

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX Parte No. 677 (Sub-No. 1)

223352

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

**COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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Pursuant to the Board's decision to hold the record open in this proceeding to accept additional submissions from interested parties, the American Short Line and Regional Railroad Association ("ASLRRA") respectfully supplements its written and oral testimony with the following Comments concerning the transportation of hazardous materials in the context of the common carrier obligation.

Comments

Responsible public policy must include small railroads in any solution to the problem of the enormous potential liability of carrying toxic-by-inhalation (TIH) hazardous materials. Many Class II and Class III railroads transport these materials daily, and to ignore their limited financial ability to respond to catastrophic events will leave innocent victims to bear their losses without recourse. ASLRRA believes that all affected parties – shippers, carriers, manufacturers, end-users and the public at large – should play a role in an ultimate solution to the risks presented by TIH transportation. Because of the magnitude of the problem ASLRRA has long called for a public-private solution similar to the provisions of the Price-Anderson Act for the transportation of spent nuclear materials. So far the Congress has not taken up that proposal, and

until it does sometime in the future, other means of addressing the problem must be implemented.

Absent a public fund private insurance must fill the void. No railroad large or small can adequately meet its responsibilities without it. Fortunately, although experts may differ on the total capacity of the insurance market, there appears to be no dispute that very significant amounts of insurance are available to satisfy huge potential liability. The problem for small railroads is that they simply cannot afford premiums of several million dollars per year required to obtain meaningful amounts of coverage of \$500 million to a billion dollars. Few Class III railroads carry more than \$25 million and the majority carry less. Even if the small railroads "turn over the keys" to their properties to satisfy claims, their net worth would hardly be noticeable in the face of claims for hundreds or billions of dollars.

Public policy makers must address what to do about the risk to the public above the financial ability of the small carrier to deal with it. Requiring indemnities from other participants in the industry does not wholly satisfy the problem, because indemnities are only as good as the financial ability of the indemnitor to meet the obligation they create. Insurance spreads the risk and provides much greater assurance that if the public ever needs them, the funds to compensate victims for their losses will be there.

If the small railroads that participate in the transportation of TIH materials cannot pay for adequate insurance, then ASLRRA believes there is no other satisfactory public policy choice but to look to the other participants to provide insurance above the amounts the small railroads can contribute. Insurance experts continue to advise ASLRRA that naming small railroads as additional insured's on primary insureds' policies is practical and will not create insurance capacity issues for single catastrophic incidents. The insurance markets are a moving target and

will certainly fluctuate, and what may be available today may not be at some time in the future. ASLRRA encourages the Board to undertake its own study of the insurance markets to determine what can be expected from this source of protection to the public. Like so many other issues before the Board, this one may need to be addressed annually in determining what role insurance will play at any given time. Nevertheless, ASLRRA believes that short of a legislative solution incorporating public participation, very significant insurance will be the lynchpin to protect the public, and small railroads cannot themselves afford anything approaching meaningful amounts of coverage.

ASLRRA is aware that solving the whole issue of spreading the risk of catastrophic incidents arising from the transportation of TIH materials is an enormously complex and sensitive equation for which the inputs are constantly shifting. ASLRRA hopes that the proposal it has made will illuminate the issues that affect small railroads and that it will play a role in the ultimate resolution of this issue, but ASLRRA also hears and acknowledges the concerns of the larger participants in the inquiry. No one wants a solution that is more painful than the problem it addresses, and ASLRRA understands that a satisfactory public policy solution will require flexibility and an open-minded approach from all parties. For its part and its members ASLRRA looks forward to working cooperatively with all parties to explore all possible initiatives which will lead to the protection of the public and the preservation of all industries – including small railroads – that create, transport and consume critically important TIH hazardous materials.

Respectfully Submitted,

American Short Line and Regional Railroad Association

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