

Chicago EJ&E debates Final Comment on scope of STB DETS 1 30 08

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**COMMENTS ON THE SCOPE OF THE STB DRAFT EIS
ON THE CANADIAN NATIONAL'S EJ&E PROPOSAL
(STB FINANCIAL DOCKET 35087)**

Fred Millar, representing Friends of the Earth and Brian Imus, Executive Director of Illinois Public Interest Research Group are pleased to submit the following comments for the record

I Content The ongoing STB Draft Environmental Impact Study -
[see
<http://www.stb.dot.gov/decs/ons/keacingRoom.nsf/0/4f33303e805efc2f852573b6006e6524?OpenDocument>]

must consider as within its scope.

a. All plausible and available alternatives. including CN's potential for routing of some portion of its medium- to long-range North-South and East-West through cargoes on further-out rail lines skirting the crowded Chicago metropolitan area, to further both disaster prevention and counter-terrorism. Such consideration falls within the "public interest" mandate in the STB charter

This does not involve suggesting that CN has to buy these "safer and more secure" rail lines, but that CN simply utilize the industry's normal kinds of interchange and trackage rights agreements with the other railroads in the region.

Interchanges are the life-blood of the North American railroad industry, utilized by railroads more than 5 5 million times a year in the US for normal commercial purposes.

Non-target rail lines well outside the Chicago target area are available as alternatives -- such as those through Kankakee, Streator, Buda, etc

This suggestion is based on some experience in the Chicago area. I helped initiate a 2005 campaign for a Chicago Board of Aldermen proposed ordinance on hazmat re-routing and testified in the subsequent hearing which got Tribune and Sun-Times coverage. In the 2005 re-routing ordinance hearing in Chicago, the railroads estimated that fully 65% of their cargoes into Chicago railyards were through shipments with no origin/destination in Chicago area, i.e., that could go around. There was no detailed breakdown of the most dangerous cargoes.

Arguments for the rationality of consideration of further-out alternative lines include:

1. The current notorious congestion in Chicago's railyards
2. The projected future rise in rail freight demand and even more congestion
3. The current efforts by major railroads to find ways around Chicago, e.g., by using other hubs such as East St. Louis or Memphis.
4. The historical recognition of the need for rational regional freight planning - at least as early as the venerable 1909 Plan of Chicago by Daniel Burnham and Edward Bennett, which advocated relocating freight operations to provide space for Chicago to grow, relieve congestion and improve the quality of life (cf "The Metropolis Freight Plan Technical Report", 2004, p. 58, Metropolis 2020)

b Terrorism-caused (as well as accidental) hazmat releases and their potential impacts on all the plausible alternative lines, as well as on the downtown Chicago and EJ&E lines. See the (inadequate but significant) precedent in a previous STB case ("Bayport Loop" case):
http://www.stb.dot.gov/stb/environment/key_cases_bayport.html

There is continued widespread post-9/11 public concern, including in the Chicago area, about the terrorism threat posed by poison gas [TIH] rail shipments through major cities.

As CSXT Railroad suggested in the federal rulemaking docket, the public has begun to think anew since 9/11 re what is an acceptable risk.

"The support of the public, and of many policy makers, has greatly eroded since 9/11. Now the railroads are harshly criticized for transporting these [TIH cargoes]. Our company's reputation has been assailed [and] vilified in the media. TIH cannot simply continue to move by railroad indefinitely...Even if the potential for ruinous liability were somehow erased, the widespread social disapproval of TIH transport by rail would remain." [CSXT comments to the US DOT rail security rulemaking docket (2/27/07)] http://dmses.dot.gov/docimages/pdf101/456287_web.pdf

We now have 11 major US cities (including Chicago) with re-routing ordinances introduced since 9/11 (all based on the DC ordinance from 2003), and about 25 major TV investigative pieces. And similar re-routing bills have been introduced also in major chemical state legislatures - e.g., TN and NYS.

Even though there is a new federal law on rail hazmat re-routing for counter-terrorism, voluntary or STB-mandated efforts by the railroads to re-route around major target cities could be immediately valuable in reducing risks

The new re-routing bill from Congress, HR 1, Section 1551, [signed by President Aug 3, 2007] says we should systematically consider re-routing the most dangerous hazmat ["WMD"] rail cargoes around our (est. 46) "high-consequence areas", major target cities, such as the greater Chicago area. The Congressional intent is clear enough

This should mean not going through the outskirts of major cities with cargoes like chlorine gas, one tank car of which can produce a toxic gas cloud 15 miles long by 4 miles wide (say widely-known industry documents) The most dangerous rail cargoes should use available alternative routes well around major cities like Chicago But the two major opponents of re-routing, the Bush Administration and the individual railroads, are in charge of implementing the law **So Chicago will get no likely relief anytime soon** from "the greatest vulnerability in the nation" [see Falkenrath, attached] Additionally

- Forthcoming Bush Administrations regulations are reportedly designed, as in an earlier iteration on December 21, 2006 to provide the railroads with 27 different ways not to re-route
- Neither state and local officials nor rail workers have any role in railroads' routing decisions
- And the railroads' routing decisions will be entirely secret
- So there will be virtually no accountability regarding whether terrorism risks have been reduced or not

The Chicago region "high consequence" target area includes the near-in suburbs along the EJ&E line like Joliet, Barrington, East Chicago, etc. Any attack there will no doubt yield the international headlines which the terrorists desire: "Terrorists Attack Chicago!" [not "Terrorists Attack Barrington!"]

- c **The likely catastrophic and non-catastrophic insurance impacts of changes in freight traffic (and specifically hazmat traffic) along various routing alternatives:**

The Association of American Railroads has testified in Congress repeatedly that railroads **even now have inadequate insurance** to carry the most dangerous poison gas (TIH) cargoes through major cities'

“Indeed, railroads understand as well as anyone that hazmat safety is essential. This transportation carries extraordinary risks for railroads, and the revenue that highly-hazardous materials generate for railroads does not come close to covering the liability to railroads associated with this traffic. This is especially so for TIH. Even though TIH accounts for a small fraction of total rail traffic, the transport of TIII has the potential to be a “bet the company” activity for railroads.²

²Even with the extension last year of the Terrorism Risk Insurance Act, TIII contributes some 50 percent to the overall cost of railroad insurance. Even with this substantial expenditure, it is not possible to fully insure against a catastrophic incident involving TIH. Insurers are less and less willing to write insurance at all for these risks.” [Page 4 of 20, testimony of Edward R. Hamburger, President of AAR before the US House Transportation and Infrastructure Committee, Subcommittee on Railroads, June 13, 2006]

II Methodological Issues and Resources:

[Background I scanned several documents, including the STB's Draft EIS and Final EIS, for the 2002-2004 “Bayport Loop” project in Houston Texas (STB Finance Docket 34079) This seemed the recent STB project most similar to the EJ&E proposal, as a contentious recent proposal for a large increase in new rail traffic, including hazardous chemicals [“hazmat”], through a major city's suburbs

Sustained Houston suburban residential opposition eventually killed the Bayport Loop proposal, which would have meant building a new 13-mile suburban rail line carrying a significant number of hazmat cargoes, and forced a Tom Delay-imposed political solution in which chemical companies and railroads grudgingly compromised on sharing the existing rail lines [not exactly a model public policy process]

In the Bayport Loop case, the STB FEIS officially concluded that the hazmat risk to suburban residents was “negligible”. In this Bayport process, many severe deficiencies in STB's scope, approach, and method are apparent to an experienced hazmat professional [These are not deficiencies in legal interpretations, necessarily, although in the Bayport Loop decision STB reveals a highly debatable and key interpretation of their alleged statutory lack of ability to force the railroads “in the public interest” to share rail lines See p 2-17, DEIS]]

In STB's scoping process for the Draft EIS in the EJ&E project, STB should consider and include:

- 1 More adequate methods for calculation of potential accidental and terrorism-caused rail hazmat release risks, both regarding probability and consequences**
- 2 Evaluation of existing precedents in post-9/11 governmental assessments of hazmat transportation terrorism risks, both as to probability and consequences [e.g., federal agencies' cost-benefit analyses for post-9/11 rulemakings]**

3. More valid assessment of chemical release emergency response “capabilities” of agencies and companies in the study area for any serious rail hazmat release, based in historical awareness of emergency response to previous serious releases (see, e.g., analysis in recent testimony of former Chairman Carolyn Merritt of the US Chemical Safety Board that the local emergency response in six major chemical releases the Board investigated was terrible and that US community readiness was comparable to “Bhopal India”)
4. Better historical awareness of the impacts of key major rail accidental releases (e.g., Graniteville SC, Minot ND, Macdonald TX, Mississauga ONT, General Chemical spill in Contra Costa County CA,) and deliberately-caused hazmat releases (NIH in FL, chlorine in Iraq, etc.)
5. More valid methods for assessment of the efficacy of existing federal, state and local policies and practices in rail hazmat safety and security (see, e.g., the 2005 New York Times Pulitzer Prize-winning series of reports exposing the pitiful safety regulatory actions of the Federal Railroad Administration and its cozy relations with the industry it pretends to regulate)
6. Assessment of the likely near-term impact of the new federal rail hazmat re-routing law, HR 1
7. More valid methods for assessment of the efficacy of existing chemical shipper and railroad policies and practices, e.g., in hazmat handling, emergency response, training, etc., both for safety and security issues
8. Background context – impacts of “captive shippers” issues, Chicago’s CREATE project, Chicago Board of Alderman proposed hazmat re-routing ordinance, etc.

III. Some specific questions STB should consider, regarding BOTH the existing freight rail hazmat situation and the anticipated changes due to the proposed EJ&E acquisition :

- a. What percentage of the most dangerous hazmat rail traffic into Metro Chicago is through shipments with no origin or destination in the metro Chicago area?
- b. Given the US Department of Homeland Security’s concerns about this vulnerability, how long (range of hours or days) do rail cars of the most dangerous classes of hazmat sit (“dwell time”) on sidings or in urban railyards in the Chicago metro area?
- c. What are the existing plausible alternative rail routes to the west and south that could take through hazmat cargoes well around the Metro Chicago target area?
- d. What are the relative risks, separately considering probabilities and consequences, of accidental or terrorism-caused rail hazmat releases of the most dangerous classes of hazmat shipments according to estimates from the industry (e.g., the Chlorine Institute Pamphlet 74) and federal agencies (e.g., the US Naval Research Labs) – [i.e., NOT using the wholly inadequate estimates in the US DOT Emergency Response Guidebook, which

are for the first few minutes only of a release] along the downtown route, the EJ&E route, and a circumferential route well outside the Chicago area?

e Given the demonstrably inadequate emergency response efforts in our most recent serious rail hazmat fatal releases (chlorine gas) in Graniteville SC and near San Antonio TX, and the 2006 testimony from the former head of the US Chemical Safety Board that US communities are woefully unprepared for significant chemical releases, what are the realistic chances for an effective emergency response in the Chicago Metro area that could prevent thousands of casualties in case of a serious, multi-railcar release of chlorine or other TIH (Toxic by Inhalation) rail cargo?

* "Most dangerous classes of hazmat shipments" – see the classes (including radioactive cargoes) cited in the Congressional re-routing bill HR 1, signed by the President on August 3, 2007

washingtonpost.com

We Could Breathe Easier

The government must increase the security of toxic chemicals in transit.

By Richard A. Falkenrath

Tuesday, March 29, 2005, Page A15

The basic strategy al Qaeda used on Sept. 11, 2001, was to strike a common, poorly secured commercial system in a way that would cause catastrophic secondary effects. The terrorists did a better job of identifying the vulnerability associated with fully fueled commercial airliners than the government did -- and they exploited this vulnerability to terrible effect. Now, because of the work of the Transportation Security Administration, commercial aircraft in the United States are all but impossible to hijack.

But the terrorist is an adaptive enemy. One central question in homeland security is whether terrorists will again locate a catastrophic civilian vulnerability before the government gets around to addressing it.

There are an infinite number of potential targets in America that, if attacked, could result in hundreds of civilian casualties. The number of potential targets that could result in *thousands* of civilian casualties is, however, finite and knowable. In the federal government, the Department of Homeland Security is responsible for identifying these potentially catastrophic targets, analyzing their security schemes and taking action if the security arrangements are deficient.

It is in general a bad idea to call attention to America's most serious civilian vulnerabilities. Government officials should never do so and should not be asked to. Private citizens should do so with care, and only when the government fails to act.

Of all the various remaining civilian vulnerabilities, one stands alone as uniquely deadly, pervasive and susceptible to terrorist attack: industrial chemicals that are toxic when inhaled, such as chlorine, ammonia, phosgene, methyl bromide, and hydrochloric and various other acids. These chemicals, several of which are identical to those used as weapons on the Western Front during World War I, are routinely shipped through and stored near population centers in vast quantities, in many cases with no security whatsoever.

A cleverly designed terrorist attack against such a chemical target would be no more difficult to perpetrate than were the Sept. 11 attacks. The loss of life could easily equal that which occurred on Sept. 11 -- and might even exceed it. I am aware of no other category of potential terrorist targets that presents as great a danger as toxic industrial chemicals.

The federal government has the authority to regulate the security of chemicals as they are being transported on roads, railways and waterways. With only one minor exception, the administration has not exercised this authority in any substantial way since Sept. 11. There has been no meaningful improvement in the security of these chemicals moving through our population centers.

In a desperate step, the D.C. council recently voted to ban hazardous material shipments through downtown Washington. This ordinance is clearly good for Washington, but it is bad for the other parts of the country that will absorb the diverted chemical loads. Furthermore, its economic burden falls principally on CSX Corp., the company that owns the two rail lines through downtown Washington. CSX is suing to block implementation of the ordinance. The federal government is supporting CSX's effort, an awkward position for a security-conscious administration that has so far failed to mandate a systematic, nationwide reduction in the vulnerability of this sector.

The administration can and should act immediately to enhance the security of toxic chemicals in transit nationwide; no new legislation is required. Specifically, the

departments of Homeland Security and Transportation should promulgate regulations that will, over time, require chemical shippers to track the movement of all hazardous chemicals electronically, to report this data to DHS in real time, to use fingerprint-based access controls for all chemical conveyances, to adopt container signs that do not reveal the contents to most observers, to perform rigorous background checks on all employees, to strengthen the physical resilience of chemical containers, to reduce chemical loads; to ship decoy containers alongside filled containers, and to install perimeter security at loading and switching stations. Violators should suffer harsh civil and criminal penalties

But the federal government does not have authority to regulate the security measures inside chemical plants and storage facilities. President Bush has twice called on Congress to pass legislation granting the Department of Homeland Security this authority. The 108th Congress declined to do so. It is often alleged -- incorrectly -- that lobbying by the chemical industry was behind Congress's inaction. The real reasons had to do with the full agendas of the committees involved, the administration's competing legislative priorities; and the obscure, esoteric and theoretical nature of the issue.

The voluntary security enhancements many of the larger chemical firms have implemented -- in some cases with assistance from the Department of Homeland Security -- are a step in the right direction but are insufficient. Congress should promptly grant powerful authority to regulate chemical-plant security to that department as the president has requested.

There is no silver bullet to improving the security of chemicals that are toxic when inhaled. A layered, nationwide approach is required. It is right and proper for the government to require industries to take on the security costs of their activities. The immediate cost of these regulations would be borne by the chemical industry. Over time, costs would be passed on to consumers, and the market would adjust to a new, more socially responsible equilibrium. The real losers would be al Qaeda and its successors.

The writer was deputy homeland security adviser to President Bush until May 2004. He is now a visiting fellow at the Brookings Institution and senior director of the Civitas Group, an advisory and investment services firm serving the homeland and national security markets.