

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 698

ESTABLISHMENT OF THE TOXIC BY INHALATION HAZARD
COMMON CARRIER TRANSPORTATION ADVISORY COMMITTEE

COMMENTS OF THE
AMERICAN CHEMISTRY COUNCIL

The American Chemistry Council (“ACC”)¹ respectfully submits these comments in response to the Board’s Notice served August 3, 2010 and corrected August 5, 2010 (“the Notice”) proposing the establishment of a Toxic By Inhalation Hazard Common Carrier Transportation Advisory Committee (herein referred to as “the Committee”).

I. Introduction and Statement of ACC's Strong Commitment to Transportation Safety

ACC applauds the Board's initiative in seeking to create a mechanism to address possible private-sector solutions relating to the transportation of hazardous materials that are toxic by inhalation (“TIH materials”). A core mission of ACC is to help participants in the business of chemistry maintain and improve the safety of chemical transportation. To this end, ACC

¹ The American Chemistry Council represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$674 billion a year enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

manages the Responsible Care® initiative which among its other elements strives to make transportation as safe as possible and to improve the training of local emergency response authorities to handle any incidents that do occur.

ACC has also been active in efforts to improve tank car design for enhanced safety. In July 2008 ACC, the railroads, and other stakeholders petitioned the U.S. Department of Transportation to adopt, by regulation, enhanced designs for newly manufactured TIH tank cars. Those rules were published in final form on January 13, 2009, 74 Fed. Reg. 1770, and went into effect in March 2009.

ACC, in partnership with the rail industry, also initiated a DOT-sponsored "Section 333" conference, which had as its goal to enhance the safety of the transportation of TIH materials by examining possible ways to optimize the routing of such materials. While the Section 333 process did not ultimately result in implementing new transportation solutions (because of antitrust concerns expressed by the U.S. Department of Justice), it was indicative of efforts by ACC and other industry associations to affirmatively advance transportation safety.

II. The Common Carrier Obligation is Sacrosanct, But ACC Stands Ready to Seek Creative Solutions

Rail transportation of TIH products, including chlorine, anhydrous ammonia, and a variety of other products, is critical to the American economy -- vital for the safety of our drinking water, the productivity of our farms, and the production of affordable consumer products ranging from pharmaceuticals to plastics to textiles. As ACC has stated very clearly in the past, the common carrier obligations of our nation's railroads, mandating their carriage of TIH products as well as all of the other myriad goods that sustain our economy, is not a subject that can legitimately be opened for debate. Congress recognizes the common carrier obligation

as the bedrock on which our national railroad transportation system is built, and railroads are chartered to operate in the public interest because the public depends on safe and reliable service in the delivery of a wide range of products on which we all rely. See Comments of ACC filed July 10, 2008 in STB Ex Parte No. 677 (Sub-No. 1), Common Carrier Obligations of Railroads – Transportation of Hazardous Materials.

Notwithstanding these concerns, ACC members are open to federally-sponsored discussions among industry participants that could possibly lead to creative solutions regarding responsibility for safe transportation of TIH materials.

ACC notes that potential antitrust objections to joint discussion of, e.g., alternative generic transportation terms, are not trivial and must be taken seriously. The views of the Department of Justice regarding the proper bounds of discussion should be actively sought before substantive discussions begin. ACC will work diligently with other interested parties to find a way to engage in productive discussions that will not run afoul of our antitrust laws.

III. Issues of Committee Structure and Operations

The Board's proposed Committee contemplates a total of ten shipper representatives, drawn only from among chlorine and anhydrous ammonia shippers. ACC notes, however, that of TIH revenue tank car loads, approximately 20% are neither chlorine nor anhydrous ammonia. Appendix A to ACC's July 10, 2008 comments in Ex Parte No. 677 (Sub-No.1) provided a list of these other TIH products. ACC would propose that shipper membership in the Committee include representation from companies shipping those other TIH products.

The Board should also make clear that "shipper" representatives can and should include at least some companies that purchase and receive TIH products, rather than only companies that manufacture and send the products.

The Board's Notice suggests that company representatives on the Committee be drawn from among vice presidents and general counsels. We believe the Board should make it clear that this is not a hard and fast rule. Depending on how a company structures its organization and assigns responsibilities, senior transportation and logistics managers may be in the best position to speak authoritatively for their companies, and they should be eligible for Committee membership. In addition, ACC believes that the work of the Committee would best be advanced if a majority of the Committee members were drawn from the commercial and operational sides of the involved companies, rather than from legal departments.

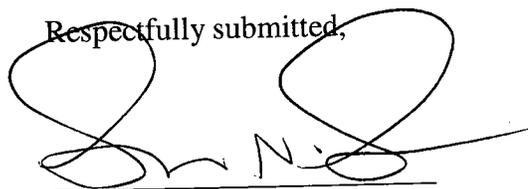
With respect to "representatives currently engaged in academia or policy analysis," ACC assumes that this category can and should include professionals in the field of transportation economics, including those who have assisted parties in proceedings before the Board. Naturally, to the extent economists actively practicing before the Board on behalf of clients were selected for membership on the Committee, the Board should balance the numbers as between those who are generally aligned with shippers and those generally aligned with railroad parties.

ACC concurs with the Board's proposal in the Notice that approval of major actions should require the affirmative votes of both a majority of the rail representative and a majority of the shipper representatives.

The Board should clarify that while members will be encouraged to attend Committee meetings in person, members may also participate telephonically, or by sending a deputized alternate in place of the Committee member. Otherwise, it might become more difficult to schedule Committee meeting that can be attended by all members, and necessary quorums may be lacking in some meetings because of critically pressing schedule changes on the part of members.

Finally, ACC believes that it is critical to the perceived neutrality and productivity of the Committee that it be chaired by a two-person shared chairmanship. At the outset of the Committee's work, shipper representatives would nominate a co-chair to the Board's Chairman and rail representatives would nominate the other co-chair. Thereafter meetings would be chaired alternately by the shipper co-chair and the railroad co-chair.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott N. Stone", written over a horizontal line.

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Dated and Due: September 24, 2010

CERTIFICATE OF SERVICE

I certify that I have served the foregoing comments by first class mail upon all parties on the Board's service list as posted on the Board's website.

A handwritten signature in black ink, appearing to be 'S. N. Stone', written over a horizontal line.

Scott N. Stone

9/24/10