



**American Short Line and
Regional Railroad Association**

The Voice of America's Independent Railroads

224249

December 22, 2008

Surface Transportation Board
Room 1149
395 E Street S.W.
Washington, DC 20423-0001

Re: STB Ex Parte No. 677 (Sub-No. 1): COMMON CARRIER OBLIGATIONS OF
RAILROADS ---TRANSPORTATION OF HAZARDOUS MATERIALS

Dear Members of the Board:

It has now been a full six months since the Board concluded its July 22, 2008 hearings on the Common Carrier obligation as it applies to the transportation of toxic-by-inhalation (TIH) hazardous materials. Before the year ends the American Short Line and Regional Railroad Association would like to reiterate the need for action by the Board to avert the potentially devastating effects of a TIH related rail incident both to the small railroad industry and to the public as a whole. Virtually every day since the Hearing small railroads have carried TIH materials without notable adverse consequences, but the risk of an unforeseen event have not diminished. Each movement, mandated by law, puts the very existence of the small railroad on the line. Not a single member of ASLRRA can either afford the cost of insuring the movement of hazardous TIH materials, nor can any one of them bear the cost directly of a serious TIH calamity.

In the six months since the Hearing, the situation has become more dire as the financial and related insurance markets have become less functional and more volatile. Insurance products available then may not be available now. Small railroad finances are more fragile and can less withstand the consequences of any TIH incident than during the summer. Consequently, the risk to the public has also increased. Without the financial resources or insurance coverage to withstand a significant TIH event on its lines, the small rail carrier will quickly go out of business if claims from a serious incident occurs, leaving members of the public without obvious recourse for their damages.

This vulnerability is not shared to the same extent by other participants in the movement of TIH hazardous materials. Class I Railroads generally have access to huge amounts of insurance and reinsurance coverage and are able to spread the risk of TIH shipments and the cost of insurance over a very large cohort of traffic movements. Shippers tend to be (but are not always) very large publicly held companies who have similar access to public capital and insurance markets. Small railroads, in contrast, are limited to the amounts of insurance they can afford, which as a small multiple of their revenues does not suffice to cover claims from a major TIH

catastrophe.

It is in the context of these very dangerous circumstances that the America Short Line and Regional Railroad Association renews its request that the Surface Transportation Board take immediate steps to make the common carrier obligation of small railroads to carry volatile TIH materials contingent on the willingness of all parties to a movement to share equitably the risk and responsibility that comes with putting those materials into the stream of commerce.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard F. Timmons".

Richard F. Timmons

President