



September 26, 2016

Mark Ghilarducci, Director
c/o Ms. Jennifer L. Pleascia, Senior Counsel
Governor's Office of Emergency Services
transmitted via email

Re: Finalization of Emergency Regulations approved under OAL No. 2016-0609-01 – Railroad Hazardous Accident Preparedness and Response

Dear Director Ghilarducci:

On behalf of the Chemical Industry Council of California¹ (CICC), generally, and the Council Members and Member-Associations listed below that requested specifically to be associated with them, we would like to offer the following comments regarding the above-referenced proposed approval of regulations establishing Chapter 4.1 of Title 19, relating to Regional Railroad Accident Preparedness and Immediate Response. This proposal is pursuant to 2015 Budget provisions adopted under SB 84.

Our comments relate specifically to provisions in these proposed regulations regarding collection of hazardous material fees, and provisions recognizing in-kind contributions to the aims of the law. Our Council represents a range of companies concerned with various aspects of chemical manufacturing, distribution and use within California. We believe we clearly have a stake in this matter and appreciate the opportunity to provide comments. We offer the following comments regarding two points that are, in our view, left inappropriately unclear in this proposed text.

Collection of Rail Car Fees

Section 2701 establishes the obligation of the railroad to collect the subject fee on rail cars that contain any of a prescribed list of hazardous materials commodities. Section 2704 further prescribes the fee to be collected per loaded rail car. Unfortunately, neither of these provisions seems to expressly capture the very important qualifier contained in SB 84's section 8374.32(b)(5), which states:

Any owner or railroad that has paid the fee pursuant to this section shall not be assessed any additional fee under this section for further transporting the same hazardous materials in the same rail cars on a different railroad within the state.

It is our fear that both sections 7401 and 7404 seem to ignore the practice of a rail car being handed from one railroad to another during the course of a single shipment. Despite this common practice, the language of the proposed text can be read to require action by any railroad transporting a subject railcar, irrespective of whether the particular car had already been assessed a fee for that shipment.

This is not an idle concern. We noted the June 13 comments received from BNSF railroad pursuant to the initial Emergency Rulemaking, recognized exactly this point and called for specification of which railroad should collect the fee in event of multiple railroads transporting the same shipment. Additionally, this point was made by both the American Chemistry Council (ACC) and Dow Chemical Company. Despite these comments, this point was neither clarified in the text nor addressed in the Initial Statement of Reasons (ISOR).

¹ The Chemical Industry Council of California is a voluntary trade association comprised of large and small chemical manufacturers, distributors and allied businesses throughout California representing 105 facilities, with annual sales in excess of \$3 billion; employing more than 5700 workers with combined annual payroll \$283 million. An additional 11,000 indirect jobs are created by CICC member companies, with a combined annual payroll of some \$360 million.

We note that the text of the proposed regulation, itself, may offer a path forward. It contains language in Section 2702 which seems to make exactly the desired point, only with respect to Intermodal Cargo Containers. It states:

The railroad must impose the fee (for intermodal containers) to the extent the (subject shipment) has not otherwise already been assessed pursuant to this Chapter. (emphasis added)

We recommend a similar approach be incorporated into the language prescribing fee collection under section 2701 or elsewhere to ensure that interpretation of the regulations conforms with the mandates of SB 84.

“In-Kind” Recognition of Trade Association Contributions

The other point we’d like to see addressed explicitly relates to in-kind contributions from trade associations. This point, too, was raised in comment on the initial draft by both the ACC and the Dow Chemical Company, but was neither responded to in the regulatory text nor in the ISOR. The issue is simply that the industry has been pursuing upgrading of hazardous material handling in transportation for decades, pursuant to organized, obligatory standards and management practices imposed upon members through various programs within the chemical manufacturing and distribution industries.

Programs such as CHEMTREC’s TRANSCAER® program², and the Chlorine Institute’s Chlorine Response CHLOREP® program³ add significantly to the accident avoidance and response capacity within which members of these industry associations operate, and thus clearly further the aims of the California statute. These programs may pose particular accounting challenges for Cal OES, but the comments referenced above by ACC suggest one possible approach. Regardless of the mechanism chosen for providing in-kind recognition, however, such industry initiatives offer a vital and significant component of the overall accident preparedness and response capacity within the State. These valuable industry rail transportation initiatives must not be disregarded.

We appreciate the opportunity to comment on these proposed regulations. Please do not hesitate to contact either of us, should you have any questions or concerns about the above.

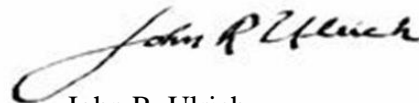
CICC Companies and Member-Associations requesting to be specifically associated with these comments:

A.G. Layne, Inc
Eco Services Operations Corp
Hasa, Inc.
National Association of Chemical Distributors (NACD)
Olin Chlor Alkali Products
The Dow Chemical Company
Searles Valley Minerals

Sincerely,



Thomas R. Jacob
Sr. Consultant
Chemical Industry Council of California



John R. Ulrich
Executive Director
Chemical Industry Council of California

² CHEMTREC® is a registered service mark of the American Chemistry Council, Inc.

³ CHLOREP® is a registered trademark of the Chlorine Institute