists for the specific purpose of requiring the railroads to provide service to shippers when they would otherwise choose not to do so because it would be unprofitable or inconvenient. Such exceptions could also cause major market disruptions.

NACD urges the federal government to fully 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.