

Documents for the Record: March 28, 2023

Subcommittee on Environment, Manufacturing, and Critical Materials

1. Letter from National Safety Council Letter to Chair Johnson and Ranking Member Tonko
2. Letter from Association of American Railroads to Chair Rodgers



**Testimony of National Safety Council
to
U.S. House of Representatives
Energy and Commerce Committee
Subcommittee on Environment, Manufacturing, and Critical Materials
Hearing on
“Government Response to East Palestine: Ensuring Safety and Transparency for the
Community”
March 28, 2023**

Chair Johnson, Ranking Member Tonko and members of the Subcommittee, the National Safety Council (NSC) appreciates the opportunity to submit these comments to improve railroad workplace safety. NSC was founded by the business community to improve workplace safety over 100 years ago. We continue to support safe and healthy workplaces, consulting with hundreds of workplaces each year—including high hazard workplaces—and we are honored to share our learnings with the Committee here today.

NSC is America’s leading nonprofit safety advocate and has been for more than 100 years. As a mission-based organization, we work to eliminate the leading causes of preventable death and injury, focusing our efforts on the workplace and roadway. We create a culture of safety to keep people safer at work and beyond so they can live their fullest lives. Our more than 13,000 member companies represent employees at nearly 41,000 U.S. worksites.

Despite differences among business operations, there are key factors that are common among safety programs. NSC believes that optimum safety performance requires strong Safety Management Systems (SMS) and an organizational culture that prioritizes high safety standards, incident prevention and preparedness. Of course, continual improvement and learning must be fully integrated into any safety program.

America’s rail operators, like other industries with similar risk profiles, need to have strong safety and health programs that address:

- Personal safety – employees and teams
- Contractor safety – critical partners in safe operations and maintenance
- System safety – assets, infrastructure, operating systems, maintenance
- Public safety – customers, communities and the general public

Key factors of successful programs include the following concepts:

1. Management commitment
2. Employee involvement
3. Training
4. Hazard/risk identification
5. Hazard control

There are learnings to be gained from organizations that implement safety and health systems well. NSC believes that the U.S. Nuclear Regulatory Commission Normative Framework, 10 Traits for a Healthy Safety Culture, is time-proven methodology for evaluating culture and has wide applicability to a number of industries.¹ The components of this framework include:

1. **Leadership Safety Values and Actions** – Leaders demonstrate a commitment to safety in their decisions and behavior.
2. **Personal Accountability** – All individuals take personal responsibility for safety.
3. **Decision-Making** – Decisions that support or affect safety are systematic, rigorous and thorough.
4. **Questioning Attitude** – Individuals avoid complacency and continuously challenge existing conditions and activities to identify discrepancies that might result in error or inappropriate actions.
5. **Environment for Raising Concerns** – A safety conscious work environment (SCWE) is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment or discrimination.
6. **Respectful Work Environment** – Trust and respect permeate the organization.
7. **Work Processes** – The process of planning and controlling work activities is implemented so that safety is maintained.
8. **Effective Safety Communication** – Communications maintain a focus on safety.
9. **Organizational Learning** – Opportunities to learn about ways to ensure safety are sought out and implemented.
10. **Problem Identification and Resolution** – Issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance.

There is always an opportunity to improve safety to protect all stakeholders. Every worker deserves to return home in the same way he or she went to work. NSC welcomes an opportunity to work with the Committee on these issues and build upon efforts started in the Rail Safety Improvement Act.²

¹ <https://www.nrc.gov/about-nrc/safety-culture.html>

² Public Law 110-432

March 27, 2023

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chair McMorris Rodgers:

On behalf of the members of the Association of American Railroads, thank you for holding a hearing to discuss rail safety and the transportation of hazardous materials by rail. AAR freight railroad members account for the vast majority of railroad mileage, employees, and freight traffic in Canada, Mexico, and the United States.

Let me make absolutely clear at the outset that, for freight railroads, pursuing safe operations is not an option, it's an imperative. Railroads know that families deserve to feel safe within their communities. That's why railroads are steadfastly committed to solutions-oriented steps to prevent accidents from occurring.

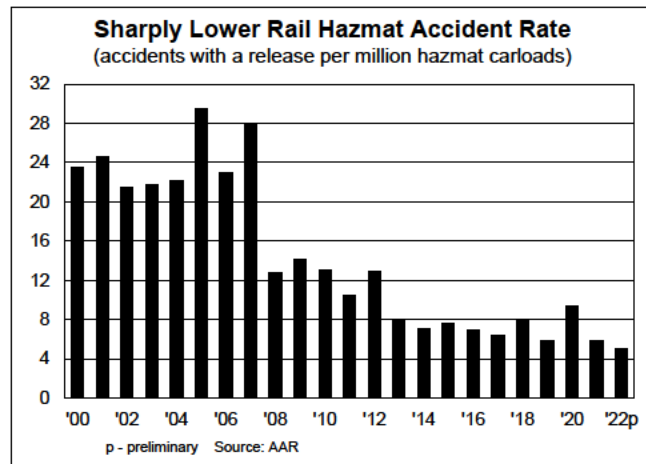
Unfortunately, the recent train accident in East Palestine, Ohio, has led some to question railroads' commitment to safe operations and their ability to operate safely. Railroads know they have to restore confidence and demonstrate that nothing is more important to them than the safety of their employees, their customers, and the communities in which they operate. Every rail accident is one too many, and railroads' ultimate goal is to eliminate accidents altogether.

Actions speak louder than words, of course, which is why railroads will continue to take meaningful actions, as they've been doing for many years, to enhance safety. These actions will continue to be driven by good-faith, cooperative efforts with policymakers, suppliers, customers, and rail employees; sustained private investment in infrastructure, equipment, and safety technologies; the modernization of operating and maintenance practices; effective employee training; and steadfast adherence to pertinent laws and regulations.

As I will explain below, in the wake of the East Palestine accident, railroads have pledged to take additional measures that will further enhance the safety of rail operations.

Rail Safely Moves Hazardous Materials Daily

Railroads are the safest mode for transporting hazardous materials. Rail hazmat accident rates — accidents that result in hazmat releases as a percentage of total hazmat carloads — fell 78 percent from 2000 to 2022. In 2022, there were just 11 train accidents that involved the release of hazardous materials, with just 19 hazmat carloads releasing their contents.¹ According to the Bureau of Transportation Statistics, the last fatality caused by hazardous materials transported by rail in the United States occurred more than a decade ago. That safety record compares very favorably to hazardous materials moved on highways.²



Today, well over 99.9% of rail hazmat shipments reach their destination without a release caused by a train accident. The rail industry will not rest until it can eliminate the accidents that remain. Until that day, the industry will continue to take measures to meaningfully boost safety, prepare communities, and make them whole following any incident.

Most commodities carried by rail pose little or no threat to anyone or anything, but some commodities are classified as hazardous. In a typical year, U.S. railroads transport approximately 2.2 million carloads of hazardous materials. Depending on the year, hazardous materials account for 7 percent to 8 percent of rail carloads. Ethanol, crude oil, and propane make up the highest volume of hazardous material carried by rail, but countless other hazmat products that are indispensable to our nation’s economy, health, and standard of living are also moved by rail.

Railroads want all their shipments to travel safely, but they have consistently taken concrete steps dedicated specifically to making hazmat transportation safer and hazmat accident response and mitigation more effective. A few examples include:

- Railroads, several federal agencies, and outside experts collaborated several years ago to produce the web-based “AskRail” app. AskRail allows emergency responders to input the identification number of a particular rail car and immediately determine the commodity contained in that car, its hazard class, emergency response information associated with the commodity, and other information. Emergency responders in East Palestine used AskRail to quickly obtain information on the railcars involved in that accident.
- Emergency responders have control of the response to railroad accidents in which hazardous materials are spilled. If an accident occurs, railroads work closely with the responders and

¹ An accident involving hazmat can lead to the release of product from more than one railcar.

² <https://www.bts.gov/content/hazardous-materials-fatalities-injuries-accidents-and-property-damage-data>

appropriate local, state, and federal officials to ensure proper community protections. Railroads reimburse local authorities for the costs associated with their response efforts.

- Railroads provide thorough information to emergency response agencies on hazardous materials moving through their cities and towns.³
- Railroads and several federal agencies jointly developed the Rail Corridor Risk Management System (RCRMS), a sophisticated statistical routing model that incorporates 27 risk factors (including hazmat volume, trip length, and population density along the route) to aid railroads in identifying the safest and most secure rail routes for transporting high risk hazardous materials.
- Railroads invest well over \$20 billion a year on capital expenditures, maintenance, and technology like wayside determination equipment, track geometry technology, and positive train control.
- Major railroads have teams devoted to emergency response, as well hazmat response contractors and environmental consultants on call 24/7.
- Railroads help communities develop and evaluate emergency response plans. They also provide training for more than 20,000 emergency responders each year through their own efforts and through the Transportation Community Awareness and Emergency Response Program (TRANSCAER).
- Around half of all hazardous materials, and nearly all TIH materials⁴, are transported in tank cars. All but a tiny fraction of the 437,000 tank cars in the North American rail car fleet are owned by rail customers and leasing companies, not by railroads. Tank cars built today are vastly improved over earlier generations, with higher grade steel, better thermal protection, improved valves and fittings, often thicker tanks, and other improvements.
- Railroads equip train dispatchers and crews with information about hazmat on individual trains and detailed emergency response information in addition to contact lists for local emergency responders along a train's route.
- Railroads provide hazmat awareness training to all employees who are involved in hazmat transportation. Employees responsible for emergency hazmat response efforts receive far more in-depth training.
- Railroads work closely with chemical manufacturers in the Chemical Transportation Emergency Center (Chemtrec), a 24/7 resource for emergency responders that provides access to chemical product, medical and toxicology experts and assists in the mitigation of hazmat incidents.

³ Providing open, unfettered access to the precise location and contents of every train could make those carrying hazardous materials a target for terrorist attacks, which is why railroads limit this information sharing to bona-fide emergency response agencies.

⁴ “Toxic inhalation hazard” (TIH) materials — gases or liquids, such as chlorine and anhydrous ammonia, that are especially hazardous if released into the atmosphere — are a subset of hazardous materials. U.S. railroads carry around 65,000 TIH carloads in a typical year.

- Railroads provide services (e.g., lodging, food) to those displaced by rail hazmat accidents and establish assistance centers and claims teams to assess and meet the needs of displaced community members.

After an initial emergency response is complete, railroads have a less visible, but vital two-fold mission — making things right and taking action to prevent another incident. From taking care of affected individuals' immediate needs to partnering with federal and state agencies and independent experts to address any long-term environmental impacts, railroads work to ensure communities affected by an accident are made whole. In addition, railroads use accidents to assess their operations and apply lessons learned to drive safety enhancements.

Environmental Responses to Rail Hazmat Accidents

Rail accidents involving hazardous substances are rare, but railroads know that an incident can impact a local community dramatically. When an accident involving hazmat occurs, railroads follow strict protocols. They work closely with the Environmental Protection Agency (EPA), the National Transportation Safety Board (NTSB), relevant state and local authorities, and outside experts to immediately contain the situation, protect the health and safety of nearby residents and the environment, and remediate impacts.

Six main federal statutes are pertinent to railroad hazmat prevention, clean up, and mitigation efforts:

- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides a federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, EPA can seek out parties responsible for a release and force their cooperation in a cleanup.
- The Resource Conservation and Recovery Act (RCRA) mandates strict standards for the storage, transport and disposal of hazardous substances.
- The Clean Water Act is the principal law governing pollution control and water quality of our nation's waterways. Its main purposes is to restore and maintain the chemical, physical, and biological integrity of U.S. waters.
- The Safe Drinking Water Act (SDWA) requires many actions to protect drinking water and its sources, including rivers, lakes, reservoirs, springs, and ground wells. The SDWA authorizes EPA to set health-based standards for drinking water.
- The Oil Pollution Act requires the development of Area Contingency Plans to prepare and plan for oil spill response on a regional scale.
- The Hazardous Materials Transportation Act tasks the Secretary of Transportation with prescribing regulations for the safe transportation of hazardous materials, which include requirements for packaging, pre-transportation functions, and transportation functions.

Taken together, these laws and their accompanying regulations give the EPA a comprehensive framework to ensure that railroad hazmat spills are properly addressed. Working in conjunction with state agencies, safety experts, and others, the EPA approves cleanup plans, sets required remediation requirements, and oversees remediation efforts from start to eventual

finish. The EPA and other federal and state agencies make sure that railroads comply with all regulations as they implement short- and long-term monitoring and remediation plans.

Working cooperatively with these environmental and safety officials, railroads also deploy internal, contracted, and third-party environmental experts to assess the impacts on health and the environment after an incident. These experts use sophisticated equipment to monitor an accident site as well as nearby air quality, soil, and water. Samples are collected and tested by independent third-parties. If applicable, experts are deployed to conduct biological and wildlife assessments along with associated animal rescue.

Long-term monitoring, remediation, and eventual closure of an accident site must meet regulatory requirements and be approved by EPA and state agencies. Throughout the ongoing investigation, the NTSB, EPA, local governments, and railroads maintain constant communications with affected communities. If complete remediation of a site cannot be accomplished before rail service can be safely restored, areas of contamination are identified and delineated. Various types of remediation, and associated site monitoring and testing, are available to ensure that the site is restored to applicable standards. EPA and state agencies remain involved in the process and are informed regarding site conditions. Railroads are committed to supporting communities throughout the process until remediation is complete.

Looking Ahead

Rail is the safest way to move hazardous materials, but railroads fully appreciate that public trust in railroads' ability to operate safely must be restored through action. Until they achieve their goal of zero accidents, railroads will maintain a fierce commitment to getting there. Railroads wholeheartedly agree that policymakers have a key role to play in this effort, and railroads will continue to work in good faith with policymakers at all levels of government to identify ways to genuinely improve rail safety performance.

It is deeply unfortunate, in the aftermath of the accident in East Palestine, that some policymakers, pundits, and others have asserted that railroads broadly oppose increased safety regulations. This is categorically false. Railroads have consistently advocated for data-driven solutions that would effectively increase the safety of the rail network.

Some rail efforts have been successful, such the push for DOT to enhance tank car standards for flammable liquids. Other rail efforts, like expanding the use of automated track inspection technologies proven to be far more effective than traditional manual inspections, have been hamstrung by the FRA and are impeding the industry's efforts to improve safety. Railroads are also disappointed that some are using East Palestine to push for regulatory and legislative changes that have little or nothing to do with rail safety and, if enacted previously, would not have prevented the East Palestine accident. These changes could hamstring railroads' ability to provide essential rail service that moves the American economy without making rail transportation safer.

Our nation's freight railroads share this committee's and the public's urgency in augmenting the safety of all rail transportation. Railroads are committed to continuing our work with local, state, and federal officials; their employees; their customers; their supplies; and other stakeholders to identify additional safety enhancing steps that will make our nation's rail network safer.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ian N. Jefferies". The signature is stylized with a large initial "I" and a long horizontal flourish at the end.

Ian N. Jefferies