

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35964

American Chemistry Council, The Chlorine Institute, and The Fertilizer Institute - Petition for
Declaratory Order - Positive Train Control

Reply Comments

Submitted by

National Association of Chemical Distributors

Dated: October 13, 2015

The National Association of Chemical Distributors (NACD) submits these reply comments in support for the Petition for Declaratory Order on Positive Train Control (PTC) that has been filed by the American Chemistry Council, The Chlorine Institute, and The Fertilizer Institute. We are supportive of the common carrier obligation of railroads to ship toxic inhalation hazard (TIH) materials in light of the PTC implementation deadline mandated by the Rail Safety Improvement Act of 2008 for lines carrying TIH materials and passenger or commuter rail. Action from the Surface Transportation Board (STB) is needed to enforce the common carrier obligation and prevent disruption of essential freight rail shipments of TIH materials.

NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned. The typical chemical distributor has 26 employees and operates under an extremely low margin.

NACD and its nearly 440 member companies are vital to the chemical supply chain providing products to over 750,000 diverse companies such as aerospace, agriculture, cosmetics, detergents, electronics, automotive, plastics, paints and coatings, pharmaceuticals, food ingredients, water treatment, and more. Hazardous materials transportation is an integral part of the chemical distribution business. Nearly 40% of NACD members receive product via rail. For those who do, the average amount received annually is 55,328 tons per company.

Chemical distributors play a unique and integral role in the supply chain. Chemical manufacturers increasingly rely on chemical distributors to market and sell their products in a variety of packaging sizes (smaller quantities) to an incredibly varied customer base. The inability to move TIH materials will have a significant impact on NACD members unable to receive product via rail from the manufacturers. While NACD members represent the immediate downstream customer, there will be further impact to NACD member's customer base including plastics, fertilizer, and water treatment facilities. For NACD members serving water treatment facilities, the inability to deliver these chemicals to small municipalities presents a public health risk far greater than the immediate and calculable economic impact.

In addition, recipients of TIH materials will be put in the difficult and potentially dangerous position of stockpiling their supplies in advance of the deadline in order to be able to serve the needs of their customers, increasing the presence of TIH on facility sites. Being a significant safety concern, under no circumstances should this be considered an easy or costless solution in the absence of a PTC extension.

Moreover, a letter from BNSF Railway¹ stated, “Our review includes analysis of the possibility that, if Congress has not extended the deadline for PTC operations, as of January 1, 2016, neither passenger nor freight traffic would operate on BNSF lines that are required by federal law and regulation to have an interoperable PTC system as of that date.” BNSF’s cessation of shipping freight traffic on lines required to implement PTC would further impact NACD members who receive a variety of non-TIH products by rail.

NACD shares the concern that the TIH embargoes threatened by the railroads would violate the common carrier obligation. NACD, therefore, encourages the STB to address the petition favorably in light of the railroads’ threats.

Thank you for your consideration. If you have questions or require additional information, please do not hesitate to contact Jennifer Gibson or Laura Chambers.

Respectfully submitted,



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Attachment

¹ Letter to The Honorable John Thune, Chairman of the Senate Committee on Commerce, Science and Transportation dated September 9, 2015. Attachment.