

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. EP 698

**COMMENTS OF OCCIDENTAL CHEMICAL CORPORATION REGARDING THE
ESTABLISHMENT OF THE TOXIC BY INHALATION HAZARD COMMON CARRIER
TRANSPORTATION ADVISORY COMMITTEE**

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Occidental Chemical Corporation (together with its affiliates, “OxyChem”) is a leading North American manufacturer of basic chemicals and vinyl resins, including chlorine, caustic soda and polyvinyl chloride (PVC) – the building blocks for a range of products essential to public health and modern life. Our products, which are used in water purification, medical supplies, pharmaceuticals, construction materials and agricultural chemicals, are also vital to the economy of the United States. OxyChem employs approximately 3,000 people at 21 domestic locations spread throughout the central to eastern United States.

The ability to continue to have access to an effective rail transportation network throughout the United States is critical to our company. Railroads must continue to be required, as common carriers, to carry materials that are necessary for many of the industrial applications essential to our economy.

OxyChem is supportive of the STB creating the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee (TIHCCTAC). This committee will be crucial in providing input and guidance regarding Railroads’ common carrier obligation as applied to the movement of TIH material.

OxyChem provides the following comments regarding the proposed structure:

- A cross section of stakeholders is paramount to the success of this committee. Members should include TIH Shippers, Railroads, Railcar Builders and Underwriters. OxyChem believes that the financial analysis could most effectively be performed by economic consultants with access to real-world model experience.

- The size of the group is also critical. Too large of a group will make ultimate decision making difficult. Too small a group may not properly represent valid stakeholders. OxyChem proposes the following make up for the committee:
 - Chairperson (Propose this to be co-chair positions held by one Shipper and one Railroad representative).
 - 8 representatives from the Railroads (including Class I, II and III)
 - 8 representatives from Shippers (3 Chlorine, 3 Anhydrous Ammonia and 2 TIH Shippers that are not Chlorine or Ammonia)
 - 2 General Counsel (one selected by Shippers and one by Railroads)
 - 2 Economists (one selected by Shippers and one by Railroads)
 - 2 representatives from Insurance or Underwriting and/or Risk Managers
 - 2 representatives from Tank Car Builders/Lessors
 - Consideration should be given to include a TIH customer. Although many TIH Shippers are also TIH receivers, the viewpoint of a pure receiver may be different from that of one that also ships.
 - Total Committee size of 26 - 27 persons (if the Chairperson role consists of co-chairs)

OxyChem strongly urges that nominations should come from individual companies.

Trade groups can be supportive of nominations, but the official nomination should not come from the trade group exclusively. More importantly, the individuals nominated to the committee should not be from trade groups (TFI, ACC, CI, AAR, etc).

In addition, nominees should come from various business and logistics backgrounds. Legal involvement is critical; however, the majority of stakeholders should be Vice President and Director level positions representing Supply Chain, Logistics and various Business Units with TIH products. General Counsel should be allocated two positions (one selected by the Shippers and one from the Railroads) to ensure adherence to all antitrust requirements, to provide counsel on various proposed scenarios and to address liability allocation issues at law.

As proposed, each member will receive one vote. The majority vote of the Railroad interests and majority vote of the Shipping interests is required to recommend any final proposals. As Shippers and Railroads will have the majority numbers, we question why Railcar Manufacturers, Insurers, etc. should have a vote. Although their input is very important, OxyChem proposes that voting rights be granted only to the representatives of the Railroads and Shippers.

The proposed duration of the TIHCCTAC is two years, during which time it will hold monthly meetings. OxyChem encourages these meetings to be scheduled well in advance for planning purposes and recommends that, whenever possible, these meetings be scheduled via conference call to ensure a high level of participation, increase the time that members can commit to the issues and minimize travel expenses.

OxyChem strongly opposes the framework of the argument proposed by Railroads challenging their common carrier obligation. The committee should begin its discussions starting with the framework of existing regulations, not with the Railroad proposal being held in abeyance. The scope of the committee should focus on recommendations regarding economic solutions for the liability incurred in the movement of TIH materials. The availability and cost of liability insurance needs to be understood and evaluated. However, negligence on behalf of

the Railroads needs to be carved out and remain with the Railroads. In addition, Shippers have been incurring significant cost increases as a result of Railroad's perceived risk in hauling TIH. In return for any shifts in liability, Shippers are expecting rates to be moderated lower in recognition of these shifts.

OxyChem appreciates the opportunity to provide comments regarding the proposed scope and structure of the TIHCCTAC. Chlorine and its derivative products are vital to the way we live. Rail is the most viable, safe, energy efficient and cost-effective means of transporting these products, which are critical to both modern life in the US and the nation's economy. This is a critical topic for OxyChem and our industry. We look forward to being a part of a solution regarding this important initiative.

Thank you for your consideration.