

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2188

2007 SENATE JUDICIARY

SB 2188

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2188**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1217

Committee Clerk Signature

Mona L Solberg

Minutes: Relating to railroad safety and risk assessments.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Fischer, Dist. #46 (meter 0:01) Introduced the bill – Att. #1

Sen. Robinson, Dist. #24, Co sponsor in support of bill (meter 1:41) This is a very serious issue that I hope we never have to deal with. But we have had issues with this in Minot and in my community we had the "highland bridge extension" and it is very feasible to happen again.

Rep. Lisa Wolf, Dist. #3 (meter 3:08) Gave testimony – Att. #2 read a letter from Dr. Rick Towsand (meter 5:47)

Sen. Nething questioned how this bill (meter 7:16) would relate with emergency response teams. Page 2, line 28, states about "filing information"-this would not help with the immediate notification of local levels. Discussions of an amendment that would put these people in the loop.

Mike Muscha, Chairman of ND Leg. Board for the Brotherhood of Locomotive Engineers and Trainmen. (meter 12:04) Gave testimony – Att. #3

Sen. Nething asked what the relationship with the P.S.C. and the railroad (meter 18:18)

Discussion of who regulates what. The Federal Government does not regulate the railroad.

How is "hazardous cargo" currently being "secured" – locks on the doors.

Sen. Lyson (meter 20:20) discussed an amendment to put local emergency responders on the notification. Discussion of how in some areas they have a relationship with the railroad system and can find things out immediately while in others 6 months later they still do not have a response to an incident. Sen. Lyson is very concerned that the local responders are going into these situations 'blind' to what they may be facing.

Dennis Willer, member of Bro. of Loc. Eng. & Trainmen (meter 22:10) Gave testimony – Att. # 4a, provided committee with chart 4b ND R/R Accident Reports.

Sen. Nething requested clarification of types of accidents (meter 26:27) D.E.P. vs. Equipment.

Ron Huff, Lobbyist for The Bro. of Loc. Eng. & Trainmen (meter 27:30) Discussed the accident portion of the bill – Att. #5 He also discussed on Page 2, line 3, Chap. 44-04-18, refers to open records laws, making it a Class C Felony if information is released. They are also open to a friendly amendment to include local emergency responders.

Sen. Nething questioned what other states have done (meter 32:16) This is modeled off of California Law. They are the only state that I am aware of that has adopted this type of legislation. Spoke of some of the states similarities in regards to type of freight and rural areas.

Sen. Nething stated (meter 33:54) the concern is about the safety of the railroad employees and how they need a process on how to act in the case of a situation. Discussed better training and homeland securities involvement also discussed were contract employees.

Testimony in Opposition of the Bill:

Brian Sweeney, Leg. Counsel for BNSF Railway (meter 39:40) gave testimony 6a, referred to Att. #6b Freight Rail Security Briefing”, Att. #6c U.S. Dept of Homeland Security and Transportation and Att. #6d. Letter from H. Steven Blum, Am Aerospace Defense Command. Spoke of tracking reports and coordination with local responders “R.O.C.K.” in Texas.

Sen. Nething questioned (meter 50:05) on page 3, second paragraph, second sentence—are the local emergency responders in ND included. Mr. Sweeney responded that he did not know, only in a general form. Discussion of accessibility of information and lines of communications. Mr. Sweeney could not answer several of the “communication” process information. Sen. Nething requested from Mr. Sweeney what training the employees have for situations and exactly how the communication works for to find out what the contents in a train are in a adverse situation.

Sen. Fiebiger question the “confidentiality” issues of sharing information broadly. Discussion of Federal Law.

Mr. Tom Kelsch – Local Attorney representing CP Rail. (meter 59:46) We concur with the remarks that Northern Railway made. The representative from CP Rail tried to make the hearing but with the notice being so short they could not get a flight. **Sen. Nething** requested the importance of there presence and would convene the hearing until next wed. at 1:00 so that they may be on the record.

Testimony Neutral to the Bill:

Greg Wilz, Dir. Of Homeland Security ND (meter 1:2:17) Att. #7 Discussed his problems getting information from the railway on a couple of instances. Homeland security are not first responders, they are in charge of the after effects. Discussed two incidence in which the railroad snubbed him. Calls from sheriffs offices so the first responders were aware of what they were getting into. Things are still “popping” up from under the water from this wreck. We

have over 15,000 first responders we are responsible for the leaders of those people should at least be aware of what they are getting into. Discussion on if this bill could help or not. The railway has provided a list of top "25 chemicals" that go through ND.

The committee discussed funding for homeland security.

Scott Radig, Dir. Of Div. of Waste Management, gave testimony – Att. #8

Annett Bendish, from PSC.(meter 1:24:13) The chairman requested that Bill Bennek from PSC be present for the cont. of meeting next wed. p.m.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2188**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1805

Committee Clerk Signature

Maria L Solbery

Minutes: Relating to railroad safety and risk assessments.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Mr. Krenda on behalf of Tom Kelsh introduced **Faye Ackermans** (meter 0:00) Gave Testimony – Att #1a and submitted US Dept of Homeland Security Manifestation – Att. 1b. & Att. #1c.

Sen. Fiebiger is very concerned that being the plans are so “closely” guarded that the left hand does not know what the right hand is doing. He is concerned that the plans are built around what is “perceived” to be a threat. These plans are not for the emergency responders it is only a response for terrorism.

Sen. Olafson cited his concern for the local responders (meter 8:40) and how they get information, discussing the protocol.

Sen. Nelson stated on page 4, of your testimony (meter 11:30) the requirement to keep things “merely confidential”, in our state means as tight as you can get, discussion about there terminology. When you talk about training of all rail employees who are required to be trained by HM2-32 who are they and what is the training? Any employee who handles dangerous

good Ms. Ackermans (meter 12:50) spoke in detail. No training from the high-end of your organization down from the employee to the local emergency response people? No, Only within the person on the train, handling the actual materials.

Sen. Nelson commented living near a rail road track and her concerns about being there (meter 14:00).

Sen Fiebiger stated (meter 15) on pg. 3, the process of "OT55" the 25 most dangerous and then the additional process of more information-and the restrictions of this information (or lack of information) at the time of a train wreck there is the need to have specific information-can you address this. (meter 15:40) She responded this is done in the "pre planning" of an actual event they address it and the train crew have the list of items and the network manager system has the list if the crew are not available.

Sen. Fiebiger asked (meter 16:10) that we have heard testimony of the people who have been involved with trying to get the information from you and that information you provided was of little, or no use. Is there anything that you have in process to make that information more of use? Ms. Ackerman answered with a statement that did not answer this question.

Sen. Lyson discuss his concerns (meter 18:06) of a first responder coming onto an accident seen and seeing a "cloud" of smoke or something coming out of the train. You state that the information is available as soon as possible, is that the next day? Discussion of location of labeling on the product-but in the case of a fire you may not get close to it. Discussion of this.

Sen. Fiebinger spoke of they do not want employees to be in harms way. You speak (meter 19:00) of prevention but nothing is on responding to an accident or an act of sabotage.

Discussion of this.

Sen. Nething (meter 20:50) stated the proponents of the bill's reasoning for putting the bill in was the concern of the employees and there own safety. The crew, are the true first responders and our sense is they do not have this. What is your view of this?

Phil Marbut, CP Railway (meter 22:38) spoke of his local level "full-scale" training drills-did not state if any were done in ND. Discussed in detail a document with the product description on it being on the train and the 24 hour central dispatch emergency number one could call. In Canada we are required to show them a document of all contents on the train and we provide them with it. We are not required to show this in the US. In situations the crew can not respond local emergency systems can call "Soo-help". Sen. Nething (meter 25:20) asked who on the train has the document. Mr. Marbut explained.

Sen. Nething asked if this process was in place at the time of the Minot accident? (meter 26:50) Yes. Was there not a delay at that accident with this process? Yes, but due to current law suits could not give a time amount.

Sen. Fiebinger (mete 27:30) Is there Federal law in place that address the concerns this bill? 49CRF172-82, I believe this was the law that requires the railroad to have a plan.

Dan. Zink , Red River Valley and Western Railroad (meter 22:12) spoke in a local level the full scale drills. Provided testimony that they are not in support of the bill stating his concerns, of states needing to have a consistent plan with each other. – Att. # 2a.

Sen. Olafson questioned exactly what in the bill they were opposed of (meter 32:44). Also submitted testimony of Greg Jeffries, BNSF Railway. Att. #2b

Also submitted: **William W. Benek**, Public Service commission ND

Senator David Nething, Chairman closed the hearing

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2188**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2433

Committee Clerk Signature

Mirra L. Salberg

Minutes: Relating to railroad safety and risk assessments.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Nething reviewed the request that was made that certain persons did not have time to book a flight. He reviewed the committee having plenty of testimony on both sides. While he respects both sides and their intentions, the unresolved issue is for the local community and their respective responders. Other than the actual workers/people on the train they are the first to come upon a situation. They do all they can to get there quickly and when they get there what to do next. Some decisions are made without a whole lot of information or help from anyone. The other side of the issue is the impact on the National level and how much we can legitimately expect to have available. In my mind I would like to not have this bill go any farther, but to turn it into an interim study.

Sen. Lyson reluctantly agreed stating that this seems to be like going to a "family fight". You said, I said, who said. I am in a quandary as to how to go, but I would like something to be done in regards to these issues. (meter 3:43) The committee discussed more of the same sentiments. **Sen. Nelson** could not understand why they can have a bill of lading for parts of the country, why is it so difficult to do it in another? Her other concern was training and the

conflicting stories. The people who are working on the train are worried. This concerns me greatly. Two years from now is too long to find out! Something really bad could happen in that time. **Sen. Fiebiger** stated that he was not sure that this bill would address what either side is trying to accomplish and to water down the bill it would definitely not do it. **Sen. Nething** stated that sometime a study forces proactive activity. (meter 8:00) He was concerned how sometimes a study is to kill a bill. While we realize how legislative council hates a mandate, we are greatly concerned with the issues this bill brings up, if the study did not get done and something happened it would be unacceptable-this is the only way Sen. Nelson would agree to a study.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2188**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 3047

Committee Clerk Signature *Maria L Solby*

Minutes: Relating to railroad safety and risk assessments.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Sen. Nething reviewed the amendment that mandated a study – Att. #1

Senator David Nething, Chairman closed the hearing.

Sen. Nelson made the motion to Do Pass Amendment – Att. #1 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Nelson made the motion to Do Pass SB 2188 as amended and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2188

Page 1, line 1, replace "four" with "a" and replace "sections" with "section"

Page 1, line 2, replace "safety and risk assessments" with "accident reports; and to provide for a legislative council study of risk assessments and railroad safety"

Page 1, line 4, replace "Four" with "A" and replace "sections" with "section"

Page 1, line 5, replace "are" with "is"

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 24

Page 3, line 26, remove "or a derailment involving"

Page 3, remove lines 28 through 31

Page 3, after line 31, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - RISK ASSESSMENTS AND RAILROAD SAFETY. During the 2007-08 interim, the legislative council shall study risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes. This study must include an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-7-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2188

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendment - Att #1

Motion Made By Sen. Nelson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Nething	/		Sen. Fiebiger	/	
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-7-07

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2188

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Sen. Nelson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Fiebiger

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2188: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2188 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "four" with "a" and replace "sections" with "section"

Page 1, line 2, replace "safety and risk assessments" with "accident reports; and to provide for a legislative council study of risk assessments and railroad safety"

Page 1, line 4, replace "Four" with "A" and replace "sections" with "section"

Page 1, line 5, replace "are" with "is"

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Page 3, remove lines 1 through 24

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Page 3, replace lines 28 through 31 with:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - RISK ASSESSMENTS AND RAILROAD SAFETY. During the 2007-08 interim, the legislative council shall study risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes. This study must include an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2188

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2188

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4486, 4487

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2188.

Rep. Lisa Wolf: (see attached testimony). For every \$9 we spend on airport security, we spend a penny on our rail system. It doesn't make sense to me.

Rep. Dahl: Regarding section 1, requiring railroads to contact the Dept. of Emergency Services, in your testimony you said that folks with a cell phone were able to contact the appropriate authorities. How is this helpful in moving forward.

Rep. Wolf: It says that they have to notify. More so in the case of other areas, when accidents do happen they don't tell me. The railroad does not always let people know that there's been an accident. This one was too hard to cover up, they had 290,000 gallons of anhydrous over our city, and they had to tell somebody what had happened. But you will hear testimony of other incidents that have happened where they don't tell people, the chemicals have been released.

Rep. Dahl: Railroads are largely governed by federal law, do you know of any federal laws that are on the books that would require that reports be made in case of an accident.

Rep. Wolf: I don't know specifically, but there are people here that do.

Rep. Koppelman: I was just looking at the language, it says a railroad corporation shall provide immediate notification. Somehow the words corporation and immediate don't seem to jive, because the corporate structure, like any large entity in a scenario like you just described, it's not like somebody has a cell phone on the spot to call, but it looks like the bill makes it a corporate responsibility. Can you shed some light on that wording.

Rep. Wolf: I can't, but there are others who can.

Chairman DeKrey: Thank you. Further testimony in support.

Sen. Larry Robinson: I am here in support as well. We were on break in Appropriations and we gave up that time to be up here.

Chairman DeKrey: Thank you. Further testimony in support.

Sen. Tom Fischer: Sponsor, support.

Chairman DeKrey: Thank you. Further testimony in support.

Mike Muscha, Brotherhood of Locomotive Engineers and Trainmen: (see attached testimony).

Rep. Dahl: I'm looking at the word "immediate" and going back to Rep. Koppelman's question about the corporate structure, I'm just wondering under this statute, in terms of taking into account the corporate structure, wouldn't an hour and 10 minutes be considered immediate.

Mike Muscha: An hour and 10 minutes in the right situation would mean hundreds of people dead. The point is when we know a car goes down, we're carrying hazardous materials, we know where they are at in the train, and usually we can tell roughly most times about where it's at, within a few minutes we know; we call our dispatchers and the technology has vastly changed since when I started, but 90% of us carry cell phones, we can get the message out. The point that I think needs to happen, the corporations need to make sure that we have the

training how to get the message out faster. I think that's why the language is in the bill. For example, ironically, I just had a class the other day on strange activity around a railroad track and I came in 20 minutes before I went to work, I watched a little short video, and I signed my name, and I guess I have been trained on how to report accidents now. So maybe it came up after we started this process, but that's the way it should work. We need to have programs in place on how to notify the emergency services people.

Rep. Onstad: Let's say that what you foresee happening in the near future is going to happen, how is that going to occur.

Mike Muscha: I was given the reassurance that it was going to be studied, and if it is studied, I say thank you and we're moving along. History tells me that we will probably need another incident before people wake up. It goes back to when I came to this legislative session 10 years ago, with a critical incident concerning a locomotive engineer having a fatality. It took about six years to really fix the problem, but we don't need anything like Minot ever having again. I had one similar incident at Bordulac, ND in 1987. At that time, the same kind of anhydrous spill happened there on CP rail. There wasn't any public around there, it traveled for 22 miles and the Highway Patrol and sheriffs ran ahead of it and kept people moving away from the cloud until it dispersed.

Rep. Koppelman: It looks like the original bill had a risk assessment procedure and so on. It's essentially been amended down to a study and the accident report, which is probably just fine for now, but I'm still concerned about the way the accident report provision is written. As an engineer, wouldn't you think it would be more practical for you, if you there on the train, and you notice a problem or spill, that you report it instead of it being the responsibility of the company that owns the railroad.

Mike Muscha: I believe that the corporation is responsible to give us direction. In our training, we aren't allowed to just hand this stuff out to anybody. So the corporation, I believe has a pecking order that we'll be trained, and we are on whom to respond to. They went to speed dial, 911, on our local radios, etc. I mean it could be just the committee that drafted that, where is said corporation, but I believe we are part of the corporation.

Rep. Koppelman: So you are satisfied because the word immediate is in there, that there will be some training or procedure put in place so if something like Minot were to occur again, you as the engineer on that train would have a clear indication of what you need to do, who you need to call, etc.

Mike Muscha: If something isn't working, there is a cell phone or there are multiple ways to get in touch with the corporation.

Rep. Charging: What about for the whistleblower, that is to protect you, because I'm sure that they have a protocol. Who owns the railroad.

Rep. Kretschmar: Shareholders.

Mike Muscha: The Burlington Northern Santa Fe is the largest railroad crossing the US, and they did testify at the last hearing. I believe the Red River Western I believe there are some short lines would have to comply with this also. They are the corporation.

Rep. Charging: Are they for the bill.

Mike Muscha: Against it.

Chairman DeKrey: Thank you. Further testimony in support.

John Olson, BNSF: We did oppose this bill in the Senate. We did agree to the language that is in the bill now. Rep. Koppelman, you asked a good question. Though we want to make the railroad corporation responsible for doing that notification, BNSF has trained 1100 employees in ND since 9-11, we take this really seriously. You haven't been informed but you can well

imagine Homeland Security is really on top of this, not only for airlines but for railroads. I want to share the information that was presented to the Senate. I didn't intend to testify today, but I thought I should share this information with you. There is a freight rail security statement that is put out by the Association of American Railroads (see attached handout). There is also a US Department of Homeland Security, Dept. of Transportation Recommended Security Action items for the Rail Transportation of Toxic inhalation hazard materials (see attached). There is also a letter from the North American Aerospace Defense Command to the Association of American Railroads regarding what has been done so far (see attached). Also at the Senate hearing, I asked for a manifest of what is contained on an intermodal train going through ND and it was printed out for just your ordinary train on January 17. I think that shows the railroad's priority of having this information immediately available for the top 25 hazardous materials. So in this manifest it has the information concerning paint, whatever other sodium hydroxide and all of these supposedly not really serious hazardous materials, but not what was experienced in Minot. From my understanding, BNSF, within minutes of an accidental release, will have the information to first responders immediately. Those are the police, the sheriffs, whomever. We didn't object to the inclusion of the state office, that's fine. It probably should be on that list if they weren't already. I think they were there already, that's fine, and we'll notify them as well. I just wanted to share that information with you.

Rep. Koppelman: In thinking about the whistleblower question, it seems to me that's probably covered with what Mr. Muscha described the process, if you are requiring the corporation to provide immediate notification, then the corporation would have to put in a protocol procedure in place telling its engineers or whoever the person is at the site, here's what happens if this accident occurs and therefore, there's no need for a whistleblower

protection because the corporation itself would be setting out that policy and the employee would just be following the policy set forth.

John Olson: That's absolutely correct. I don't think you want to restrict this language to any particular employee or anything like that, because that would cover that. I don't know what they are talking about the whistleblower, maybe there are other things going on in security or something that they want protection from. We will study it and see what they are talking about. I can tell you this, that BNSF and other railroads are very heavily involved with the Dept. of Homeland Security and the federal government. There are a bunch of agencies in the DOT, the Justice Department, there are a big number of agencies that are dealing with this issue. The bill that originally came in, was offered in other states. The only state that had adopted that legislation is California. California is involved in litigation over that bill right now, because of other things involving federal preemption and things like that. This is a complicated subject.

Rep. Charging: I'm aware of the nuclear transportation of nuclear substances. Is ND within that boundary in any way.

John Olson: I don't know, and I don't think so. I know this, the railroad transports about 98% of the arsenal weaponry, from tanks to whatever. So if there are nuclear things going across ND, I don't know. I can't say whether that is true or not, but I would say that would be classified information and be subject to the federal government restrictions on communicating that kind of information.

Rep. Charging: If, in fact, there is a crossing over the highways the federal government can appropriate money for training for that. If you don't have money, maybe it's not here yet.

John Olson: I'd be happy to explore that to make sure that you have a full response to that.

I'm not the one to ask.

Chairman DeKrey: Thank you. Further testimony in support.

Dennis Willer, Brotherhood of Local Engineers and Trainmen: (see attached testimony).

Rep. Boehning: Do you information on the number of rail cars that come through the state.

Ron Huff: That information is not available to us, all they will tell us is the increase of tons per mile. How many more cars they haul during a year. If you look at their profits, they've increased every year. Part of that is they are running at a point of saturation. Some areas aren't even working right, because the traffic is so heavy they cannot move.

Rep. Boehning: From 2001 to 2006, I am assuming that the rail cars coming through ND has doubled.

Dennis Willer: That information on how many trains have actually increased on the number of trains or the number of cars, that's really not readily available to us through the system web.

Rep. Boehning: In looking at the numbers, it looks like it's doing pretty good with accidents. With all the cars coming through, the numbers are a lot better than they were back in 2001.

Dennis Willer: I give the railroads a lot of credit for it because their track maintenance has increased, their upkeep of the rail has increased but as you can also notice, back in 2001, we had one accident where there was a damaged hazmat car. Already up to October we had three. We're getting more and more hazardous material. As you know, in the state of ND you produce anhydrous ammonia along with a lot of other chemicals. Some of them would make anhydrous look like a baby food. We've got ethanol plants that are now producing in Richardton and various parts around the state, with another one going up in Beulah, and very shortly, Cole Creek. We are producing more and more of it within the state, and it has to be hauled and most of it is going by rail.

Rep. Boehning: I don't disagree with that. I'm looking at the numbers here, with the increased traffic in the state, I am assuming that these are probably better than the national

average for accidents occurring. I'm just trying to get apples to apples comparison here. Are they going up or coming down.

Dennis Willer: I could possibly try to get you some numbers and the national average.

Rep. Onstad: One thing to look at is track maintenance and if you look at your charts on page 4, does it consider track defects, is that part of maintenance and if it is, I don't see where is the standard maintenance for that, maybe we should study that too. If track defect is part of what causes the accidents, if that is related to maintenance and part of the study, what is the maintenance protocol and should it be improved as part of that study.

Dennis Willer: Anything that is going to help in the study to find causes to prevent any kind of spills, I think it is a great idea. We have a lot of bridges in the state of ND, we've got one big one up in Minot and one over at Valley City. If you want a terrorist area, or somebody trying to get somebody's attention, if somebody tampered with one of those bridges with a hazmat tanker car or chemicals going over the top of it, would cause a lot of problems and kill a lot of people.

Rep. Charging: In relation to the train/vehicle accidents, how many train related deaths have there been.

Dennis Willer: We are at or below the national average.

Rep. Boehning: What about breakdown of numbers, say if somebody commits suicide on the tracks.

Dennis Willer: It would be registered as an accident.

Rep. Boehning: Is there an accident protocol.

Dennis Willer: First of all, I would figure out what was on my train, in the cars, and go through the list and find out where it's at and try and see back to see if it is compromised or not. If you see a car attempting to run, you get a hold of dispatch and let them know there is a problem.

Then the conductor would walk back and check on the status of the cars. The dispatcher then notifies emergency personnel.

Rep. Boehning: Once you make your call, you investigate and relay back as to your status. In the meantime they call the emergency personnel. So it is basically immediately that you call it in.

Dennis Willer: To notify our dispatchers, yes, they are in Ft. Worth, TX.

Rep. Boehning: Do they give you the authority to call 911.

Dennis Willer: We don't have a phone on, we call 911 on the train phone which relays the information by radio towers to Ft. Worth.

Rep. Boehning: I thought you had cell phones on.

Dennis Willer: No, that is against the rules. Sometimes they carry them for their own personal use, but we're not allowed to have them on when we're running. A lot of times there are spots where you couldn't get cell phone reception that is why we use the train phone which is dedicated and calls to Ft. Worth.

Chairman DeKrey: Thank you. Further testimony in support.

Russell Timmreck, Director of Division of State Radio, Dept. of Emergency Services:
Neutral. We strongly support the amendment requiring railroad corporations to provide immediate notification to the Dept. of Emergency Services of an accident where an accidental release of hazardous material has taken place. This amendment at a minimum will provide the Dept. early notification so if an accident is large, the right state agencies can begin finding out early and be ready to assist local responders.

Rep. Wolf: In your job, I would assume you have had dealings with the railroad, can you briefly tell us what your experiences have been like.

Russ Timmreck: Yes, I have had dealings, in my previous position as State Operations Center Chief, and I have been briefed on some of our issues, as I work very closely with the Greg Wilz, the director of the Dept. of Homeland Security. When we have a local emergency, we get very early, very cooperative notification from county emergency management. When we have a situation happen on a railroad, we feel we aren't notified right away, then when we do hear about it, we have contacted the railroad and feel like it's pulling teeth. It's a process of bureaucracy, we see the field, selective filtration whatever, that's why we are in support of this immediate reporting amendment. In an integrated emergency management situation, it's key that we know right away because we can notify lead agencies at the state level and help with mutual aid and get prepared to plan ahead, so that this thing gets bigger and out of control of the local response of the railroad, or the local support of the town that the incident is in, we've got things ready to go to mitigate this as soon as possible. We feel that there is just no place for that in an emergency response to protect life and property in ND.

Chairman DeKrey: Thank you. Further testimony in support.

Ron Huff, Brotherhood of Locomotive Engineers and Trainmen: (see attached testimony). As to the question of calling 911 on cell phones, it is a rule violation for us to talk on the cell phone while on a moving train. So when we stop, we may or may not have cell phone coverage; because of dead spots, etc. Also, the phone on the train doesn't make local calls, it only calls to the main office in Texas, when we call 911. They are able to contact the Dept. of Emergency Services right away when an accident occurs. They can do this within 3-5 minutes. It does not have to be an hour and 10 minutes, because in some cases if you wait an hour and 10 minutes, you are in really big trouble. As far as the corporation's immediate notification policy that does really seem like an oxymoron; however, they do possess the capabilities of doing it. I think that's one of the reasons that the representative from the BNSF,

Mr. Olson, was in support of this, because they know that they do have the capability and they are willing to do it.

Rep. Griffin: Do you know, if this bill would pass, is there a penalty section to it.

Ron Huff: There is not a penalty section, the way that the bill is written right now.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition or neutral. We will close the hearing. What are the committee's wishes in regard to SB 2188.

Rep. Meyer: I move a Do Pass.

Rep. Onstad: Second.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Griffin

Date: 3-6-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2188

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Meyer Seconded By Rep. Onstad

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Griffin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 6, 2007 4:39 p.m.

Module No: HR-42-4586
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2188, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2188 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2188

Bill # 1 - 1-16-07

Chairman Nething, Members of the Judiciary Committee

For the record I am Tom Fischer, State Senator, District 46, Fargo.

I am here today to ask for your support of Senate Bill 2188 which provides for the risk assessment of rail facilities in North Dakota.

I sponsored this bill because I believe one day there will be an act of sabotage, terrorism, or other crimes committed at a rail facility. It may not happen in North Dakota, but what if they struck the BNSF rail yard in Grand Forks next to UND, downtown Fargo, in the bowl in Minot, or in Jamestown. We only have to remember Minot's CP Rail derailment to see the effect of that accident and to remind us what could happen.

I believe this bill would help coordinate our agencies in North Dakota and better prepare us for an incident.

There are those here today much more knowledgeable than I who will testify on this measure so I will defer to them at this time.

Thank you

I will stand for any questions Mr. Chairman

Att #2

1-16-07

Testimony in Support of SB 2188

Mr. Chairman and members of the Committee, for the record my name is Representative Lisa Wolf from District 3 in Minot. I am here to testify in support of SB 2188 which, in a nutshell, requires the filing of various reports to Homeland Security, the PSC and the Department of Emergency Services. These reports are already drafted by the railroads, but are not required to be filed with any state agency.

According to National Homeland Security, our railroads are the least protected of all transportation systems. Our railways are carrying more and more hazardous chemicals and the accidents that cause damage to the cars carrying dangerous chemical is on the increase as indicated in the chart you received. What happens when these accidents occur? What plan is in place? Who knows about the plan? What is going to be done?

Let me share with you what happened in Minot.

On January 18, 2002 at approximately 1:40 a.m. with an outside air temperature well below zero, a Canadian Pacific train derailed on the outskirts of Minot, North Dakota near a subdivision called Terracita Vallejo. Because of the nature of the accident, Terracita Vallejo immediately lost all power—causing terror and panic among residents. They were unable to call for help, and had no idea what had happened, or what was going on. Approximately 290,000 gallons of anhydrous ammonia was spilled, making it one of the largest spills in history. All the residents of Terracita Vallejo and many residents of Minot were trapped in their home for hours, many not knowing what was happening or what efforts, if any, were being made to rescue them. Many citizens, including children, suffered injuries that continue to this day. The ammonia was so strong that it killed one resident who tried to escape from the burning and suffocating fog that blanketed Minot and attacked us in our homes. Two years after the derailment, the National Transportation Board concluded that poor track maintenance was the reason for the derailment. Because of this

accident, Minot lost one resident, and 1,441 of its residents, both adults and children, were injured with the long term affects of this exposure still unknown.

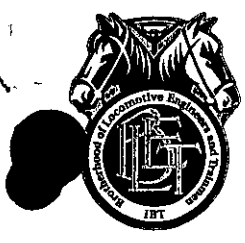
Highlight Dr. Townsend's letter.

In conclusion, with the testimony and graphs that have been presented here today, whether it is a rail security issue or an accident, it is not IF it will happen, it is WHEN will it happen, and are we going to be prepared this time? Will our emergency response teams know what procedures are in place to follow—will all people called to respond have proper training? This bill will help to ensure that emergency response procedures are in place.

Mr. Chairman, members of the committee, I respectfully ask that you consider a Do Pass on this bill.

Thank you for your time, and I will answer any questions you may have.

AH #3 1-16-07



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference-International Brotherhood of Teamsters

Chairman Nething, Members of the Judiciary Committee

My name is Mike Muscha, Chairman of the North Dakota Legislative Board for the Brotherhood of Locomotive Engineers and Trainmen. I do believe there will be an act of terrorism or an act of sabotage using a rail facility in the future. I stand in support of **Senate bill 2188**. We need to unite our agencies in North Dakota to prevent an act from happening and yet be prepared should such an act take place in our state.

The **Risk Assessment to the Commission** portion of the bill, would allow all parties to evaluate a rail facilities operator's capabilities of handling an act of terrorism. A through H each has an important piece to the Risk Assessment puzzle. We can step through each one if you would like, but I would like to comment on one I'm familiar with and have been involved in a mock staged accidental release.

- A. Location and function Rogers, ND Agrium
- B & C Type of cargo Anhydrous Ammonia
- D. Volume stored _____ and a 14 cars unloading capacity of the main line
- E. Current capabilities in case of an act or incident
- F. Training for the rail operators and subcontractors
- G. Respond to an act of terrorism or an accidental release
- H. Rail Operator's communication and response

You can pick any operator of a rail facility and ask yourself the question, "does he comply with A through H?" Next, does this rail facility bring in subcontractors and do they comply with A through H?

Infrastructure Protection Program portion of the Bill

This is for the Rail Operator or Subcontractor to have an infrastructure protection program in place to respond to an act of sabotage, terrorism, or other crimes.

- Are all the employees trained?
- Do they know what to watch out for?
- Do the subcontractors have the same training and background checks as other rail operators?
- Last, does the rail operator have the communication skills to get the warning out in case of an act or incident?

Please note the Infrastructure Protection Program is confidential. The Rail Operator shall update the infrastructure protection program once yearly and submit to the agencies. There are provisions for the commission to review, improve, modify or change the operator's program to comply with this section. The commission may fine a rail operator for failure to comply with the requirements of this section.

Hazardous Cargo Rules

The current Hazardous Material laws would cover this portion of the bill.

- 2) A rail operator shall provide communications capability
 - 1) Alert all agencies listed in the plan in the event of an act.
 - 2) The same applies for bridges (overpasses) etc.

Testimony will be given on the **Accident Reporting** portion of this bill.

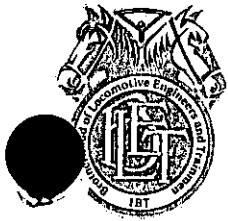
Whistleblower Protection portion of the bill is implemented to protect an employee.

I recommend a due pass on the bill.

I will answer any question Mr. Chairman, members of the committee.

Mike Muscha
Chairman, BLET NDSL
221 Oehlke Avenue
Enderlin, North Dakota 58027-1132

Phone 701.793-0325



ATT # 4a 1-16-07

Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

1 Good morning Chairman Nething and Members of the Senate Judiciary Committee. My
2 name is Dennis A. Willer. I'm with the Brotherhood of Locomotive Engineers and
3 Trainmen. I'm here in support of Senate Bill 2188.

4 I have a graph showing the number of train accidents in North Dakota from 2001 until
5 October 2006. The graph is from the Federal Railroad Administration web site. If you
6 will refer to the second page. As you will note that with the exception of 2005 the
7 number of accidents have gone down, a fact that the Railroads are very proud of. But as
8 you will also note, the percentage of accident with hazardous material cars in the train has
9 increased, and the percentage of hazardous material cars that were damaged has also
10 increased.

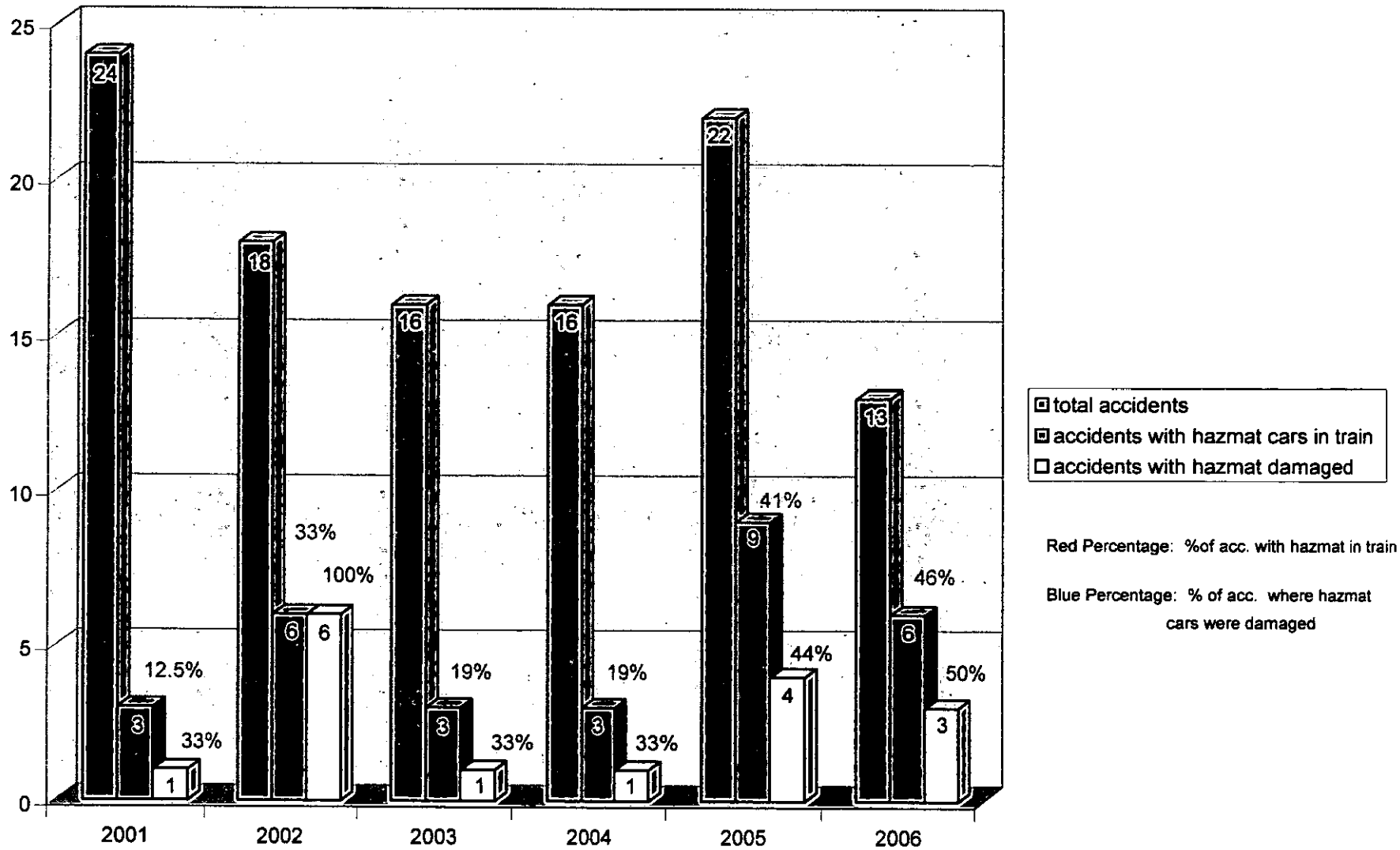
11 Now if you refer to page 3. You see a chart of North Dakota where the accidents have
12 happened by county. This map is from 2001 to Aug 2006. According to the map, Cass
13 and Ward counties have the highest number with accidents. As we all know Cass County
14 is the most populated county in North Dakota.

15 Railroad traffic, tons per mile, has increased every year. In our great state of North
16 Dakota, more hazardous materials are being produced as well as being hauled by the
17 railroad industry. We are producing more ethanol, gasoline, diesel, anhydrous, and more.
18 These chemicals are handled through or stored in every major city in North Dakota.

19 In closing Mr. Chairman, I would urge this Committee to give a Do Pass to Senate Bill
20 2188. If you or any member has any questions, I will try to answer them or if you need
21 anything I will try to get the information for you.

22 Thank you for giving me this opportunity to appear before your committee.

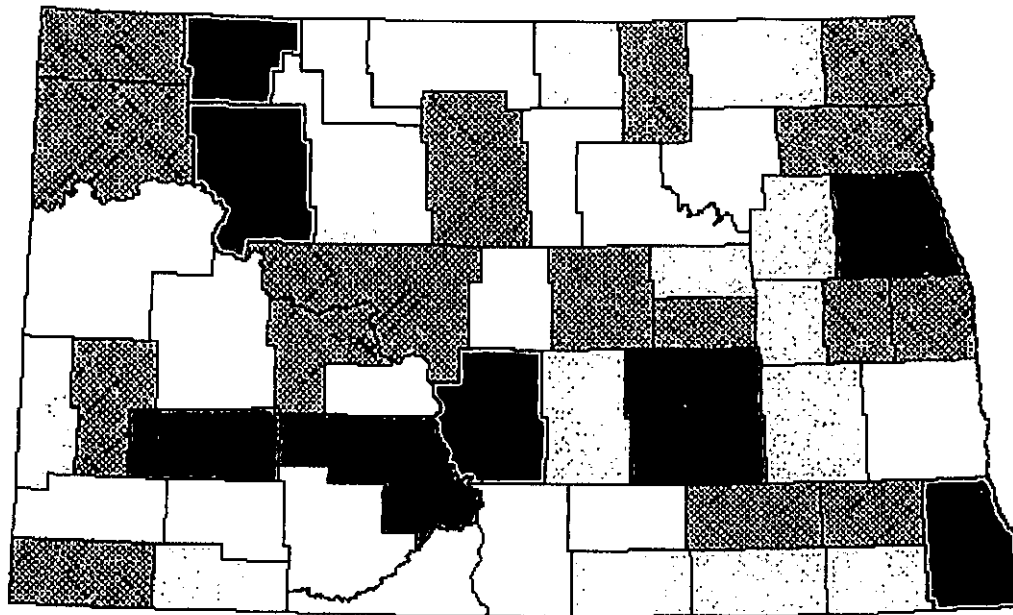
North Dakota R/R Accident Report



AH #46

TRAIN ACCIDENTS FOR NORTH DAKOTA, January 2001 TO August 2006

RAILROAD: ALL TYPE OF TRACK: All



Nbr 1 2-3 4-5 6-10 11-25

Excludes Highway Rail Incidents

NORTH DAKOTA, By County

County	Totals				Type of Accident		Causes				
	Accs	Kld	Inj	Reportable Damage	Der	Othr	Eqp	Hmn	Othr	Sig	Trk
ADAMS	1	0	0	534,201	1	-	1	-	-	-	-
BARNES	1	0	0	8,200	-	1	1	-	-	-	-
BILLINGS	2	0	0	512,352	1	1	1	-	-	-	1
BOWMAN	2	0	0	358,393	2	-	-	-	-	-	2
BURKE	4	0	0	136,748	4	-	-	1	2	-	1
BURLEIGH	5	0	0	2,724,478	5	-	1	-	1	-	3
CASS	16	0	2	10,079,751	14	2	5	2	-	-	9
CAVALIER	1	0	0	75,000	1	-	-	-	-	-	1
DICKEY	1	0	0	95,020	1	-	-	-	1	-	-
DIVIDE	2	0	0	103,780	2	-	-	-	-	-	2
EDDY	1	0	0	280,024	1	-	1	-	-	-	-
FOSTER	2	0	0	151,678	2	-	1	-	1	-	-
GOLDEN VALLEY	1	0	0	85,353	1	-	1	-	-	-	-
GRAND FORKS	6	0	0	197,943	5	1	-	3	-	-	3
GRIGGS	1	0	0	4,546,565	1	-	-	-	1	-	-
KIDDER	1	0	0	1,815,922	1	-	-	-	-	-	1
LA MOURE	2	0	0	86,500	2	-	-	-	-	-	2
MCHENRY	2	0	0	87,191	1	1	1	-	1	-	-
MCINTOSH	1	0	0	131,750	1	-	-	-	-	-	1
MCLEAN	2	0	0	148,085	2	-	-	1	-	-	1

County	Totals			Reportable Damage	Type of Accident		Causes				
	Accs	Kid	Inj		Der	Othr	Eqp	Hmn	Othr	Sig	Trk
MERCER	3	0	0	255,282	3	-	2	-	-	-	1
MORTON	7	0	0	231,985	5	2	1	5	-	-	1
MOUNTRAIL	4	0	0	2,103,431	4	-	2	1	-	-	1
NELSON	1	0	0	42,861	1	-	-	-	-	-	1
PEMBINA	2	0	0	67,662	2	-	-	-	-	-	2
RANSOM	2	0	0	35,241	-	2	-	2	-	-	-
RICHLAND	4	0	0	966,386	4	-	1	2	-	-	1
ROLETTE	1	0	0	24,280	1	-	-	-	1	-	-
SARGENT	1	0	0	59,000	1	-	-	-	-	-	1
STARK	7	0	0	1,579,409	7	-	3	3	-	-	1
STEELE	2	0	0	840,288	2	-	-	-	1	-	1
STUTSMAN	7	0	0	1,266,004	7	-	3	2	-	-	2
TOWNER	2	0	0	47,099	2	-	-	-	-	-	2
TRAILL	2	0	0	246,501	2	-	-	-	1	-	1
WALSH	2	0	0	247,390	2	-	1	-	-	-	1
WARD	17	1	1,441	2,400,117	13	4	1	9	1	1	5
WELLS	2	0	0	85,560	2	-	-	1	-	-	1
WILLIAMS	2	0	0	2,188,022	2	-	1	-	-	-	1

Causes: Eqp=Equipment Defect Hmn=Human factor Sig=Signal Defect Trk=Track Defect Othr=Other
 Excludes Highway Rail Incidents

Mr. Chairman

Members of the committee

For the record my name is Ron Huff, I lobby for The Brotherhood of Locomotive Engineers and Trainman. Good morning .

I'm here in support of S.B. 2188. My testimony today is concerning the reporting of all railroad accidents where hazardous materials are involved. This morning you have heard testimony and seen graphs that indicate derailments and accidents involving hazardous materials are increasing each year.

We all remember the terrible derailment that occurred in Minot in 2002 and the devastating effects it had on the community. Some of the citizens are still suffering from this tragedy.

At that time there were no requirements for the Railroads to report this type of incident to any state agency. There was a derailment in August of 2006 at or near Luverne, ND. where hazardous materials were involved. After talking to the Directors of Homeland Security and Dept. Of Emergency Services, this was the only derailment they were aware that had happened. According to the Federal Railroad Administration records we know that there were (6) six of these derailments. You would think that in the four (4) years after such as incident as Minot there would be some type of requirement where the railroads would have to let the proper state agency know of the incidents. **THE TRUTH IS, AS OF THIS DATE, THERE ARE NO REQUIREMENTS FOR THE RAILROADS TO REPORT THESE DERAILMENTS TO ANY STATE OR LOCAL OFFICIALS.**

. SB 2188 will require the Railroads to immediately report ALL accidents and derailments to either Homeland Security or Dept. of Emergency Services.

The language in this bill has the Railroad Corporations and state government working together to come up with a communication plan. I feel this is the best way to get business's and government working together for the solution to the problems confronting our state.

In closing, I would urge the committee to take favorable action on SB 2188.

Thank You

AH #60

1-16-07

BNSF Testimony in Opposition to SB 2188
February 16, 2008

Good Morning Mr. Chairman and members of the committee. My name is Brian Sweeney; I am legislative counsel for BNSF Railway. I am here to speak in opposition to SB 2188. First, I want to stress that the rail industry takes the subject of this bill seriously. So seriously, in fact, that we have been praised by many for our strong efforts regarding security in the post-911 environment. I would also like to note that since September 11 BNSF has trained more than 1,700 emergency personnel in North Dakota in responding to hazardous materials incidents on the railroad. We take this very seriously.

This bill is simply not needed. Following the events of September 11 the rail industry took a number of significant steps in the area of rail safety and security. Those steps were taken in cooperation with federal agencies, notably the Department of Homeland Security. We have been commended by federal authorities and others for our efforts. This proposal is actually counterproductive to those efforts and conflicts with them in some key areas.

Following September 11 BNSF, along with the other major railroads, put together a comprehensive industry security plan developed by the rail industry with the assistance of counter terrorism experts. This plan includes the assessment of prioritization of all railroad assets, vulnerabilities and threats. Based on this assessment, the rail industry identified appropriate countermeasures to reduce risk and restricted access to important

rail facilities and information. In the packet of information I have given you is a portion of the Association of American Railroads' "Freight Rail Security Briefing", which outlines the measures the railroads developed to ensure that the country's essential rail services and those people potentially put at risk are reasonably protected against terrorist threats.

The industry has also worked closely with federal agencies, including the Department of transportation, Federal Railroad Administration, Transportation Security Administration and others in an effort to continuously improve the security and safety of railways in a manner consistent with the safety and security of all stakeholders. We also participate with those agencies and others, such as the Department of Homeland Security and the Department of Defense, on intelligence matters. A railroad police officer and knowledgeable railroad analysts work literally side-by-side with government intelligence analysts at the FBI's National Joint Terrorism Task Force and in two intelligence offices with DHS (Information Analysis and Infrastructure Protection Directorate, and the Transportation Security Administration) to help evaluate intelligence at the Top Secret Level.

In your packet you will find some of the commendations we have received for our efforts. They come from government sources, such as the Department of Homeland Security, the United States Northern Command, the North American Aerospace Defense Command, and the Department of Transportation. They also come from private sectors experts, including one who says the aviation industry needs to follow the rail industry's example

of identifying risks and spending money to address the problem, establishing procedures and following them. (Greg Faith, former investigator with the NTSB).

The provisions of this bill would only duplicate or complicate what we are already doing and being commended for.

Specifically in the field of hazardous materials, BNSF works with local emergency responders on the types of materials that move through their jurisdictions and provides information on dealing with them. The industry recently adopted a policy to inform emergency responders of the top 25 hazardous commodities that move through their communities. We believe that this policy best balances the needs of security and emergency responders. By the way, railroads transport a great deal of material for the armed forces, including tanks and about 98 percent of the ammunition used in by the U.S. in Iraq. Obviously, there is a great need to maintain secrecy about such movements and what is being done to secure them.

That brings us to one of the major problems with this bill – security of information. Safety is compromised as exposure of the information is increased. This bill works against that by giving access to some of this critical information to “other law enforcement or emergency personnel.” Who are those persons? They are not specified in the bill – so presumably they would include a wide variety of persons and jobs.

The rules, plans and oversight of them are not static. Much more is happening at the federal level. For example, in the information packet is a document issued jointly last

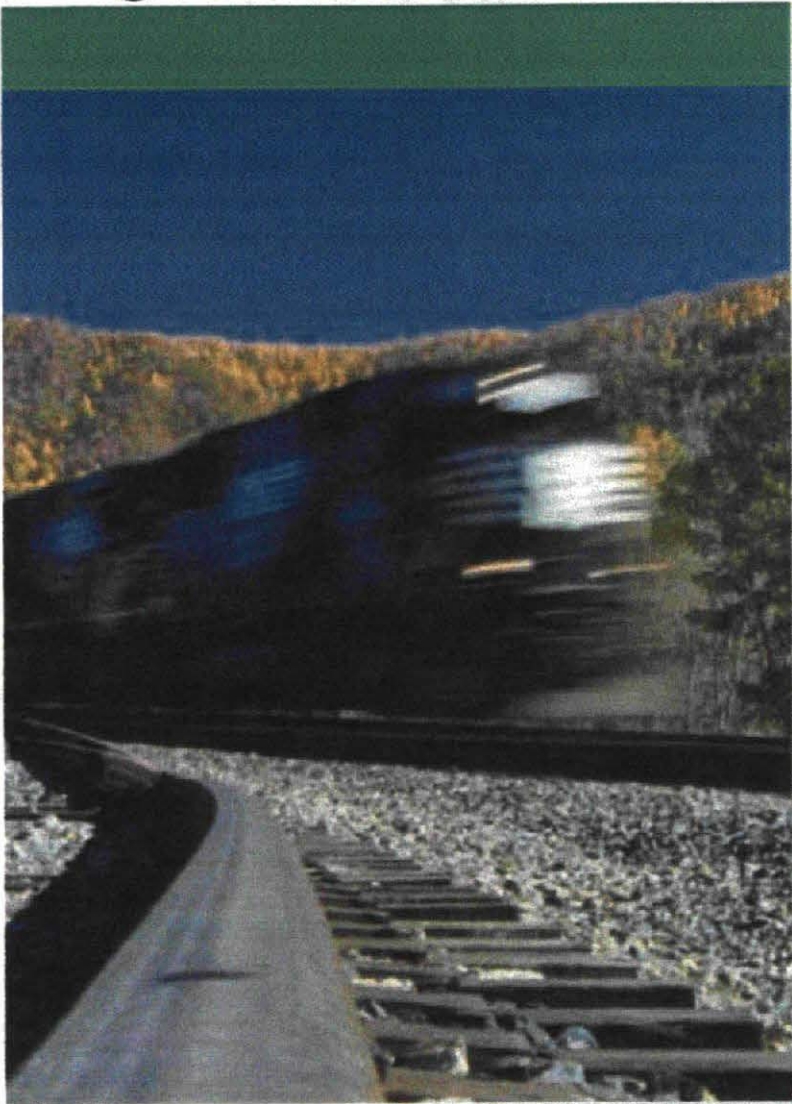
summer by the Department of Homeland Security and the U.S. Department of Transportation.

It recommends additional security action items related to the rail transportation of certain hazardous materials. It also notes the need and desire for a nationwide, uniform approach to railroad security. It says that state and local governments should not enact them into law and that such laws would likely be preempted.

Two rulemakings are now underway at the federal level. The first is by the Transportation Security Administration, which is part of the Department of Homeland Security. The second is by the Pipeline and Hazardous Material Safety Administration, which is part of the U.S. DOT. These complementary rulemakings address much of what is in this bill. For example, the proposed rules address subjects including protection of information related to hazardous materials, inspections of facilities by TSA personnel for security measures, monitoring the location of hazmat cars and maintaining a chain of custody of such cars. Proposed rules also would cover the storage of hazmat cars and limiting access to them, security inspections of the cars, data compilation of routing.

In short, each aspect of this bill would be no more than a duplication or complication of what is already being done on a national basis. Parts of it would conflict with the very security goals the bill is aimed at advancing. It would also run afoul of the goal of a coordinated nationwide approach to security. For these reasons the rail industry urges you to not pass this legislation.

Att #6b



FREIGHT RAIL SECURITY BRIEFING



ASSOCIATION OF
AMERICAN RAILROADS

TOMORROW. ARRIVING BY TRAIN.

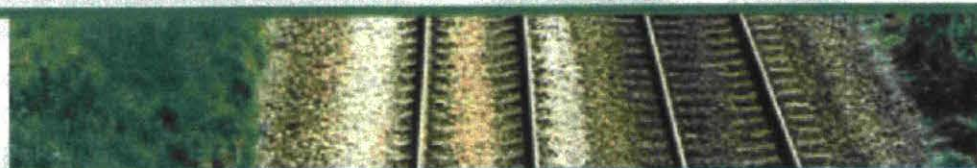


America's Freight Railroads are Serious About Security

- ◆ Created a comprehensive security plan immediately after 9/11, on our own initiative
- ◆ Comprehensive plan evolves and improves based on Top Secret intelligence
- ◆ Plan is put into action every day throughout the rail network, at every level of operations
- ◆ Vital transport link kept open and flowing on national basis



TOMORROW. ARRIVING BY TRAIN.



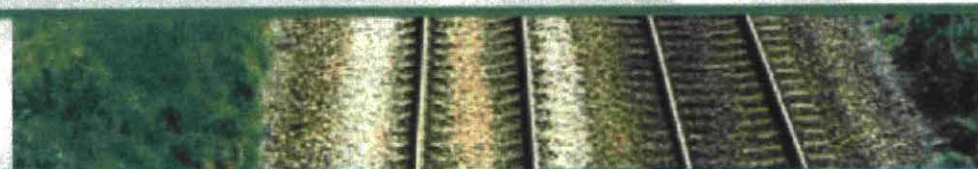
Freight Railroads Reacted Swiftly to 9/11

- ◆ Immediately tightened security and intensified inspections
- ◆ Restricted access to facilities
- ◆ Full service restored as quickly as possible in hard hit areas



ASSOCIATION OF
AMERICAN RAILROADS

TOMORROW. ARRIVING BY TRAIN.

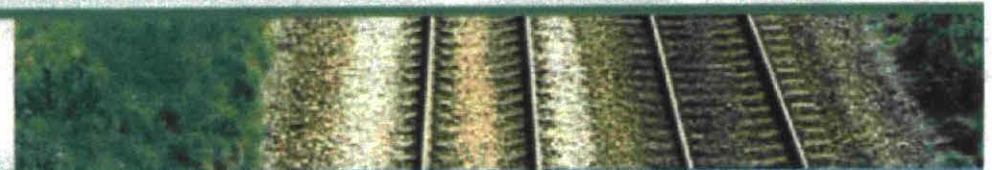


We Developed a Comprehensive Security Plan

- ◆ Initiated a post-9/11 security plan, based on actionable intelligence to protect our more than 142,000-mile rail network
- ◆ Conducted a comprehensive risk analysis covering the entire industry
 - ◆ Train operations
 - ◆ Communication and cyber-security
 - ◆ Identifying and protecting critical assets
 - ◆ Transportation of hazardous materials
 - ◆ Military liaison
- ◆ Worked closely with the federal intelligence community and security experts
- ◆ Identified and prioritized more than 1,300 critical assets



TOMORROW. ARRIVING BY TRAIN.

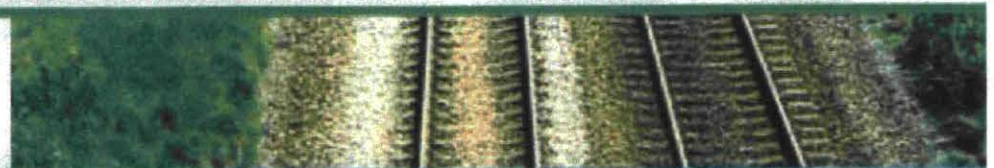


We Put Our Robust Security Plan into Action

- ◆ Comprehensive 24/7, priority-based blueprint of actions
 - ◆ Four progressively higher alert levels, each with a set of countermeasures to be activated based on perceived need
- ◆ More than 50 permanent changes to procedures and operations, including:
 - ◆ Restricted access to facilities
 - ◆ Increased tracking of certain shipments
 - ◆ Enhanced employee security training
 - ◆ Cyber-security improvement



TOMORROW. ARRIVING BY TRAIN.



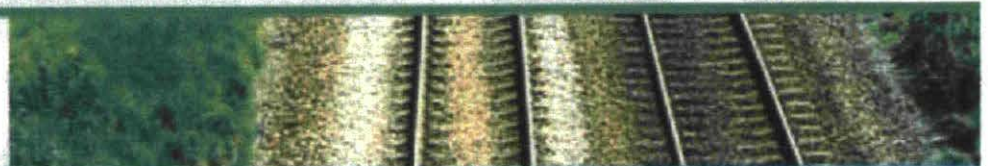
We Established a System to Gain Quick Intelligence and Respond Rapidly

- ◆ Rail police officer sits on the FBI's National Joint Terrorism Task Force and rail analysts sit in two Department of Homeland Security intelligence offices to help evaluate data at the Top Secret level
- ◆ Created a DOD-certified, 24/7 Operations Center, working at the Secret level to monitor and evaluate intelligence on potential threats and communicate with railroads through the Railway Alert Network (RAN)
- ◆ Created the Surface Transportation Information Sharing and Analysis Center (ST-ISAC) – operating at the Top Secret level – to collect, analyze and disseminate information on physical and cyber-security threats



ASSOCIATION OF
AMERICAN RAILROADS

TOMORROW. ARRIVING BY TRAIN.



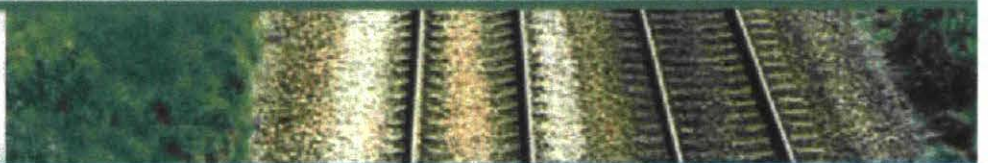
We Enhanced Security-Related Employee Training

- ◆ Employees are the industry's "eyes and ears"
- ◆ Security is now part of daily employee briefings
- ◆ Supplemental measures include:
 - ◆ Videos with examples of suspicious activities and how to report them
 - ◆ Rewards for useful tips and ideas
- ◆ Additional communications via emails, brochures, posters, newsletters and individual contact



ASSOCIATION OF
AMERICAN RAILROADS

TOMORROW. ARRIVING BY TRAIN.

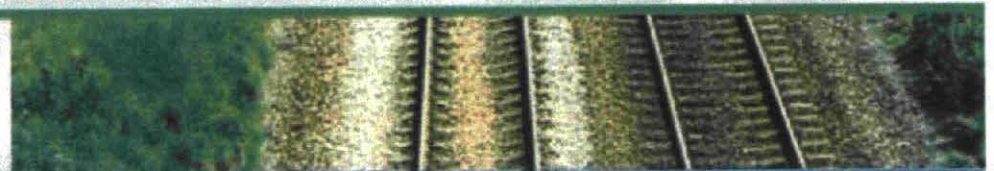


We Help Protect Borders

- ◆ Work closely with federal agencies to provide notification of shipments coming from abroad
- ◆ Work with Customs on the implementation of VACIS (Vehicle and Cargo Inspection System) examinations of freight cars crossing Mexican and Canadian borders
- ◆ Work with Customs and the Coast Guard at ports
- ◆ Work with the military to ensure the security of military shipments

“What we don’t want is for our checkpoints to become chokepoints.”

-Secretary of Transportation Norman Mineta



Our Actions Have Drawn Praise by Experts

“I can say how impressed I am by the scope of the analysis, the sophistication of the analytical framework, and the manner in which rail carriers have devoted substantial resources – both funding and senior leadership – to the completion of this important task (enhancing security). Railroads have done remarkable work.”

— **Allan Rutter, former Federal Railroad Administrator**

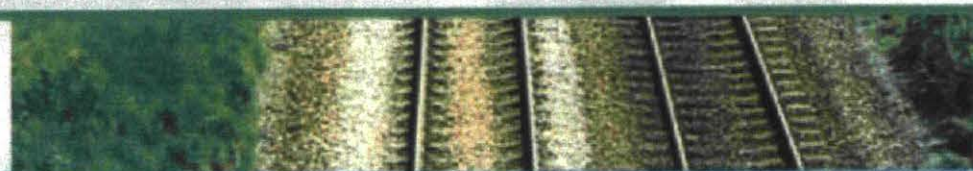
“The railroads’ execution of a voluntary, intense, and robust risk and vulnerability analysis has absolutely supported the security of our nation. The National Railroad “Terrorism Risk Analysis and Security Management Plan” is a model plan of action. The public and private sector should consider your security initiatives and efforts for wider adoption throughout the nation.”

— **Major General H. Steven Blum, Chief of Staff, NORTHCOMM**



ASSOCIATION OF
AMERICAN RAILROADS

TOMORROW. ARRIVING BY TRAIN.



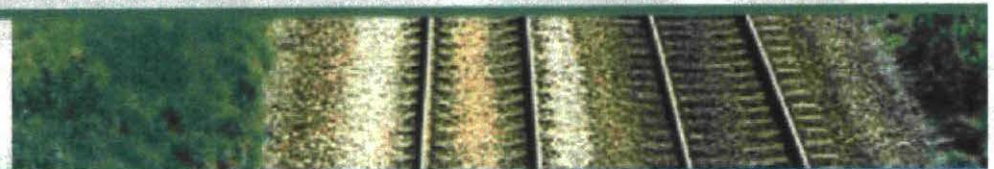
Our Actions Have Drawn Praise by Experts

- ◆ “They (aviation) really need to take a lesson from the rail industry. The rail industry went out and said that we...have a potential problem as far as vulnerability and that it could severely impact us economically. So they took it upon themselves to do a security check, they determined their vulnerabilities, spent the money and implemented security procedures which they abide by, not only as an independent organization, but as an industry.”
 - **Greg Feith, former accident investigator with the National Transportation Safety Board, on CNBC's News with Brian Williams**
- ◆ Railroads “have been terrific in coming to the plate and helping us figure out” strategic plans for the transportation sector.
 - **Admiral James Loy, Deputy Secretary of Homeland Security**
- ◆ “A”
 - **Grade received by the rail industry for its security efforts in an in-depth security assessment by *The Washington Post* on the response of private industry to 9/11. (Only a few industries received this grade.)**



ASSOCIATION OF
AMERICAN RAILROADS

TOMORROW. ARRIVING BY TRAIN.

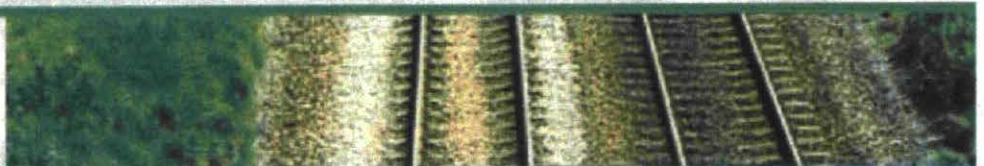


We Received the 2003 James S. Cogswell Award for Industrial Security

- ◆ Awarded by DOD's Defense Security Service
- ◆ Most prestigious award in the industrial security field
- ◆ Of nearly 11,000 cleared contractors, only 15 were selected for the award in 2003
- ◆ Based on overall quality of security program, level of top management support, excellent review results, knowledge and professionalism and other factors



TOMORROW. ARRIVING BY TRAIN.





AA # Lec
1-16-07

U.S. Department of Homeland Security
U.S. Department of Transportation



RECOMMENDED SECURITY ACTION ITEMS FOR THE RAIL TRANSPORTATION OF TOXIC INHALATION HAZARD MATERIALS

This document contains recommended security action items for the rail transportation of materials poisonous by inhalation, commonly referred to as Toxic Inhalation Hazard (TIH)¹ materials. Adoption of these measures is voluntary. Movement of large quantities of TIH materials by rail in proximity to population centers warrants special consideration and attention. These materials have the potential of causing significant numbers of fatalities and injuries if intentionally released in an urban environment.

The efficient operation of our critical interstate rail system requires a uniform nationwide approach to railroad security. The security action items listed in this document have been identified by the Department of Homeland Security (DHS) and the Department of Transportation (DOT) during risk assessments and security reviews and build upon existing DOT hazardous materials regulations. In particular the DOT regulations at 49 CFR Sections 172.704 and 172.800-804 require each transporter of hazardous materials, including TIH materials, to develop and implement security plans and to train appropriate employees in security measures. DHS and DOT are issuing these voluntary action items as measures that should be considered when security plans are developed, implemented, and revised. The action items are voluntary to allow the railroad carriers to adopt measures best suited to their particular circumstances, provided the measures are consistent with existing regulations. It is not our intent that these security action items be enacted into law by state and local governments. Existing federal regulations likely would preempt any such law.

The security action items have been divided into three categories 1) system security; 2) access control; and 3) en-route security. System security and access control refer to practices affecting the security of the railroad and its property. En-route security refers to the actual movement and handling of railcars containing TIH materials.

DHS and DOT recognize that no one solution fits all locations and circumstances. These security action items allow for flexibility in implementation based upon the assessed vulnerability of a particular process or operation. Where applicable, implementation of these action items to their fullest extent practicable should be the goal of the affected property owner and operator.

DHS and DOT reserve the right to update or modify these security action items as circumstances warrant.

¹ Under the Hazardous Materials Regulations (49 CFR 171-180), TIH materials are gases or liquids that are known or presumed on the basis of tests to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. See 49 CFR 171.8, 173.115, and 173.132.

**DEPARTMENT OF HOMELAND SECURITY
DEPARTMENT OF TRANSPORTATION**

SYSTEM SECURITY PRACTICES AFFECTING THE TRANSPORTATION OF TIH MATERIALS

1. Designate an individual with overall responsibility for hazardous materials transportation security planning, training, and implementation. This individual should report directly to an executive officer of the company. Designate an individual with overall responsibility for security planning and countermeasure implementation for company-designated critical infrastructure.
2. Conduct exercises, at least annually, to verify the effectiveness of security plan(s).
3. Develop and conduct an internal or external company audit program to independently verify that the security plan is being effectively implemented. The audit process should include a policy for record keeping of the audit and a method for management review and performance measurement.
4. Identify and then annually review company-designated critical infrastructure. Ensure that changes or additions to the operating environment have been properly addressed.
5. Maintain a communications network to receive timely government notices of current threat conditions and available intelligence information. Adjust security measures as necessary to reflect current threats and vulnerabilities based on available information.
6. Make use of opportunities to establish liaison and regular communication with federal, state, and local law enforcement, emergency responders, security agencies, and industry partners. Strive to make local law enforcement aware of railroad security issues.
7. Establish liaison and collaboration with other railroad security offices to promote information sharing and security enhancements.
8. As with industry safety programs, regularly reinforce security awareness and operational security concepts to all employees at all levels of the organization.
9. Reinforce the need for employees to immediately report to the proper authorities all suspicious persons, activities, or objects encountered.
10. Have contingency plans in place to supplement company security personnel to protect company-designated critical infrastructure as threat conditions warrant such as contracts to engage private security guard providers or procedures to request supplemental physical security assistance of federal, state, local, and tribal authorities.
11. Restrict access to information controlled by the railroad that it determines to be sensitive, in particular information about hazardous materials shipments and security measures.
12. Make available emergency response planning materials, and when requested, work with local communities to facilitate their training and preparation to deploy and respond to an emergency or security incident.
13. Cooperatively work with the federal, state, local, and tribal governments to identify through risk assessments those locations where security risks are the highest. Cooperatively work with the federal, state, local, and tribal governments to identify and implement protective measures at these locations.

**DEPARTMENT OF HOMELAND SECURITY
DEPARTMENT OF TRANSPORTATION**

ACCESS CONTROL SECURITY PRACTICES

14. Focus proactive community safety and security outreach and trespasser abatement programs in areas adjacent to company-designated critical infrastructure to reduce the likelihood of unauthorized individuals on company property and to enhance public awareness of the importance of reporting suspicious activity.
15. To the extent feasible and practicable, utilize photo identification procedures for company-designated critical infrastructure. Establish procedures for background checks and safety and security training for contractor employees with unmonitored access to company-designated critical infrastructure.
16. To the extent feasible and practicable, and as threat conditions warrant, restrict the access of contractors and visitors at non-public areas of company-designated critical infrastructure and monitor the activities of visitors in or around such infrastructure.
17. Establish employee identification measures for all employees. Conduct spot checks of identification as threat conditions warrant.
18. Implement measures to deter unauthorized entry and increase the probability of detection at company-designated critical infrastructure as threat conditions warrant. To the extent patrols are utilized, vary the pattern and schedule to avoid predictability.
19. Utilize interlocking signals and/or operating rules to prevent trains from occupying moveable bridges until they are locked in place.

EN-ROUTE SECURITY PRACTICES

20. Maintain systems to locate rail cars transporting TIH materials in a timely manner to enable the implementation of security measures when necessary and provide information on the location of rail cars carrying TIH materials to DHS and DOT, as requested, in case of events of national significance.
21. During required on-ground safety inspections of cars containing TIH materials, inspect for any apparent signs of tampering, sabotage, attached explosives, and other suggested items. Train employees to recognize suspicious activity and report security concerns found during inspections.
22. Provide local authorities with information on the hazardous materials transported through their communities consistent with AAR Circular OT-55.
23. Consider alternative routes when they are economically practicable and result in reduced overall safety and security risks. Work with the DHS and DOT in developing better software tools to analyze routes.
24. In rail yards, to the extent feasible, place cars containing TIH materials where the most practical protection can be provided against tampering and outside interference when appropriate for the threat level in the geographic area in accordance with the AAR Security Management Plan.

ATT #6d
1-16-07



**NORTH AMERICAN AEROSPACE DEFENSE COMMAND
AND
UNITED STATES NORTHERN COMMAND**



2 December 2002

HQs NORAD/USNORTHCOM/CS
250 South Peterson Boulevard, Suite 116
Peterson AFB, CO 80914-3010

Mr. Edward R. Hamberger
President and Chief Executive Officer
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001

Dear Mr. Hamberger:

Thank you for your personal efforts and briefing to the NORTHCOM Command Group and staff

The nearly three hours that we spent with you and your team decisively demonstrated that the National Railroads take security very seriously. The railroads execution of a voluntary, intense, and robust risk and vulnerability analysis has absolutely supported the security of our nation. The National Railroad "Terrorism Risk Analysis and Security Management Plan" is a model plan of action. The public and private sector should consider your security initiatives and efforts for wider adoption throughout the nation.

As we move forward, all public and private resources must be mobilized and integrated to ensure our national security. I believe we have embarked on establishing an extremely valuable relationship with the railroad industry. By developing this relationship, we can help ensure a more secure nation, population, and national economy.

Areas that we should explore include integrating railroad personnel into appropriate military planning and execution efforts. The railroads' physical asset database could provide great value to a force that may be called upon to protect these assets. We understand that the railroads' national plan is a plan of action that is driven by intelligence and information. We must foster and mature a strong, informative, and sharing relationship.

I applaud the railroads very significant security work! We look forward to working with you to fully integrate our efforts. Please call me directly at anytime.

Sincerely

H Steven Blum
Major General, USA
Chief of Staff

Att # 7
1-16-07 pm

TESTIMONY OF
GREG WILZ
DIRECTOR OF HOMELAND SECURITY
OFFICE OF THE ADJUTANT GENERAL
BEFORE THE
SENATE JUDICIAL COMMITTEE
JANUARY 16, 2007
SENATE BILL 2188

Mr. Chairman and Members of the Committee:

I am here today on behalf of Major General David Sprynczynatyk, the Adjutant General to provide information pertaining to Senate Bill 2188.

We taking a neutral position on this bill but will speak to its merits and possible impacts.

This bill recognizes the risks rail transportation presents and would require railroad owners and operators to identify such risks, plan appropriately for them, and share that information with the appropriate authorities. At the heart of this bill is a requirement to improve rail security and response to incidents that will occur. Of special interest to the Department is the requirement to notify the Department on an accidental releases or a derailment involving hazardous materials. Related to this requirement, last fall it took over six hours for the Department to secure the freight manifest that identified hazard materials involved train derailed in Griggs County from the rail owner/operator.

The bill is not without costs. In addition to the costs incurred by railroad owners and operators we estimate that to do this job right the Division of Homeland Security will expend up to a third time employee. The employee would be responsible for working with railroad owners, reviewing plans, coordinating with local emergency managers and emergency personnel, and assisting the commission with interpretation of plans and assisting with any such inspections as the commission my feel warranted.

Mr. Chairman and members of the committee, the Department of Emergency Service's is always concerned for the safety and security of North Dakota citizens. This bill would provide information to the Department that it currently does not have.

I would be pleased to respond to any questions, Mr. Chairman.

AH #8

1-16-07 pm

Testimony

Senate Bill 2188

Judiciary Committee

Tuesday, January 16, 2007; 11 a.m.

North Dakota Department of Health

Good morning, Chairman Nething and members of the Judiciary Committee. My name is Scott Radig, director of the Division of Waste Management for the North Dakota Department of Health. I am here today to testify in regard to Senate Bill 2188, which relates to railroad safety and risk assessments. The Department of Health is not opposed to the bill, but has several comments and questions regarding SB2188.

- The department is in support of being able to get complete and detailed manifests of train cargo in a timely manner in the event of derailments, accidents or spills. In responding to the derailment that went into Lake Ashtabula north of Valley City last summer, it was several days before we received a manifest from the railroad. When we did receive it, the detail shown was of little value because many cars were simply listed as "FAK," meaning Freight of All Kinds.
- We have questions as to the applicability of Section 1, Paragraph 4, on Page 2, requiring "any other individual performing work at a rail facility that is not an employee of the rail operator must receive training equivalent to that received by employees of the rail operator within a reasonable period of time." Department staff who respond to releases are OSHA trained, and we already are required to follow all applicable health and safety rules.
- Similar to the previous comment, we have questions as to the applicability of Section 1, Paragraph 5, on Page 2, requiring "any other person performing work at a rail facility which is not an employee of the rail operator must undergo an equivalent evaluation of their background, skills, and fitness as the rail operator implements for the operator's employees under an infrastructure protection plan." We are already authorized by state law for site access at regulated facilities and release sites.
- The department already has requirements for reporting any releases of hazardous materials under law and rules protecting waters of the state and regulating hazardous waste, and already works cooperatively with the Department of Emergency Services in responding to releases. How will the accident reporting requirement on Page 3 work with, or be different from, existing law?

by Chap. 61:28
←

This completes my testimony. I am happy to answer any questions at this time.

AH #1a
1-24-07

TESTIMONY IN OPPOSITION TO

SENATE BILL 2188

JUDICIARY COMMITTEE

JANUARY 24, 2007

Good afternoon Mr. Chairman and members of the Committee. My name is Faye Ackermans; I am the General Manager, Corporate Safety & Regulatory Affairs for Canadian Pacific Railway (CPR). Since 2001, my portfolio has also included oversight for security matters. With me is Phil Marbut. Mr. Marbut is the Area Manager, Hazardous Materials and Emergency Response. We are here to speak in opposition to bill SB 2188. In our view, this bill is not needed.

As you heard on January 15th when BNSF appeared before you, shortly after September 11, 2001, the rail industry mounted a comprehensive and detailed security assessment of rail assets, vulnerabilities, and threats. We created a plan which each railroad then implemented. The implementation involved well over 100 mitigating actions; some of these were permanent changes; others are planned and ready to put into action should the threat level increase. And we conduct table-top exercises each year to test the plan, identify areas of weakness and put additional mitigation into place.

This plan has been closely guarded and where it has been shared with government officials, it has received protection under the Security Sensitive Information (SSI) designation. So, I appreciate the concern that legislators have when we say we have a plan but we just can't show it to you. I assure you -- the plan does exist, it is comprehensive and it is responsive to both escalating security threat levels and concerns expressed by government.

Since 9/11, the federal government has also taken many steps to improve security and the railways have been partners in these efforts. For example, all rail shipments entering the United States go through an "x-ray" machine called VACIS (vehicle and cargo inspection system). VACIS along with radiation detection equipment, is used to identify objects and people that should not be on a freight car or container. In addition, Customs and Border Protection (CBP) place many security requirements on the railways. A document issued by CBP in August of 2006 is attached for your information. A few years ago, the Department of Transportation issued regulatory requirements (commonly referred to as HM-232) for railways to have security plans and to provide security training to rail employees at least every three years. The Department of Homeland Security has developed a National Infrastructure Protection Plan (NIPP). As required by the NIPP, the Transportation Security Administration (TSA) has produced a Transportation Sector Security Plan (TSSP), which among other things, requires the railways to participate in threat assessments. TSA is also expected to issue by the end of March 2007, a Freight Rail Annex to the TSSP to address freight rail-specific issues. In 2006, TSA issued two sets of voluntary actions for the rail industry. The first was a list of 24 activities which was provided to this committee last week. TSA inspectors are currently conducting reviews to assess compliance with these voluntary items. In November, TSA also issued an additional 3 voluntary action items, which I have attached. One of these will require large volumes of car movement data to be made available to TSA so that transportation risks of certain hazardous materials can be monitored closely. This data will also be protected under SSI. The Coast Guard has just

issued security background check and ID card requirements that affect railway operations in port facilities.

As you can appreciate, the railways have not only produced industry plans that are considered top-notch by security experts, but we are partnering with the federal agencies on many initiatives. Over time, I believe that most of these initiatives will be formalized in regulation. Thus, additional legislated or regulated requirements at the state or local government level are not needed, and indeed, might lead to contradictory or confusing outcomes.

To turn more specifically to the proposals in bill SB 2188 and to testimony last week, I thought it would be useful to supply some detailed commentary on four key issues.

Training and background checks:

All rail employees who are required to be trained by HM-232 have received security awareness training. CPR is on the third iteration of training material and in 2007, we will be introducing additional material which was sponsored by DHS and prepared by the National Transit Institute affiliated with Rutgers University. Contrary to SB 2188, we do not want our employees to be placed in harms way and we do not expect them to, as the proposed bill states, "... prevent and respond to acts of sabotage, terrorism or other crimes." We DO expect them to be our eyes and ears, to be aware of their environment and to immediately report suspicious objects or activity so that railway police can respond and investigate. All new employees to the railroad and all employees of contractors are required to undergo background checks and to receive security

awareness training. This is an action item from the industry plan and we have been progressively implementing the contractor requirements over the past few years.

Security Sensitive Information:

It is absolutely necessary to protect most of the information related to rail security matters. Thus, any security-related legislation must provide high levels of protection for this information. Requiring it to be kept merely "confidential" as this bill states, is not sufficient to protect the national interest.

Reporting incidents and communication with first-responders:

We recognize that first-responders need to have certain information to prepare for emergencies. Thus, we added a process to an industry protocol called OT-55 to share specific data – the top 25 hazardous substances by volume -- being transported in their community. If a first responder requires more information than the general protocol requires, CPR does have an additional process by which we may release more confidential information, but we place restrictions on its use. There is also a need to have information available during an emergency. Not only do train crews carry consist lists on each train, but the Operations Centre has the same information available to relay in an emergency. Requirements to report incidents involving release of hazardous materials are already in place.

Risk Assessments:

The freight railroads have already thoroughly assessed their vulnerabilities and risks and put actions in place to help mitigate those risks. TSA has been conducting corridor risk assessments for the past 2 to 3 years. DHS/TSA will also be conducting ongoing threat and risk assessments.

In summary, Bill SB 2188 is not necessary. Its proposed provisions are already addressed in actions being taken at the national level. It would add confusion and possibly conflicting requirements. The rail industry urges you not to pass this legislation.

To close my remarks, I want to address some concerns I understand were raised in the session last week. Attached is some additional information on safety and security and in particular on incident preparedness and response. Thank you.

Incident Preparedness and Response

Managing security and managing safety go hand-in-hand. Both require a broad frame-work encompassing hundreds of processes and activities to produce a transportation system with as few accidents as possible. Most of our safety and security efforts go into preventing accidents. In 2006, CPR's train accident rate was 1.44 accidents per million train miles. This was the lowest rate of all the large railways operating in North America. In 2005, CPR operations in the US had the lowest employee injury rate of Class II railways¹. We are committed to a safe and secure operation, but sometimes, accidents happen.

Once an accident has occurred, we have a very simple set of criteria to guide our response and recovery activities. In order of priority, these are:

- Safeguard the community and our employees from injury;
- Protect the environment and mitigate environmental damage;
- Preserve the evidence for accident reconstruction, cause-finding and corrective actions; and
- Safely restore the operation.

Successfully managing response and recovery requires a lot of pre-planning including specialized training and running table top and full scale exercises. Among Mr. Marbut's responsibilities is the co-ordination of response programs with the communities along CPR's right-of-way.

CPR has an ongoing program to assist communities in developing and conducting full scale response exercises/drills. Designing a full scale exercise takes approximately 8 months of planning. The design process identifies short falls such as lack of incident command training, lack of hazardous materials training, lack of an up-to-date emergency response plan, lack of protective measures to protect students in schools and lack of coordination between on-scene responders. Each drill costs CPR about \$12,000 in supplies, equipment, meals and consultant support. In addition, we stop all train traffic through the area for 4 to 5 hours at a cost of \$25,000.00 per hour and we provide security to control the site. We conduct 3 to 4 such exercises each year on our SOO Line territory.

An exercise like this was held in Minot just five months before the train accident. The Minot Fire Chief indicated to us following the accident that it really helped them prepare and manage all the activity taking place through utilizing their incident command system and having practiced working with all of the response agencies in advance.

Two years ago, a new free magazine called The North Dakota Fire Chief's Magazine was published. CPR publishes a ½ page advertisement to publicize our 24 hour emergency telephone number (800) 766-4357 (SOO HELP), along with instructions regarding the kind of information we need to react quickly.

¹ Class II railways are those with annual employee hours ranging from 6 to 15 million.

Over the past five years the CPR has trained nearly 600 first responders (Fire, Police, and Emergency Medial from Minot, Velva, Harvey, Kenmare, Velva, Enderlin, Leal, and Portal). Our training program takes 3 to 4 hours and covers shipping documents, hazard classes, labeling, placarding, railroad equipment, how to use the 2004 emergency response guidebook and a short table top exercise. We provide information on how CPR responds and how to contact us using our emergency number and we give each student their own copy of the 2004 emergency response guide book.

All levels of government need to evaluate their response capabilities and where gaps or weaknesses are identified, should spend more time and resources in planning and exercising their plans. When something does go wrong, the public has a right to expect that response and recovery will go smoothly. There are examples of exemplary execution of a response/recovery plan – the subway and bus bombings in London – and examples of poor execution – the Katrina evacuation. Response and recovery are core processes that all of our security planning efforts must address.

AH #16

1-24-07



U.S. Department of Homeland Security
U.S. Department of Transportation



**RECOMMENDED SECURITY ACTION ITEMS FOR THE
RAIL TRANSPORTATION OF TOXIC INHALATION HAZARD MATERIALS**

SUPPLEMENT NO. 1, ISSUED NOVEMBER 21, 2006

This document contains recommended security action items for the rail transportation of materials poisonous by inhalation, commonly referred to as Toxic Inhalation Hazard (TIH)¹ materials. Adoption of these measures is voluntary. Movement of large quantities of TIH materials by rail in proximity to population centers warrants special consideration and attention. These materials have the potential of causing significant numbers of fatalities and injuries if intentionally released in an urban environment.

The supplemental security action items contained in this document are the result of cooperative work between government and industry to craft meaningful and executable actions that will provide for the reduction in the security risk associated with the rail transportation of TIH materials. These action items are an addition to the original 24 action items that were issued on June 23, 2006.

The three action items contained herein represent the next step in enhancing the security of rail shipments of TIH. These three items especially item number 1, the provision calling for the preparation of site-specific plans for high threat urban areas build upon rather than replace the original 24 action items.

¹ Under the Hazardous Materials Regulations (49 CFR 171-180), TIH materials are gases or liquids that are known or presumed on the basis of tests to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. See 49 CFR 171.8, 173.115, and 173.132.

I. Introduction

The Department of Homeland Security and the Department of Transportation are concerned about the risk posed by the transportation by rail of bulk Toxic Inhalation Hazard materials (TIH) in High Threat Urban Areas. Our intention is to work with the freight rail industry to develop and implement security initiatives that will measurably reduce the risk and enhance the security of bulk Toxic Inhalation Hazards moved by rail in High Threat Urban Areas (HTUA). DHS and DOT have identified four areas to be addressed:

- The establishment of secure storage areas for rail cars carrying Toxic Inhalation Hazard (TIH) materials;
- The expedited movement of trains transporting rail cars carrying TIH materials;
- The positive and secure handoff of TIH rail cars at points of carrier interchange and at points of origination and delivery; and,
- The minimization of unattended* loaded tank cars carrying TIH materials

II. Risk Definition

All railroad freight carriers operating in High Threat Urban Areas will develop annexes to their security plans that are site specific to that High Threat Urban Area as defined by the Department of Homeland Security Urban Area Security Initiative (UASI) geographic areas.

The security plans will be risk-based and will include metrics that reflect population density and the amount of TIH materials transported by rail and the length of time that these shipments are in High Threat Urban Areas. The plans will be classified appropriately to protect sensitive information.

TSA will provide the rail carriers with a list of urban areas previously identified.

The goal of this initiative is to measurably reduce the risk of the transportation by rail of bulk TIH materials through high threat urban areas. Railroads will strive to reduce risk by 25 percent in the first year. TSA will work with the railroads on goals for succeeding years. Risk will be defined as a function of population density, number of TIH shipments, and the length of time TIH cars are unattended* and unsecured.

* Unattended Cars for the purpose of this document are those rail cars that are in a train or on railroad-controlled leads or tracks with no crew on board, no personnel active in the area, or no electronic monitoring. "Personnel" includes railroad employees or agents, law enforcement officers, private security guards, and rail customer employees.

III. Data Base

The risk reduction will be measured by the time TIH cars are held in yards, terminals, on railroad-controlled leased tracks and the time that TIH trains are stopped or standing within a HTUA. Railroads will strive to provide TSA baseline data within 60 days.

IV. Action Plans to Reduce Risk

Supplemental Security Action Item No. 1

Rail carriers with operations in High Threat Urban Areas (HTUA) will develop site-specific security plans that address the security of the transportation in bulk of TIH material in loaded rail cars ("TIH cars") in HTUA. The site-specific security plan should include specific and detailed measures to enhance the security of TIH cars in the carrier's custody. These plans should be completed within 90 days of the issuance date of the guidelines.

The site-security plan will address the following objectives for railroad operations within the HTUA:

- 1) Reduce the number of hours TIH cars are held in yards, terminals, and on railroad-controlled leased track in HTUA.
- 2) Minimize the occurrence of unattended* TIH cars in HTUA.
- 3) Reduce potential exposure to surrounding people, property and environment in HTUA. Special emphasis should be placed on reducing potential exposure to hospitals, high-occupancy buildings, schools, and public venues.
- 4) Reduce the occurrence of standing TIH trains in HTUA.
- 5) Provide a procedure for the protection or surveillance of unattended TIH trains in HTUA
- 6) Ensure compliance with CFR 49 Part 174.14 (48 hour rule).
- 7) Develop site-specific procedures for the positive and secure handoff of TIH cars at points of origin, destination, and interchange in high threat urban areas.

Supplemental Security Action Item No. 2

Rail carriers will not operate trains carrying TIH within a specified distance of public venues with National Special Security Events in progress and as requested by the appropriate agency responsible for overall event security coordination.

Supplemental Security Action Item No. 3

Rail carriers will, in the security planning process, identify and select areas throughout the carrier's system where cars containing TIH can be moved and held when threat conditions warrant. Risk and exposure to the general public are factors to be considered in the selection process. The rail carrier will provide this information to the government upon request.

V. Verification

The Transportation Security Administration and the Federal Railroad Administration will work cooperatively to evaluate the degree of implementation of these security action items through data analysis and inspection, and may take appropriate actions to encourage carriers to achieve risk reduction.

AH # 10

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Printed:

Wed Jan 24 10:11:52 CST 2007

Rail Carrier Minimum-Security Criteria

08/28/2006

Rail carriers must conduct a comprehensive assessment of their security practices based upon the following C-TPAT minimum-security criteria. Recognizing that rail carriers do not control their shippers and have a common carrier obligation to transport goods tendered to them, rail carriers shall work with their shippers on their security practices as set forth in these criteria.

These minimum security criteria are fundamentally designed to be the building blocks for rail carriers to institute effective security practices designed to optimize supply chain performance to mitigate the risk of loss, theft, and contraband smuggling that could potentially introduce terrorists and implements of terrorism into the global supply chain.

Rail carriers should periodically assess their degree of vulnerability to risk and should prescribe security measures to strengthen or adjust their security posture to prevent security breaches and internal conspiracies. The determination and scope of criminal elements targeting world commerce through internal conspiracies requires companies.

C-TPAT recognizes the complexity of international supply chains and security practices, and endorses the application and implementation of security measures based upon risk. Therefore, the program allows for flexibility and the customization of security plans based on the member's business model. Security measures, as listed throughout this document, must be implemented and maintained as appropriate to the carrier's business model and risk understanding.

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Business Partner Requirements

Rail carriers must have written and verifiable processes for the screening of new business partners, including carrier's agents, sub-contracted rail carriers, and service providers, as well as screening procedures for new customers, beyond financial soundness issues to include security indicators. These processes apply to business partners and service providers not eligible for C-TPAT membership.

Security Procedures¹

- Written procedures must exist to address specific factors or practices, the presence of which would trigger additional scrutiny by the rail carrier. U.S. Customs and Border Protection (CBP) will work in partnership with the rail carriers to identify specific information regarding what factors, practices or risks are relevant.
- For those business partners eligible for C-TPAT certification (importers, ports, terminals, brokers, consolidators, etc.) the Rail carrier must have documentation (e.g., C-TPAT certificate, SVI number, etc.) indicating whether these business partners are or are not C-TPAT certified. Non-C-TPAT business partners may be subject to additional scrutiny by the Rail carrier. Rail carriers should institute appropriate security procedures for their contract service providers.
- Rail carriers have a common carrier responsibility for all cargo loaded aboard their rail cars, they must communicate the importance of security to their employees as a fundamental aspect of their security policies.
- Rail carriers should strongly encourage that contract service providers and shippers commit to C-TPAT security recommendations.

Rolling Stock Security

Rail carriers shall have procedures to protect against the introduction of unauthorized personnel and material.²

- It is recognized that even though a carrier may not "exercise control" over the loading of rail cars and the contents of the cargo, rail carriers must be vigilant to guard against stowaways, and the smuggling of implements of terrorism and contraband. The rail carrier shall have procedures in place to guard against the loading of contraband while trains are in transit to the border, even in regards to unforeseen train stops.
- Rail carriers must have procedures in place for reporting unauthorized entry into rail cars, and locomotives.
- Rail carriers must maintain inventory information and movement records on each rail car and use the physical rail car tracking technology that is inherent to the North American rail network system.

Inspection Procedures

- Rail personnel should be trained to inspect their rail cars and locomotives, for anomalies. Training in conveyance searches should be adopted as part of the company's on-the-job training program. Training that is held should be recorded or documented in a personnel file of the employee that attended the training.
- A systematic inspection must be made prior to reaching the U.S. border.
- During required on-ground safety inspections of rolling stock entering the U.S., conduct security inspections for any apparent signs of tampering, sabotage, attached explosives, contraband, stowaways, and other unusual or prohibited items. It is understood that railroads must comply with the Federal Railroad Safety Act and the Hazardous Materials Transportation Act.
- CBP will work in partnership with the rail carriers to identify specific information regarding what factors, practices or risks are relevant including the use of non-intrusive gamma ray technology or other inspections.

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Conveyance Tracking and Monitoring Procedures

- Rail carriers must maintain, to the extent feasible and practicable, locomotive and rail car integrity while the train is en route to the U.S. border by maintaining inventory information and movement records for each rail car. Rail carriers must record unannounced or unforeseen train stops.
- Rail carriers must utilize existing tracking and monitoring processes to track conveyances while they are en route to the U.S. border. Unannounced or unforeseen train stops shall be documented.
- Railroad supervision must ensure that tracking and monitoring processes are being adhered to.

Seals

The sealing of rail cars, and intermodal maritime containers, along with continuous seal integrity are crucial elements of a secure supply chain, and remains a critical aspect of a rail carrier's commitment to C-TPAT. To the extent practical, a high security seal should be affixed to all loaded rail cars bound for the U.S. All seals must meet or exceed the current PAS ISO 17712 standards for high security seals. Rail carriers crossing the U.S. border must also fully comply with seal verification rules and seal anomaly reporting requirements once promulgated and mandated by the U.S. government.

- Clearly defined written procedures must stipulate how seals in the rail carrier's possession are to be controlled during transit. These written procedures should be briefed to all rail crewmembers and there should be a mechanism to ensure that these procedures are understood and are being followed. These procedures must include:

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Physical Access Controls

To the extent practical, rail carriers should institute access controls to prevent unauthorized entry to rail property and rail cars and should maintain control of employees and visitors. Access controls should include the positive identification of employees, visitors, service providers, and vendors. Rail companies should also conduct spot inspections of motor vehicles on railroad property where international shipments are handled.

- **Employees**

An employee identification system must be in place for positive identification and access control purposes. Employees should only be given access to high security areas such as dispatch centers if necessary for the performance of their duties. Railroad supervision or railroad police must adequately control the issuance and removal of employee, visitor and vendor identification badges. Procedures for the issuance, removal and changing of access devices (e.g. keys, key cards, etc.) must be documented. Establish employee identification measures for all employees. Conduct spot checks of identification as threat conditions warrant.

- **Visitors, Vendors and Service Providers**

To the extent feasible and practicable, and as threat conditions warrant, restrict the access of contractors and visitors to non-public areas of company-designated critical infrastructure and monitor the activities of visitors in or around such infrastructure.

- **Challenging and Removing Unauthorized Persons**

Procedures must be in place to identify, challenge and address unauthorized/unidentified persons.

- **Unauthorized Persons**

- Implement measures to deter unauthorized entry and increase the probability of detection at company-designated critical infrastructure. Provide safety and security training for employees at facilities where international shipments are handled.
- Establish procedures to detect or deter unmanifested material and unauthorized personnel from gaining access to trains crossing into the United States.
- Reinforce the need for employees to immediately report to the proper authorities all suspicious persons, activities, or objects encountered.
- Focus proactive community safety and security outreach and trespasser abatement programs in areas adjacent to company-designated critical infrastructure to reduce the likelihood of unauthorized individuals on company property and to enhance public awareness of the importance for reporting suspicious activity.

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Personnel Security

Written and verifiable processes must be in place to screen prospective rail employees and to periodically check current employees.

- **Pre-Employment Verification / Background Checks / Investigations**

Application information, such as employment history and references must be verified prior to employment.

- **Background checks / investigations**

Depending on the sensitivity of the position, background checks and investigations shall be conducted for current and prospective employees as appropriate and as required by foreign, federal, state and local regulations. Conduct background checks on all new railroad employees. Once employed, periodic checks and reinvestigations should be performed based on cause, and/or the sensitivity of the employee's position.

- **Personnel Termination Procedures**

Companies must have procedures in place to remove identification, facility, and system access for terminated employees.

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Procedural Security

Security measures must be in place to ensure the integrity and security of processes relevant to the transportation, handling, and storage of cargo in the supply chain. Procedures must be in place to prevent, detect, or deter unmanifested material and unauthorized personnel from gaining access to rail cars and locomotives.

Security procedures should be implemented that restricts access to the rail car and locomotive and prevents the lading of contraband while en-route from facilities in international locations to the United States.

Procedures must be in place to record and immediately report all anomalies regarding train crew personnel to U.S. Customs and Border Protection. Likewise, rail companies should investigate all suspicious activity and report it to the proper authority.

- **Bill of Lading/Manifesting Procedures**

Procedures must be in place to ensure that the information in the carrier's cargo manifest accurately reflects the information provided to the carrier by the shipper or its agent, and is filed with CBP in a timely manner. Documentation control must include safeguarding computer access and information.

- **Reporting Train Crew Personnel**

Identify all personnel on the train as required by CBP.

- **Reporting Suspicious Cargo**

All instances of suspicious cargo shipments should be reported immediately to the nearest CBP port-of-entry or other nearest appropriate authority.

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Physical Security

Procedures must be in place to prevent, detect, or deter unmanifested material and unauthorized personnel from gaining access to conveyance, including concealment in rail cars. Rail carriers should incorporate the following C-TPAT physical security criteria throughout their supply chains as applicable.

- **Fencing**

Perimeter fencing should enclose areas deemed by the rail carrier to be a critical infrastructure.

- **Parking**

Privately owned vehicles should be monitored when parked in close proximity to rolling stock that crosses the international border.

- **Building Structure**

Buildings must be constructed of materials that resist unlawful entry. The integrity of structures must be maintained by periodic inspection and repair.

- **Lighting**

Adequate lighting must be provided where appropriate, for entrances and exits.

- **Alarms Systems & Video Surveillance Cameras**

Where appropriate, alarm systems and video surveillance cameras should be utilized to monitor premises and prevent unauthorized access to rail property

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Security Training and Threat Awareness

A threat awareness program should be established and maintained by security personnel to recognize and foster awareness of the threat posed by drug smugglers and terrorists. Employees must be made aware of the procedures the rail carrier has in place to address a situation and how to report it.

Additionally, specific training should be offered to assist employees in maintaining rolling stock integrity, recognizing internal conspiracies, and protecting access controls

- Establish an employee security awareness-training program to include procedures to

recognize suspicious activity and report security concerns.

- During required on-ground safety inspections of international shipments inspect for any apparent signs of tampering, sabotage, attached explosives, and other suspicious items. Train employees to recognize suspicious activity and report security concerns found during inspections and in transit.
- Implement a policy to preclude unnecessary disclosure of sensitive information.

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Information & Technology Security

- **Password Protection**

Measures should be taken to protect electronic assets, including advising employees of the need to protect passwords and computer access. Automated systems must use individually assigned accounts that require a periodic change of password. IT security policies, procedures and standards must be in place.

- **Accountability**

IT security policies, procedures, and standards must be in place to address the abuse of IT including improper access, sharing, tampering or the altering of business data. All system violators must be subject to appropriate disciplinary actions for abuse.

¹C-TPAT recognizes that rail carriers are common carriers and are already subject to defined security mandates created under the Department of Transportation, such as the Federal Railroad Safety Act and the Hazardous Materials Transportation Act, as well as the Customs and Border Patrol (CBP) Trade Act of 2002, Maritime Transportation Security Act, FDA 2002 Bio-Terrorism Act, and other applicable federal requirements of the TSA. It is not the intention of C-TPAT to duplicate these security requirements rather C-TPAT seeks to build upon the government security measures and industry practices already in place.

²For purposes of this document, the term rolling stock is used to denote locomotives and rail-cars.



AH # 2a
1-24-07

Brian J. Sweeney
Legislative Counsel
Exec. Dir., Gov't Affairs

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brian.sweeney@bnsf.com

January 22, 2007

Senator Dave Nething
State Capitol
Bismarck, ND

RE: SB 2188 Questions

Dear Sen. Nething:

I would like to follow up on questions you raised during my testimony before your Committee in opposition to SB 2188 on January 16.

Question 1: Are there current federal regulations that address the content of SB 2188?

Yes. 49 CFR 172 goes into great detail. For example, 49 CFR 172.600 requires that emergency response information regarding hazardous material be on the train and made immediately available to federal, state or local responders. That information must include an emergency response phone number that is covered 24 hours a day. The content of the emergency response information is found in 172.602. 49 CFR 172.802 requires railroads to have a security plan dealing with personnel security, unauthorized access and en route security of shipments. It requires the plan be in writing and updated as circumstances change. Other sections deal with training requirements. In short, there is federal regulation in place.

Question 2: Is there security training for contractors who work on our property?

While the safety training for contractors emphasizes personal safety and not causing rail-related accidents, one of the courses does deal with security awareness. Also, contractors are typically accompanied by a BNSF person when they are working on our property. For example, when utility companies are installing facilities on our property, there is a BNSF flagman present.



Question 3: Who is contacted by the railroad when there is an emergency?

Typically, the emergency call goes to the local police department. If the location of the emergency is outside of a city, the call goes to the county sheriff's department. Those agencies then make additional local contacts as necessary. If there is hazardous material involved, our hazmat team members are contacted and they make additional contacts with state agencies that have jurisdiction.

If you have any other questions, I would be happy to provide answers.

Sincerely,

Brian J. Sweeney

**Testimony of Greg Jeffries, BNSF Railway
SB 2188
January 24, 2007**

Good afternoon Senator Nething and members of the committee. My name is Greg Jeffries; I am manager of environmental remediation for BNSF Railway Company in Minneapolis, my territory includes North Dakota. I am trained in responding to hazardous materials incidents and work closely with local emergency responders. I help train firefighters and other responders in the proper response and handling of railroad hazmat incidents.

Thank you for the opportunity to appear here and respond to earlier comments made about an incident that occurred last August near Luverne, North Dakota. I was personally involved in the response and cleanup effort following that incident and firmly believe that the problem was the need for more training and education about railroad incidents. All of the hazardous material information was on that train, as required by federal regulation. That information was promptly delivered to responders, as required by federal regulation. The problem was that state personnel were asking for information that, if it existed at all, was not in our possession. There seemed to be a feeling that we were holding something back or not being forthcoming, because we didn't relay information that we didn't have.

The problem revolves around the information we have about intermodal shipments. Intermodal traffic is trailers or shipping containers placed on flatcars. When an intermodal customer delivers a shipment to us, they are required to list any hazardous materials in the load regardless of amount or weight, but not the other non hazmat

contents. The US DOT required information is the amount, proper shipping name, hazard class and ID number. The rest of the non hazmat contents is listed as FAK, or "Freight All Kinds." Say we get a shipment going to a Wal Mart store. The container might contain sweatshirts, CDs, sneakers and several cartons of hairspray. The hairspray would be listed as a hazardous material, but the other contents would not be detailed on the documents we receive from the shipper. It would just say FAK.

For example, attached is a copy of the manifest for an intermodal train that will travel through North Dakota this week. You will see that it shows the shipments of hazardous materials and provides contact numbers to call in case of emergency. That is a requirement of federal regulations. This information is on the train and to be provided immediately to local, state or federal responders. Again, those are requirements of federal regulations. This same information was on the intermodal train that derailed near Luverne.

After the incident in Luverne, our Resource Operations Communications Center notified the State Police, Sheriff and or local police and our Service Interruption Desk contact the State Department of Transportation. We followed up by faxing the trainlist showing the train's contents to the Department of Health, which sent personnel to the site because of the hazmat present in some of the containers that fell from the bridge and broke open.

At the site, they saw situations like the one I just described – a container that had both hazmat and other non-hazardous materials. Because they couldn't find the non-

hazardous material -- CDs, sneakers and sweatshirts -- on the manifest, they assumed we were not giving them all the information and kept demanding more. We explained several times that we weren't holding back, we just didn't have it. The only way to get it is to contact each shipper and ask for a detailed breakdown of each load.

The derailed containers included some carrying mail for the US Postal Service. We were asked by the state responders what was in the mail and if it posed an environmental hazard. Obviously, since the Post Office doesn't even know what's in the mail, we didn't have that information. Again, we weren't holding back, we simply cannot give them information that doesn't exist. All the information related to the hazardous materials was on the train, all of it was given to them promptly.

I think the problem is that this is one area -- rail transportation, reading freight waybills and so on, where more training is needed. As was noted earlier, BNSF has provided training to more than 1,100 emergency responders in North Dakota just since September 11, 2001. I am willing to arrange additional training in this area for more of the people at the state level in North Dakota.

Thank you. I will be happy to answer any questions you may have.

AH #3

S. B. 2188

Presented by: William W. Binek
Public Service Commission

Before: Senate Judiciary Committee
Honorable David Nething, Chairman

Date: January 24, 2007

TESTIMONY

Chairman Nething and committee members, my name is William Binek. I am the Chief Counsel for the Public Service Commission. The Commission asked me to appear here today to testify on Senate Bill 2188.

The Commission is officially neutral on SB 2188, but would request significant changes if the legislature is inclined to pursue the intent behind the legislation. The primary concern we have with the present form of this bill is that it does not clearly define the roles of the agencies named in the bill. After discussions with others we believe that the intent of this bill was primarily related to homeland security-type issues, and that the ongoing oversight of the issues would be primarily the responsibility of the Division of Homeland Security. The role of the PSC was envisioned to be one in which it hears and adjudicates complaints under the section. Yet this is not what is accomplished in the text of the bill. The bill appears to vest ultimate responsibility for the ongoing operations and inspections associated with this program with the PSC itself. Currently, the Commission does not have the necessary personnel or appropriation that is required under this legislation. The legislature would need to add both FTE and an appropriation to the agency budget in order for the legislation to have any real meaning at all. If the committee wishes the PSC to simply hear cases brought to it by the Division of Homeland Security, or others, that would likely be acceptable within our current appropriation, but that would require significant amending to make that intent clear.

In the alternate, the Commission believes that these proposed sections could be placed in Chapter 37-17.1 of the North Dakota Century Code because they deal with homeland security issues.

The Commission would then recommend that reference to the Public Service Commission be eliminated in the language of the bill. The Division of Homeland Security has the expertise to review the proposed infrastructure protection program, to conduct inspections and to determine if a rail operator is in compliance with the requirements of the law. .

Section 37-17.1-07.1 contains penalty provisions, both civil and criminal, that are enforceable through the Attorney General. Similar provisions can be included to cover violations under this proposed legislation. The Commission has authority to assess only civil penalties up to a maximum of \$5,000.

The Commission recommends that exemptions from the open records requirements be included in Chapter 44-04.

I have attached proposed amendments for your consideration that would accomplish this if that is your preferred option.

This completes my testimony. I will be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2188

Page 1, line 8, remove "commission, the" and after "security" delete ","

Page 2, line 16, remove "commission, in consultation with the"

Page 2, line 17, after "security" delete ","

Page 2, line 23, remove "commission, in consultation with the"

Page 2, line 24, after "security" delete ","

Page 2, line 25, remove "commission, the"

Page 2, line 26, after "security" delete ","

Page 2, line 29, remove "commission, the"

Page 2, line 30, after "security" delete ","

Page 3, line 1, remove "commission, in consultation with the" and after "services" delete ","

Page 3, remove lines 6 and 7.

Page 3 after line 5, insert

- "9. a. A person who violates any of the reporting, planning, or notification requirements of this section is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.
- b. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government attempting to perform duties and functions required by this section, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

10. If the director of the division of homeland security determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32.40.

Testimony in Support of SB 2188

Mr. Chairman and members of the Committee, for the record my name is Representative Lisa Wolf from District 3 in Minot. I am here to testify in support of SB 2188 which, as amended by the Senate Judiciary committee, requires that a railroad corporation shall provide immediate notification to the department of emergency services of an accidental release of a hazardous material.

According to National Homeland Security, our railroads are the least protected of all transportation systems. Our railways are carrying more and more hazardous chemicals and the accidents that cause damage to the cars carrying dangerous chemical is on the increase as indicated in the chart you received. We need to make sure our communities are notified when these accidents occur.

Let me share with you what happened in Minot.

On January 18, 2002 at approximately 1:40 a.m. with an outside air temperature well below zero, a Canadian Pacific train derailed on

the outskirts of Minot, North Dakota near a subdivision called Terracita Vallejo. Because of the nature of the accident, Terracita Vallejo immediately lost all power—causing terror and panic among residents. They were unable to call for help, and had no idea what had happened, or what was going on. Approximately 290,000 gallons of anhydrous ammonia was spilled, making it one of the largest spills in history. All the residents of Terracita Vallejo and many residents of Minot were trapped in their home for hours, many not knowing what was happening or what efforts, if any, were being made to rescue them. Many citizens, including children, suffered injuries that continue to this day. The ammonia was so strong that it killed one resident who tried to escape from the burning and suffocating fog that blanketed Minot and attacked us in our homes. Two years after the derailment, the National Transportation Board concluded that poor track maintenance was the reason for the derailment. Because of this accident, Minot lost one resident, and 1,441 of its residents, both

adults and children, were injured with the long term affects of this exposure still unknown.

Thank goodness the occupants of the train had a cell phone and were able to call the police and notify them of this accident.

This bill further includes a legislative council study. This study is needed to help provide information regarding risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes. This information is also relevant and pertinent to keeping our railway systems ^{accountable} and our communities safe.

Mr. Chairman, members of the committee, I respectfully ask that you consider a Do Pass on this bill.

Thank you for your time, and I will answer any questions you may have.



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

Chairman **DeKrey**, Members of the House Judiciary Committee

My name is Mike Muscha, Chairman of the North Dakota Legislative Board for the Brotherhood of Locomotive Engineers and Trainmen. I'm here today representing Engineers and Trainmen across this great state.

In all fairness to this House committee, I would like to address Section 2 the "shall study" portion of this bill.

I want to echo what the sponsors of this bill said I do believe there will be an act of terrorism or an act of sabotage using a rail road, in the future. I stand in support of **Senate Bill 2188** as it crossed over from the Senate but would like to explain the importance of Legislative Council shall study. The original bill was designed to unite our forces in North Dakota to prevent an act from happening and yet be prepared should such an act take place in our state.

The **Risk Assessment and Railroad Safety** portion of the bill, would allow the Legislative Council to evaluate a rail facilities operator's capabilities to respond to potential accidents and emergencies, including sabotage, terrorism and other crimes. I would like to give you one example of how I envisioned a risk assessment of a railroad facility. I was involved in a mock staged accidental release at this facility we discovered there weaknesses.

- A. Location and function Rogers, ND Agrium
- B. & C Type of Cargo Anhydrous Ammonia
- D Volume stored _____ and unloading capacity 14 cars
- E. Current capabilities in case of an act or incident
- F. Training for rail operators and subcontractors
- G. Respond to an act of terrorism or an accidental release
- H. Rail Operator's communication and response time
(This is addressed in the Accident report portion of the bill)

The Legislative Council needs to pick an operator of a rail facility and ask the question, "does this facility comply with A through H?" Next, does this rail facility bring in subcontractors and do they comply with A through H?

Whistleblower protection

The Engineers and Conductors that ride the trains are the eyes and ears and the real first responders of an incident. The Legislative Council needs to address whistleblower protection for these employees.



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

The BLET is prepared to assist the legislative council if asked.

Dennis Willer and Ron Huff will address the **Accident Report** portion of SB 2188 but I did provide copies of an incident where CSX RR had an hour and 10 minutes delay in reporting and incident. With the deadly cargo we haul, this must not happen in North Dakota.

I recommend a due pass on the bill.

I will answer any question Mr. Chairman, and committee members.

Mike Muscha
Chairman, BLET NDSL
221 Oehlke Ave
Enderlin, North Dakota 58027-1132
loceng671e@drtel.net



CSX call to emergency responders delayed an hour

CSX Transportation officials waited more than an hour to tell local emergency responders that a train carrying a brew of toxic chemicals had derailed in Handley, W. Va., Tuesday morning (Feb. 6), according to this report by Davin White and Ken Ward Jr. published by the Charleston Gazette.

Robert Sullivan, a CSX media spokesman, confirmed Thursday that the derailment actually occurred at 3:38 a.m. - more than an hour before the company notified Metro 911 at 4:48 a.m.

Sullivan said that the delay was a mistake by the company, but could not immediately explain why it happened.

"We should not have waited that long," Sullivan said. "This took longer than it should have, and we are going to find out why this happened."

He said one possible explanation was that CSX workers were trying to gather more information about the incident before calling local emergency responders.

"We try to develop as much information as we can before we call emergency responders, so that they have as much information as possible - so that we have something to give them," Sullivan said. "If there was an hour or more [delay], that would not be the normal course for us. We're going to go back and look at that."

Kanawha County Commission President Kent Carper complained Thursday of the potential for a "very significant event." Some of the cars that derailed contained propane and chlorine residue.

In a memo to Kanawha County emergency services director Dale Petry, Carper asks him to confirm that the wreck occurred at 3:38 a.m. Tuesday, with CSX failing to inform Metro 911 until 4:48 a.m.

He blames this for the continued delay in response throughout the event.

John Olson

From: Sweeney, Brian J [Brian.Sweeney@bnsf.com]
Sent: Wednesday, January 17, 2007 11:47 AM
To: John Olson
Subject: FW: Z DTRS

-----Original Message-----

From: Brady, Patrick M
Sent: Wednesday, January 17, 2007 11:43 AM
To: Sweeney, Brian J; Shewmake, Charles W; Werner, Douglas W
Cc: Chapman, Ed R; Bruce, Mark C; Jeffries, Gregory J
Subject: RE: Z DTRS

I talked with Greg Jeffries about the derailment. He said that there was NO delay in getting the hazmat information to the local and State responders. The issue was the other non-hazmat freight of all kinds (FAK), that I described in earlier emails, that we could not specifically identify.

Greg also brought up the issue with the US Mail shipments that were involved in the derailment. The local/State Responders wanted us to identify "what was in the US Mail and whether any of it posed a danger to the environment". As you may know, the US Postal Services must follow all US DOT Regulations and they prohibit any and all hazardous materials shipments. Additionally, when you send a package via US Mail, the Postal Service does not make you identify what is in the package unless you are going to purchase their insurance. So, if the Postal Services doesn't know what is in the package there is no way the we are going know what is in the package. To further complicate this, the Postal Services does not track most of their packages so they don't even know who their customers are.

at

-----Original Message-----

From: Sweeney, Brian J
Sent: Wednesday, January 17, 2007 10:00 AM
To: Brady, Patrick M; Shewmake, Charles W; Werner, Douglas W
Cc: Chapman, Ed R; Bruce, Mark C
Subject: RE: Z DTRS

Thanks. Do you know if there was any delay in getting this info into someone's hands right after the Luverne derailment, or was it only the non-hazmat info they had to wait for? Their statement was that they didn't know what was on the train for several hours, but they should have known the hazmat in the consist two minutes after they got there unless there was a delay in the handoff.

-----Original Message-----

From: Brady, Patrick M
Sent: Wednesday, January 17, 2007 9:47 AM
To: Sweeney, Brian J; Shewmake, Charles W; Werner, Douglas W
Cc: Chapman, Ed R; Bruce, Mark C
Subject: RE: Z DTRS

I don't see any problems with forwarding it.

-----Original Message-----

From: Sweeney, Brian J
Sent: Wednesday, January 17, 2007 9:45 AM
To: Brady, Patrick M; Shewmake, Charles W; Werner, Douglas W

Cc: Chapman, Ed R; Bruce, Mark C
Subject: RE: Z DTRS

Any problem with me relaying this message directly to our lobbyist to give to legislators?

-----Original Message-----

From: Brady, Patrick M
Sent: Wednesday, January 17, 2007 9:42 AM
To: Sweeney, Brian J; Shewmake, Charles W; Werner, Douglas W
Cc: Chapman, Ed R; Bruce, Mark C
Subject: FW: Z DTRS

1 of 2

Below is a train list with all of the hazmat information for an intermodal train that is moving in ND today. This is the same information carried by our traincrews. BNSF's rules require that traincrews give a copy of this trainlist to arriving emergency responders. So it is available immediately to them and it also can be emailed or faxed to other responders.

In the event of a "major" (i.e. cars on their sides) mainline derailment or hazmat release, that meets ND current notification requirements, the ROCC contacts either the 911 center in a community or the Sheriffs Dept. The Service Interruption Desk would notify the State and the Federal Gov.

The issues that come up from time to time is when do you contact 911 for a derailment w/o a release? The officials from local and State governments would say that they want to know about all derailments or anytime a train goes in undesired emergency. We believe this would be "crying wolf" because a derailment with one wheel on the ground and a undesired emergency due to a failed brake hose does not require local fire and police to get involved.

-----Original Message-----

From: CHAER (TAO)
Sent: Wednesday, January 17, 2007 9:12 AM
To: Brady, Patrick M
Subject: Z DTRS

Date: Wednesday, 17 January 2007 9:12am CT
To: Patrick.Brady
From: CHAER@BNSF
Subject: Z DTRS

TRNNB001 ***** Train Documents *****
01/17/07
E R CHAPMAN
07:10:29PT .

--- We Can Move Your World ---

Train Z CHCPTL9 16A Passed SELZ ND 01/17/07 0840 0 hr 17 min
Ahead

Z CHCPTL9 16 Unit Train Set ID:

Head End Dyn Evt 2Wy Cum Loco Online

----Isolated----

Locos HP AvlHP Brk Rec ETD Axl Tons Dir Destin Cd From To

BNSF 1089 4400 4400 8 EF+ Y N 6 196 WEST PORTOR
BNSF 840 4135 4135 8 EF+ Y N 12 197 WEST PORTOR

BNSF 928 4135 4135 8 EF+ Y N 18 197 EAST PORTOR
 Total 12670 12670 18 590
 Incl DPUs 12670 12670 Actual HPT = 3.4 (12670 HP/3688 tons)
 Scheduled HPT = 4.0

Eq	Car	L	Contents	Online	J	Grs	Final					
Dest	Init	Number	Kind	E	Want	Dy	Destin	T	RAJP	Ton	Consignee	City
ST	Axl	-----										

Block PTL1 Setout PORTLAND OR
 1 TTAX 653793 QOJ L HAZMAT PORTOR 164 UNITEDPARSER PORTLAND
 OR 30
 NP NO PLACARDS REQUIRED
 E YFSZ 119989 V1M L HAZMAT PORTOR 28T YELLOWTRANSP PORTLAND
 OR
 NP NO PLACARDS REQUIRED

 * HAZMAT * 4 CT // 132 LB
 HYDROGEN PEROXIDE AND

PEROXYACETIC

 ACID MIXTURES, STABILIZED
 5.1 (8)
 UN3149 // PG II
 HAZMAT STCC 4918810

EMERGENCY CONTACT: 8003955446

Adi Desc : (I43940 S2 CL85)

	TO/CONSIGNEE	FROM/SHIPPER
E	NONZ 339216 V L FAK PORTOR	28T UNITEDPARSER PORTLAND
OR		
OR	YFSZ 119084 V1M L FAK PORTOR	28T YELLOWTRANSP PORTLAND
OR		
E	NONZ 346553 V L FAK PORTOR	28T UNITEDPARSER PORTLAND
OR		
E	JBHU 212107 K18 L FAK PORTOR	53T JBHUNTRANSPO PORTLAND
OR		
Block Totals	3 Cars 3 Loads	0 Empties 164 Tons 291
Feet		

Block PTL6 Setout PORTLAND OR
 2 DTTX 727176 QV3 L FAK PORTOR 203 AGENT PORTLAND
 OR 38
 P ZCSU 856649 K15 L FAK PORTOR 40C MERITSTEAMSH PORTLAND
 OR B1
 P JBHU 213185 K18 L COOKEQ PORTOR 53C JBHUNTRANSPO PORTLAND
 OR BT
 P ZCSU 852530 K15 L FAK PORTOR 40C MERITSTEAMSH PORTLAND
 OR C1
 P JBHU 211063 K18 L FAK PORTOR 53C JBHUNTRANSPO PORTLAND
 OR CT
 P HJCU 764434 KG5 L FAK PORTOR 40C WCOATRK36082 PORTLAND
 OR A1
 P HGIU 631366 KGM L PPRPRD PORTOR 53C WCOATRKG PORTLAND
 OR AT
 3 BNSF 253564 QV3 L FAK PORTOR 193 AGENT PORTLAND
 OR 46
 P ZCSU 842731 K15 L FAK PORTOR 40C MERITSTEAMSH PORTLAND
 OR B1
 P HJCU 122901 K15 L FAK PORTOR 40C PORTLAINTSER PORTLAND
 OR BT
 TCKU 944447 K15 L FAK PORTOR 40C JBINTERMODAL PORTLAND
 OR C1
 P HJCU 753055 KG5 L FAK PORTOR 40C CONGLOIND503 PORTLAND
 OR A1

P HGIU 632225 KGM L PPRPRD PORTOR 53C WCOATRKG PORTLAND
 OR AT
 Block Totals 4 Cars 4 Loads 0 Empties 396 Tons 408
 Feet

Block PTL1 Setout PORTLAND OR
 4 TTEX 353592 QBI L APARTS PORTOR 135 SCHNEINATL PORTLAND
 OR 54
 E SNLZ 663071 V1S L APARTS PORTOR 53T SCHNEINATL PORTLAND
 OR B1
 E SNLZ 935758 V1S L APARTS PORTOR 53T SCHNEINATL PORTLAND
 OR B2
 E SNLZ 936659 V1S L APARTS PORTOR 53T SCHNEINATL PORTLAND
 OR B3
 5 TTRX 370866 QMI L HAZMAT PORTOR 136 UNITEDPARSER PORTLAND
 OR 62
 NP NO PLACARDS REQUIRED
 E YFSZ 111215 V1M L FAK PORTOR 28T YELLOWTRANSP PORTLAND
 OR
 E NONZ 345352 V L FAK PORTOR 28T UNITEDPARSER PORTLAND
 OR
 E YFSZ 121913 V1M L FAK PORTOR 28T YELLOWTRANSP PORTLAND
 OR
 E YFSZ 123281 V1M L FAK PORTOR 28T YELLOWTRANSP PORTLAND
 OR
 E YFSZ 119140 V1M L HAZMAT PORTOR 28T YELLOWTRANSP PORTLAND
 OR
 NP NO PLACARDS REQUIRED

 * HAZMAT *

(HYDROCHLORIC

EMERGENCY CONTACT: 8003955446

1 PL // 9 LB
 CORROSIVE LIQUID, ACIDIC,
 INORGANIC, N.O.S. //
 ACID)
 8
 UN3264 // PG III
 LTD QTY
 HAZMAT STCC 4931463

TO/CONSIGNEE
 YELLOWTRANSP
 PORTLAND OR
 E YFSZ 121479 V1M L FAK PORTOR
 OR
 6 TTRX 360861 QMI L HAZMAT PORTOR
 OR 70
 FL
 E YFSZ 117748 V1M L HAZMAT PORTOR
 OR
 FL

FROM/SHIPPER
 YELLOWTRANSP
 CHICAGO IL
 28T YELLOWTRANSP PORTLAND
 133 UNITEDPARSER PORTLAND
 28T YELLOWTRANSP PORTLAND

 * HAZMAT *

EMERGENCY CONTACT: 8003955446

116 BX // 1740 LB
 ADHESIVES
 3
 UN1133 // PG II
 HAZMAT STCC 4912604

 * HAZMAT *

EMERGENCY CONTACT: 8003955446

11 BX // 458 LB
 PAINT
 3
 UN1263 // PG II
 HAZMAT STCC 4910251

 * HAZMAT *

EMERGENCY CONTACT: 8003955446

2 CH // 19 LB
 COATING SOLUTION
 3
 UN1139 // PG II

HAZMAT STCC 4910142

* HAZMAT *

EMERGENCY CONTACT: 8003955446

1 CH // 11 LB
COATING SOLUTION
3
UN1139 // PG II
HAZMAT STCC 4910142

	TO/CONSIGNEE		FROM/SHIPPER
	YELLOWTRANSP		YELLOWTRANSP
	PORTLAND OR		CHICAGO IL
E	YFSZ 122007 V1M L FAK	PORTOR	28T YELLOWTRANSP PORTLAND
OR			
E	RDWY 211024 VV1 L LTL	PORTOR	28T ROADWAEXPRES PORTLAND
OR			
E	RDWY 277372 VV1 L LTL	PORTOR	28T ROADWAEXPRES PORTLAND
OR			
E	NONZ 304883 V L FAK	PORTOR	28T UNITEDPARSER PORTLAND
OR			
E	RDWY 200639 VV1 L LTL	PORTOR	28T ROADWAEXPRES PORTLAND
OR			
7	TTAX 556635 QOJ L FAK	PORTOR	201 AGENT PORTLAND
OR	82		
E	JBHU 218187 K18 L FAK	PORTOR	53T FREIGHTLINER PORTLAND
OR			
E	WMLZ 532119 VV6 L FAK	PORTOR	53T MCCRAKMOTFRT PORTLAND
OR			
E	RDWY 251676 VV6 L FAK	PORTOR	53T ROADWAEXPRES PORTLAND
OR			
E	RDWY 251403 VV6 L LTL	PORTOR	53T ROADWAEXPRES PORTLAND
OR			
E	ABFZ 660137 VV6 L FAK	PORTOR	53T ABFFRTSYSTEM PORTLAND
OR			
8	RTTX 153584 PRO L HAZMAT	PORTOR	81 UNITEDPARSER PORTLAND
OR	86		
NP	NO PLACARDS REQUIRED		
E	RDWY 221422 VV1 L LTL	PORTOR	28T ROADWAEXPRES PORTLAND
OR			
E	NONZ 304889 V L FAK	PORTOR	28T UNITEDPARSER PORTLAND
OR			
E	RDWY 249080 VV1 L HAZMAT	PORTOR	28T ROADWAEXPRES PORTLAND
OR			
NP	NO PLACARDS REQUIRED		

* HAZMAT *

EMERGENCY CONTACT: 8003955446

1 PL // 265 LB
PAINT RELATED MATERIAL
3
UN1263 // PG III
HAZMAT STCC 4910153

Adi Desc : (SHIPPER: PATRICK DISTRIBUTION CONSIGNEE: SIGPROCA
N)

	TO/CONSIGNEE		FROM/SHIPPER
	ROADWAEXPRES		ROADWAEXPRES
	PORTLAND OR		ALLIANCE TX
9	TTAX 553995 QOJ L HAZMAT	PORTOR	169 AGENT PORTLAND
OR	98		
NP	NO PLACARDS REQUIRED		
IH	INHALATION HAZARD		
E	SNLZ 508467 V1S L APARTS	PORTOR	53T SCHNEINATL PORTLAND
OR			
E	JBHU 205433 K1M L FAK	PORTOR	53T FREIGHTLINER PORTLAND
OR			
E	RDWY 252357 VV6 L LTL	PORTOR	53T ROADWAEXPRES PORTLAND
OR			
E	JBHU 233083 K18 L HAZMAT	PORTOR	53T YELLOW PORTLAND
OR			

NP NO PLACARDS REQUIRED
IH INHALATION HAZARD

* HAZMAT *
.O.S. //

EMERGENCY CONTACT: 8004249300

1 PKG // 500 LB
TOXIC LIQUIDS, ORGANIC,
(PYROLIDONE)
6.1
UN2810 // PG III
(POISON)
HAZMAT STCC 4921272

	TO/CONSIGNEE		FROM/SHIPPER
	JBHUNTRANSP		JBHUNTRANSP
	PORTLAND OR		CHICAGO IL
E	JBHU 222178 K18 L FAK	PORTOR	53T JBHUNTRANSP
OR			PORTLAND
Block Totals	13 Cars	13 Loads	0 Empties 855 Tons 1246
Feet			

Block	Setout	PORTLAND OR		
10	DTTX 723116 QV3 L PAPER	PORTOR	175 AGENT	PORTLAND
OR 106				
P	NCDU 236073 K1M L APARTS	PORTOR	53C ROADLIUSAPAC	PORTLAND
OR B1				
P	JBHU 201637 K1M L FAK	PORTOR	53C FREIGHTLINER	PORTLAND
OR BT				
P	NCCU 291135 K1L L APARTS	PORTOR	48C ROADLIUSAPAC	PORTLAND
OR C1				
P	JBHU 204222 K1M L FAK	PORTOR	53C JBHUNTRANSP	PORTLAND
OR CT				
P	SNLU 976979 K1M L PAPER	PORTOR	53C SCHNEINATLOP	PORTLAND
OR A1				
P	JBHU 207182 K1M L FAK	PORTOR	53C JBHUNTRANSP	PORTLAND
OR AT				
11	FEC 71384 QU3 L FAK	PORTOR	60 JBHUNTRANSP	PORTLAND
OR 110				
P	JBHU 223686 K18 L FAK	PORTOR	53C JBHUNTRANSP	PORTLAND
OR B1				
P	JBHU 216077 K18 L FAK	PORTOR	53C JBHUNTRANSP	PORTLAND
OR BT				
12	DTTX 659218 QU3 L FAK	PORTOR	55 MAERSK	PORTLAND
OR 114				
P	KNLU 512468 K15 L FAK	PORTOR	40C IMPERITRAILE	PORTLAND
OR B1				
P	MSKU 903661 K15 L FAK	PORTOR	40C INDEPEDISPAT	PORTLAND
OR BT				
13	DTTX 646092 QU3 L LUMBER	PORTOR	98 MIXEDEDESTN	PORTLAND
OR 118				
MD	MIXED DESTINATION INTERMODAL UNITS			
P	MSKU 926477 K15 L FAK	PORTOR	40C PACERCARTAGE	PORTLAND
OR B1				
P	UESU 474484 K15 L FAK	PORTOR	40C PORTLAINTRA	PORTLAND
OR BT				
14	DTTX 646136 QU3 L FAK	PORTOR	70 JBHUNTRANSP	PORTLAND
OR 122				
P	JBHU 217121 K18 L FAK	PORTOR	53C JBHUNTRANSP	PORTLAND
OR B1				
P	JBHU 205898 K1M L FAK	PORTOR	53C JBHUNTRANSP	PORTLAND
OR BT				
15	BNSF 211030 QV3 L HAZMAT	PORTOR	150 AGENT	PORTLAND
OR 130				
NP	NO PLACARDS REQUIRED			
OR	SNLU 982589 K1M L APARTS	PORTOR	53C SCHNEINATLOP	PORTLAND
OR B1				
P	JBHU 212992 K18 L TRNSEQ	PORTOR	53C JBHUNTRANSP	PORTLAND
OR BT				

P HUBU 232242 K1M L MAGZNS PORTOR 53C IMPERITRKG PORTLAND
 OR C1
 P JBHU 212177 K18 L FAK PORTOR 53C JBHUNTRANSPOR PORTLAND
 OR CT
 P NCWU 683606 K1L L HAZMAT PORTOR 48C ROADLIUSAPAC PORTLAND
 OR A1
 P NO PLACARDS REQUIRED

 * HAZMAT * 4 PK // 23 LB
 SEAT BELT PRE-TENSIONERS
 9

EMERGENCY CONTACT: 18004249300 UN3268 // PG III
 HAZMAT STCC 4966333

Adi Desc : (EX-1993040309EX-199409006 EX-1996120075 EX-200404
 0349)

	TO/CONSIGNEE		FROM/SHIPPER	
	ALLIANSHIPPE		ALLIANSHIPPE	
	PORTLAND OR		CHICAGO IL	
P	JBHU 211797 K18 L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR	AT			
16	DTTX 726743 QV3 L FAK	PORTOR	174 AGENT	PORTLAND
OR	138			
P	HGIU 631388 KGM L MXDFDS	PORTOR	53C IMPERITRKG	PORTLAND
OR	B1			
P	JBHU 209754 K1M L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR	BT			
P	JBHU 233651 K18 L TRNSEQ	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR	C1			
P	JBHU 208271 K1M L FAK	PORTOR	53C FREIGHTLINER	PORTLAND
OR	CT			
P	JBHU 230770 K18 L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR	A1			
	JBHU 226120 K18 L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR	AT			
17	DTTX 733102 QV3 L TRNSEQ	PORTOR	208 JBHUNTRANSPOR	PORTLAND
OR	146			
P	JBHU 220935 K18 L TRNSEQ	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR	B1			
P	JBHU 221856 K18 L TRNSEQ	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR				
P	JBHU 211988 K18 L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR				
P	JBHU 204501 K1M L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR				
P	JBHU 220055 K18 L TRNSEQ	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR				
P	JBHU 206430 K1M L FAK	PORTOR	53C JBHUNTRANSPOR	PORTLAND
OR				
Block Totals		12 Cars	12 Loads	0 Empties 990 Tons 1122
Feet				

Block PTL1 Setout PORTLAND OR
 18 TTAX 355001 QMJ L FAK PORTOR 126 UNITEDPARSER PORTLAND
 OR 154
 E OWZ 709468 VV L FAK PORTOR 20T UNITEDPARSER PORTLAND
 OR
 E JBHU 233511 K18 L FAK PORTOR 53T YELLOW PORTLAND
 OR
 E CFKZ 824702 VV8 L FAK PORTOR 48T UNITEDPARSER PORTLAND
 OR
 19 TTAX 77039 QOI L HAZMAT PORTOR 194 UNITEDPARSER PORTLAND
 OR 166
 P NO PLACARDS REQUIRED
 VRYZ 223137 V1R L HAZMAT PORTOR 48T ROADWAEXPRES PORTLAND
 OR
 NP NO PLACARDS REQUIRED

* HAZMAT *
INORGANIC,

EMERGENCY CONTACT: 8003955446

Adi Desc : (SHIPPER: ENFORCER PRODUCTS CONSIGNEE: HOME DEPOT)

1 CA // 38 LB
CORROSIVE LIQUID, BASIC,

N.O.S. // (SODIUM HYDROXIDE)
8
UN3266 // PG II
HAZMAT STCC 4935258

3 CA // 135 LB



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference-International Brotherhood of Teamsters

1 Good morning Chairman DeKrey and Members of the House Judiciary Committee. My
2 name is Dennis A. Willer. I'm with the Brotherhood of Locomotive Engineers and
3 Trainmen. I'm here in support of Senate Bill 2188.

4 I have a graph showing the number of train accidents in North Dakota from 2001 until
5 October 2006. The graph is from the Federal Railroad Administration web site. If you
6 will refer to the second page. As you will note that with the exception of 2005 the
7 number of accidents have gone down, a fact that the Railroads are very proud of. But as
8 you will also note, the percentage of accident with hazardous material cars in the train has
9 increased, and the percentage of hazardous material cars that were damaged has also
10 increased.

11 Now if you refer to page 3. You see a chart of North Dakota where the accidents have
12 happened by county. This map is from 2001 to Aug 2006. According to the map, Cass
13 and Ward counties have the highest number with accidents. As we all know Cass County
14 is the most populated county in North Dakota.

15 Railroad traffic, tons per mile, has increased every year. In our great state of North
16 Dakota, more hazardous materials are being produced as well as being hauled by the
17 railroad industry. We are producing more ethanol, gasoline, diesel, anhydrous, and more.
18 These chemicals are handled through or stored in every major city in North Dakota.

19 In closing Mr. Chairman, I would urge this Committee to give a Do Pass to Senate Bill
20 2188. If you or any member has any questions, I will try to answer them or if you need
21 anything I will try to get the information for you.

22 Thank you for giving me this opportunity to appear before your committee.

Mr. Chairman

Members of the committee

For the record my name is Ron Huff, I lobby for The Brotherhood of Locomotive Engineers and Trainman. Good morning .

I'm here in support of S.B. 2188. My testimony today is concerning the reporting of all railroad accidents where hazardous materials are involved. This morning you have heard testimony and seen graphs that indicate derailments and accidents involving hazardous materials are increasing each year.

We all remember the terrible derailment that occurred in Minot in 2002 and the devastating effects it had on the community. Some of the citizens are still suffering from this tragedy.

At that time there were no requirements for the Railroads to report this type of incident to the Department of Emergency Services. There was a derailment in August of 2006 at or near Luverne, N.D .where hazardous materials were involved. After talking to the Directors of Homeland Security and Dept. Of Emergency Services, this was the only derailment they were aware that had happened. According to the Federal Railroad Administration records we know that there were (6) six of these derailments. You would think that in the four (4) years after such as incident as Minot there would be some type of requirement where the railroads would have to let the proper state agency know of the incidents. **THE TRUTH IS, AS OF THIS DATE, THERE ARE NO REQUIREMENTS FOR THE RAILROADS TO REPORT ANY ACCIDENTAL RELEASES OF HAZARDOUS MATERIALS TO THE DEPARTMENT OF EMERGENCY SERVICES.**

SB 2188 will require the Railroads to immediately report any accidental release of a hazardous material to the Department of Emergency Services.

According to the Council of State Government they contend that the Department of Emergency Services should take the lead on this type of incidents. I would like to read to you what they say: "The main responsibilities of state emergency management agencies include the following:

1. All facets of preparation such as the development of emergency operation plans and procedures for disasters and emergencies; as well as conducting training, drills and exercises.
2. During a disaster, coordinating emergency response such as the facilitation of resources and supplemental assistance to local governments when events exceed their capabilities; managing transportation and evacuation; overseeing the emergency operation center and **ACTING AS THE LEAD IN INCIDENT MANAGEMENT.** From this statement, this would indicate the Department does need immediate notification, so they can fulfill their responsibilities.

While I was talking to the Director of North Dakota's Homeland Security (Mr. Greg Wilz) he relayed to me that it took upwards of 6 hours to get the information he needed to determine what hazardous materials were involved in the accident at Luverne, ND. If you have questions about this, you may want to ask Mr. Russ Timmriek from the Dept. Of State Radio, he will be giving testimony this morning.

In closing, I would urge the committee to take favorable action on SB 2188.

Thank You