

**Subject:** CN Rail, Canexus and hazardous materials: A deadly mix?

**From:** Elizabeth James <cagebc@yahoo.com>

**Date:** Fri, 30 Mar 2007 04:43:28 +0100 (BST)

**To:** Mayor Walton & Council <council@dnv.org>

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29 March 2007

Dear Mayor Walton, Members of Council:

The attached material is forwarded for your interest, and is further to your recent discussions and expressions of concern regarding changes at the Canexus North Vancouver waterfront site.

The approach taken by the U.S. presenters addresses their concerns about the vulnerability of hazardous materials -particularly chlorine - to terrorist attacks. Here in BC, although we are not immune to acts of terrorism, our citizens are equally exposed due to the vulnerability of onsite and rail/truck transportation of hazardous goods during a moderate to severe earthquake, or due to a freight-train derailment.

With respect to derailment risk, as I watched the fallout - no pun intended - from the recent landslide in the Maple Ridge area, I could not help thinking about the banks which abut the Low Road in the District and City. Mother Nature has such an uncomfortable habit of overcoming the devices of man.

I heartily agree with those who believe that an operation such as Canexus is totally inappropriate so close to a largely residential community. I also understand your rationale with respect to the negotiations and, under the circumstances in which you find yourselves, approve of the decision you made.

In another context, the front page of today's North Shore Outlook carries the message, "Think global, act local". In your negotiations with Canexus and with the Vancouver Port Authority, it is my hope you will find the attached material of some considerable assistance.

In closing, please be assured that the attachments have successfully cleared our two firewalls and Norton Anti-virus software.

Sincerely,

Elizabeth James  
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**TESTIMONY OF FRED MILLAR, PH.D.  
DIRECTOR, SAVE OUR NEIGHBORHOODS PROJECT  
FRIENDS OF THE EARTH  
BEFORE THE COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT  
CAROL SCHWARTZ, CHAIR  
ON  
BILL 15-525, THE “TERRORISM PREVENTION AND SAFETY IN  
HAZARDOUS MATERIALS TRANSPORTATION ACT OF 2003”**

**FRIDAY, JANUARY 23, 2004  
THE JOHN WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, N.W.  
COUNCIL CHAMBER, ROOM 500**

**Friends of the Earth is pleased to support Council Bill 15-525.** As a longtime Chairperson of the Community Hazards Assessment Subcommittee of the DC Local Emergency Planning Committee and for twenty years a policy expert on hazardous materials transportation (“hazmats”), I can say that the bill is necessary and WILL BE valuable in reducing the current high levels of terrorism risks due to ultrahazardous chemical shipments through the District. DC can and should act locally to ban such cargoes, as New York City has already. **Here is why:**

- DC is at very high and unnecessary risk from shipment of ultrahazardous cargoes
- Terrorists could easily cause a serious release of explosives or toxic gas clouds from industrial chemicals in daily transit through the city.
- The rail and highway systems are porous and accessible to terrorists, as graffiti can testify.

DC is identified by the U.S. Department of Homeland Security as one of the seven High Threat Target Cities, and the insurance industry considers DC 100 times more likely to be targeted for future terrorist attacks than other cities. The DC Insurance Commissioner has been trying to fight the rise in insurance for building owners, etc. as a result of the insurers’ perceptions of DC’s extraordinary risks.

Some crucial aspects of the risk situation that Bill 15-525 seeks to ameliorate:

- Cargoes travel daily through DC which the Federal DOT has characterized as potential “Weapons of Mass Destruction” – this is only possible if the huge risks are kept hidden from the citizens.
- The public is being systematically kept in the dark about the catastrophic hazards of these shipments, for fear, say local officials, of “scaring them to death.”
- These cargoes pass within a few blocks of the major national “trophy buildings and institutions” in DC, such as the Capitol, the White House and the Mall. District DOT has signed the SE-SW Freeway as an approved hazmats truck route.
- The Bush Administration agencies have not acted prudently to protect DC or other cities. US DOT has no rules on routing hazardous cargo. US DHS’s idea is to impose more secrecy, by removing the hazmats placards that identify the most dangerous chemical railcars and trucks.
- DC is a major freight convergence point for the most dangerous cargoes, especially by rail. The April 2003 U.S. GAO study on rail security concluded that there were no standards, so no way to know if the industry’s own efforts have been adequate to deter terrorism. DC does not know what goes through by truck.
- Ultrahazardous shipments through DC are mostly through shipments, with no origin or destination in the District, so we get very high risks with no offsetting benefits.
- DC has a huge tourism industry to protect, vs. no heavy industry needing shipments. Just one successful terrorism attack using ultrahazardous cargoes in DC could deal a death blow to tourism for DC and increase insurance risks to all businesses
- Alternative routes exist, but no level of government is currently requiring shippers to consider or choose the safer routes. For example, the CSXT line carries ultrahazardous cargoes through Alexandria, Arlington, through DC right next to the Federal enclave (see in our Powerpoint slides the photo of chlorine gas tank car passing within 4 blocks of the Capitol), under Baltimore in the tunnel, and then through Wilmington and Philadelphia. But the major Norfolk Southern rail route run 50 miles west of DC, through such non-target cities as Luray VA and Hagerstown MD. This seems a no-brainer, since re-routing would eliminate the attractiveness of the target cargoes.
- DC lacks many crucial preparedness capabilities: sirens, indoor alert system, reliable 9-1-1, etc. for dealing with serious terrorist-caused hazmats releases.
- DC should take strong protective government action (as with New York City’s long-standing Fire Prevention Code, upheld in a 1982 federal Court of Appeals decision) to re-route the most dangerous cargoes. US DOT declined to include routing of hazmats cargoes in its recent Security Plan regulations, so cities and states are free do so.

- Those likely to support strong, protective local government action would include federal employees and other workers, citizens associations, hospitals, firefighters and emergency planners.

Those of us who are proponents of the bill have had extensive talks with several representatives of industry and government agencies and made presentations to area Local Emergency Planning Committees, Metropolitan Washington Council of Governments committees, academic and citizens groups. The clarity and focus of new drafts of the bill, and their close tracking with existing federal regulations, have resulted in part from their advice. Nearly to a person they have expressed the view that the District is unique and that urgent protective measures should be taken to reduce risks. We have learned that risk reduction by the Pentagon has taken quite seriously the risks of nearby highways and delivery trucks, and DOD has responded vigorously (see attached slides) by re-routing nearby Route 110, and with expedited construction of blast walls and earthen berms to protect the building on all sides from truck bombs.

In my testimony I will refer to “Bill 15-525” as shorthand also for the most recent revision that has the same intent, thrust and impact.

**We wish to make the following main points on the Bill:**

- A. Only the most dangerous cargoes are covered.** Bill 15-525 prohibits only a small subset of rail and truck hazmats through cargoes already identified as potential “Weapons of Mass Destruction,” and thus attractive to terrorists, in HM-232, the federal DOT Security Plan regulations finalized on March 25, 2003. The bill closely tracks also the classes of most terrorism-attractive cargoes identified (see attached ) in the still-pending Federal Motor Carrier Safety Administration’s rules on hazmats truck safety permits (Docket FMCSA-97-2180).
  
- B. The bill will survive preemption challenges.** Federal DOT and DHS apparently have joint jurisdiction on terrorism-related hazmats routing issues, but both have failed to regulate or even to propose regulations on this subject. The most venerable federal safety regulation on hazmats truck routing (49 CFR 397.9) clearly prohibited hazmats trucks from going through cities, and the same language has been preserved in the latest revisions, but federal and consultant experts report that it is widely unenforced and ignored. DOT in its new Security Plan regulation notably drops out of the final rule even any mention of routing as an important security measure. The same surprising near-total neglect is evident in the latest (October 2003) FMCSA “Guide to Developing an Effective Security Plan for the Highway Transportation of Hazardous Materials”.

**(1) The federal failure to regulate** on hazmats routing for terrorism prevention is one of the main bases for arguing that the District may enact Bill 15-525 without incurring federal preemption. Federal and industry transportation officials almost always want to overrule pesky state and local hazmats regulations, but the general legal principle is precisely that when the federal government has not ruled in a specific topic, in this case on the rail and highway routing of (non-nuclear) hazardous cargoes, the states and localities are free to do so [see *Massachusetts v. DOT*, 93 F.3<sup>rd</sup> 890 (D.C. Cir. 1996) *re imposition of a state bonding requirement on hazardous waste truckers*]. The First Circuit in *New Hampshire Motor Transport Assn v. Flynn* in 1984 had already established that a state may impose a reasonable permit and fee system on hazardous waste trucks.

(2) **Railroad cases** on preemption are less favorable to non-federal jurisdictions, but **all are in a safety regulation context, and none have involved security (terrorism-prevention) issues**. Hazmats cargo routing is clearly not covered by federal regulation -- - except (in HM-164) for the routing of high-level nuclear waste trucks, which Bill 15-525 does not cover. The CSXT legal brief on preemption cites no cases dealing with what a city or state may do to protect itself from terrorism.

**(3) The District has by analogy in hazmats safety law a powerful precedent for the non-preemption of existing local laws that mandate re-routing of hazardous cargoes around a densely populated city.** The New York City Fire Code, Chapter 40, bans the three most dangerous classes of hazmats trucks from the city, unless there is no practicable route around, and was challenged in federal court by the truckers in 1982 and upheld. The federal Second Circuit Court of Appeals said that on balance, the protection of public safety outweighed the burden on commerce incurred by the truckers who had to take one more hour to go around the City. *City of New York v. Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd*, *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982)

(4) **The existing national hazmats cargo handling system and the federal regulations** on containers, placards, etc., are based virtually entirely only on the historical experience of and potential for accidental spills – not on the potential for deliberate and catastrophic terrorist releases in urban or other High Threat areas. Some new anti-terrorism measures are in place or are being considered, but severe challenges remain in an institutional context most characterized as conservative and slow to change.

(5) Bill 15-525 is moral, legal and conservative of human safety and economic viability. The bill is not a parochial blocking of interstate commerce nor a revenue-raising permit measure for the District nor will it block any of the current origin-destination shipments of hazardous cargoes in the District. **Any burden on commerce will be small, and vastly outweighed by the public safety and terrorism reduction benefits.**

**C. Alternative freight rail and truck routes are readily available** – A glance at a consultant’s railroad map of East Coast alternatives [ see attached slides] shows that a chemical manufacturing facility in Georgia, for example, shipping chlorine gas to a user facility in New Jersey, has two main choices for its rail carrier. When the chemical company hires CSXT railroad, CSXT’s line carries the massive railcars of poison gas through Alexandria, Arlington, right through the main federal presence in Washington, DC, through miles of Anacostia, and then through the mile-long Howard Street rail tunnel under Baltimore, then Wilmington, Philadelphia, etc. in the densely-populated Eastern Urban Corridor. If, on the other hand, the shipper hires Norfolk Southern as the carrier, the most likely NS rail line swings out fifty miles west of DC, through such non-target cities as Elkton WV, Luray VA, Hagerstown MD and Reading PA. Currently no level of government requires that a rational, anti-terrorism routing choice, which effectively eliminates the terrorist threat, be made in such cases.

Bill 15-525 will shift the **safety** risks of the (relatively small number of) prohibited hazmats cargoes to the alternative non-target routes. But these, after all, are cargoes that, before the Bill’s impacts, were considered safe enough to travel day and night within four blocks of the U.S. Capitol -- if CSXT had quietly re-routed them on its own initiative, they would have had to notify no one of such shifting of risks. Apparently all railroads are free to do such shifting of “acceptable risk” cargoes frequently. And we in DC, like all rail communities nationwide, we presume, have been told by the carriers to train our hazmats teams to respond to releases of any kind of hazmats cargoes.

**D. For the American railroad industry, frequent and “seamless” interchange of cargoes among major railroad companies as eminently “business as usual”** – (see article attached)

1. Rail re-routing under Bill 15-525 would require only the interchange re-routing of a small number of railcars :
  - a. That is what railroads do every day with each other, with routine economic contractual arrangements to even out the costs and benefits.
  - b. That is what CSXT and Norfolk Southern and other lines reportedly did for the Tropicana “Orange Juice Train” and several other cargoes when the burning chemical tank cars closed CSXT’s Baltimore Tunnel for many days in 2001. (Industry experts report that in that case, some not-time-sensitive chemical tank cars simply sat in place, others were re-routed.)

**E. We are alarmed at the prospect of having this urgent and eminently practical terrorism-prevention legislation shunted over onto a remote siding** of exhaustive multiple-stakeholder discussions, as our railroad friends have suggested, of numerous options (including routing and DC infrastructure upgrades, sirens, public education, etc.) and market incentives and federal subsidies and inter-city compacts. These proposed discussions are apparently so complex and challenging – seeking to involve terrorism and safety risk analyses of alternative routes, participation by federal agencies, all affected states and cities, railroads, chemical company shippers, citizens groups, emergency planners, etc., and seeking to identify federal subsidies that could repay any railroad which had to give up cargoes to another -- that CSXT has told us they have never done it anywhere in the nation, anytime before. Not exactly a fast track which is proposed here.

The railroads are relying -- by analogy only -- on the relatively recent and burdensome truck regulations in 49 CFR 397.61 that call for such risk analyses and consultations when states want to designate approved truck routes for hazmats. In safety matters, and in normal times, this might be seen as eminently fair and necessary. (Although not many jurisdictions have jumped at the chance to open these cans of worms.)

But Bill 15-525 deals specifically with terrorism reduction matters, and in post-9/11 times during which the nation swings between federal DHS alerts swinging between Yellow (“High”) and Orange (“Elevated”).

- The railroads could make this protective re-routing happen tomorrow, without such extensive consultation with all affected jurisdictions. As common carriers, they told us years ago, they are allowed to bring any kind of legally-packaged hazmats cargoes through the District without notice or consultation and could of course likewise re-route it through any other locality.
- The Bush Administration could make this protective re-routing happen tomorrow – e.g., with an emergency order from the Surface Transportation Board or through interim final rules from DOT or DHS.
- But they will not do it, so the District must take protective action locally.

**Some final notes:**



1. The porosity and accessibility to potential terrorists of the hazmats cargo systems are evident: for the rail system, graffiti on railcars and on CSXT's Long Bridge over the Potomac is a daily advertisement of this vulnerability to penetration and to interception.
2. The shippers and carriers of ultrahazardous cargoes are carelessly endangering DC, perhaps the premier High Threat Target City in the nation, with continued shipment of WMD cargoes by rail and highway. Human lives and economic and political infrastructure are at grave risk from a potential terrorist-caused release of industrial chemicals.
3. In earlier U.S. DOT meetings, the Fire Chiefs and Fire Fighters successfully insisted on keeping the placards, and suggesting instead re-routing and other operational changes. [See the resulting DOT report, "The Role of Hazardous Materials Placards in Transportation Safety and Security," January 15, 2003, which concludes "Enhancing security through alternative means [operational procedures and technological developments] is more appropriate than replacing placards." at [http://hazmat.dot.gov/hmt\\_security.htm](http://hazmat.dot.gov/hmt_security.htm)]
4. The national rail system threat and risk study called for by U.S. GAO has not been done, nor, reportedly, has any regional comparison been made by agencies or industry of the two major existing industrial rail and highway freight corridors on the East Coast.
5. Bill 15-525 can re-route a relatively small number of the most dangerous shipments to non-target routes and virtually eliminate the terrorist risks, similar to the commendable post 9/11 action the District took on Blue Plains.
6. Truck re-routing of hazardous cargoes under Bill 15-525 will be minimal – truckers say they already avoid DC congestion if at all possible. And it is already illegal for truckers to come through the city (49 CFR 397) or under the District's two urban tunnels, although the Volpe study brought some recent evidence that violators even go through those tunnels and thus under the Capitol buildings.

**Attachments:**

- 1. FOE memo on the new bill, maps of new exclusion zone**
- 2. Federal Motor Carrier Safety Administration proposed regulations list of covered chemicals**
- 3. Interchange agreements between rail lines -- two articles**

**Appendix I: Earlier Friends of the Earth Testimony on the problem in the DC Council joint hearing -- October 6, 2003**

**Appendix II: Frequently Asked Questions on the problem – Friends of the Earth**

**Appendix III: Powerpoint slides with maps, etc.**

**Attachment 1:**

**Memo 1 20 04 Fred Millar, Friends of the Earth 703-979-9191**

*Council Bill 15-525, the “Terrorism Prevention and Safety in Hazardous Materials Transportation Act of 2004”, co-introduced by Councilmembers Patterson, Catania and Schwartz, will get a legislative hearing in the Committee on Public Works and the Environment, chaired by Carol Schwartz, on Friday, Jan 23, 2004.*

A discussion draft of amendments to the bill is being circulated. It has the same purpose and impact as the original. After many discussions with industry, federal regulators, and citizen groups, proponents made some technical amendments which make the bill clearer and less subject to a quick federal preemption challenge.

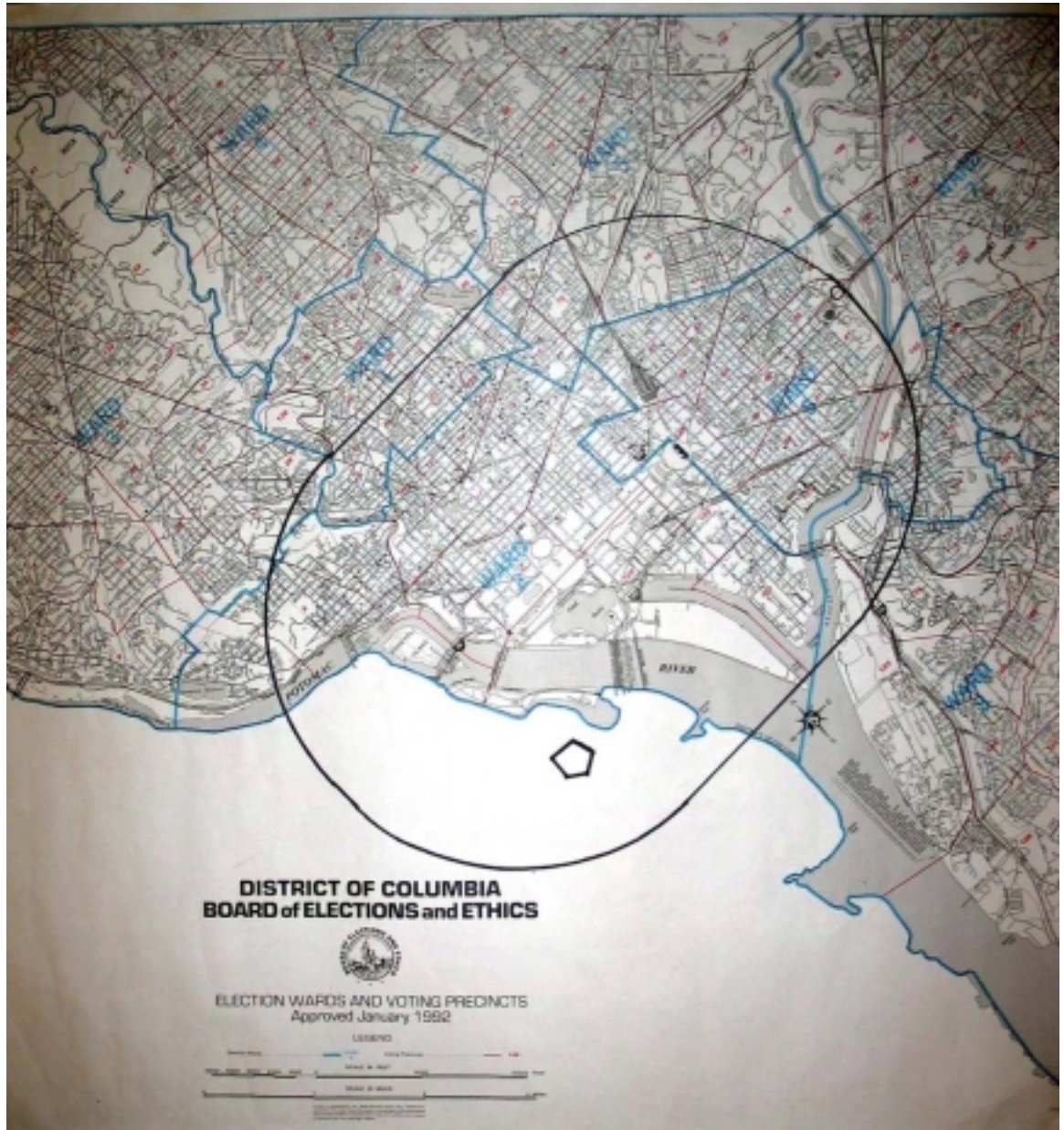
The main revision is that instead of banning the most dangerous rail and highway cargoes from the whole of DC, the new draft draws a tighter but still effective “National Mall Exclusion Zone” which is defined as any point in the District within 3 miles of the Mall. So the new zone is sausage-shaped, around the rectangular Mall.

### **Impacts of this proposed change:**

1. It emphasizes the crucial and nearly unique nature of the terrorism threat in DC, as the home of so many National Icons (White House, Capitol, etc.) which are known to be attractive targets for future terrorism. In fact, a recent federal study by the respected Volpe Transportation Systems Center, for the DC Department of Transportation, recommended just such a protected Mall zone be off-limits for dangerous trucks and that DC should “prohibit through traffic carrying hazardous materials from entering the District.”  
[http://www.ddot.dc.gov/information/studies/Motor\\_carrier\\_study/PhaseII\\_Draft.shtm](http://www.ddot.dc.gov/information/studies/Motor_carrier_study/PhaseII_Draft.shtm)
2. It clarifies that this is a terrorism prevention measure, not one in which one state (DC) is banning commerce from other states for parochial economic reasons, the main rationale for the venerable Commerce Clause in the Constitution. In fact the new draft, like the original 15-525, does not ban any shipments with origin or destination in the District and allows permits to be given for through shipments if there is no practical route around the District.
3. The new 3-mile National Mall Exclusion Zone is designed to cut off all major through freight transportation routes by rail and highway, especially the CSXT rail line and the SE-SW Freeway. The truckers assure us that they do not unnecessarily take through routes across the District with all its congestion, but stay out on the Beltway whenever possible.
4. The new zone would not extend directly over some parts of DC that are farthest from the Mall, but would still protect them, in that all of the most dangerous, large, through rail and highway shipments will be re-routed to (virtually) non-target routes around the City, for example, onto the Beltway or onto the Norfolk Southern rail line 50 miles west of the DC area.

5. **The proposed National Mall Exclusion Zone would extend roughly:**

- To the East, just beyond Robert Kennedy Stadium and the Armory and DC
- To the South, to the tip of Haines Point and crossing I-295 and Minnesota Avenue SE
- To the West: McArthur Blvd and 44<sup>th</sup> St NW, just including Georgetown University but not the US Naval Observatory
- To the North: 16<sup>th</sup> and Euclid St NW
- To the Northeast to Rhode Island Avenue Metro Stop, including Gallaudet University and Eckington Yards



**Federal Register, August 19, 2003 FMCSA Supplemental Notice of Proposed Rulemaking** (earlier Proposed Rule is from 1993, so new categories of hazmats have emerged)

[In the FMCSA-97-2180 docket]

Purpose: To establish a motor carrier Safety Permit Program, including inspections, certifications, route security plans, communication with central base, etc.

Central concerns of the rulemaking: hijacking of truck cargoes of hazmats; no regulation of rental trucks per se, however.

Materials covered: (relying on 1990 statutory mandate from Congress, but with updated classifications from later 49 CFR revisions)

- Division 1.1, 1.2 or 1.3 explosives in more than 25 kg quantity
- More than one liter per package of a material in Division 2.3, Packing Group I, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A;
- Radioactive Class 7 materials in Highway Route Controlled Quantity;
- Shipment of compressed or refrigerated liquid methane or natural gas in a packaging having a capacity equal to or greater than 13,248 L (3500 gallons) for liquids and gases [Division 2.1 ]

### **Attachment 3: Articles demonstrating extensive interchanges by railroads**

#### **CSX Transportation, Union Pacific Reach Historic Interchange Agreement**

Contacts: Kathy Burns  
CSX Transportation  
904/359-1419

**John Bromley**  
**Union Pacific Railroad**  
**402/271-3475**

#### **CSX TRANSPORTATION, UNION PACIFIC REACH HISTORIC INTERCHANGE AGREEMENT**

**JACKSONVILLE, FL and OMAHA, NE - March 31, 1999** - CSX Transportation Inc. (CSXT) and Union Pacific Railroad (UNP) today announced an industry-first agreement that will streamline east-west rail traffic through major gateways that connect the two railroads.

The two railroads will use pre-planned, mutually beneficial gateways through a new formalized structure that will make the best use of CSXT's expanded network by matching it with the UP system.

Although railroads traditionally "pre-block" freight cars for connecting railroads, this is the first time the process will use a formal, structured plan to direct flows through the most advantageous gateways, which will speed traffic and maximize the use of each interchange point.

"Customers will be the big winners as a result of this cooperative effort between our two railroads," said Aden Adams, senior vice president-merchandise sales and marketing at CSXT. "This agreement means each railroad will be able to offer run-through service at key gateways, eliminating delays and improving cycle time on these movements."

"It is very important that Union Pacific be able to move freight across the country as seamlessly as possible," said Jack Koraleski, UP executive vice president-marketing and sales. "This agreement will organize our traffic, allow us to do better planning and make the best use of our system."

CSXT's and UP's major interchange points are Chicago, St. Louis, Salem, IL, Memphis and New Orleans. Transition to the new routing is expected to take six months to a year.

CSXT and its 28,000 employees provide rail transportation and distribution services over an 18,300 route-mile network in 20 states, the District of Columbia and Ontario, Canada. With the integration of Conrail, CSXT will continue to be the largest railroad in

the Eastern United States, with a rail network spanning more than 22,000 route miles in 23 states and two Canadian provinces. CSXT is a business unit of CSX Corporation (NYSE: CSX), headquartered in Richmond, VA.

Union Pacific Railroad, headquartered in Omaha, operates in 23 states, serving the western two thirds of the nation and is the primary rail connection to Mexico. It also interchanges traffic with the Canadian rail system.

###

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CSXT's Internet address: [www.csxt.com](http://www.csxt.com)

UP's Internet address: [www.uprr.com](http://www.uprr.com)

**CN/BC Rail Joint Press Release**

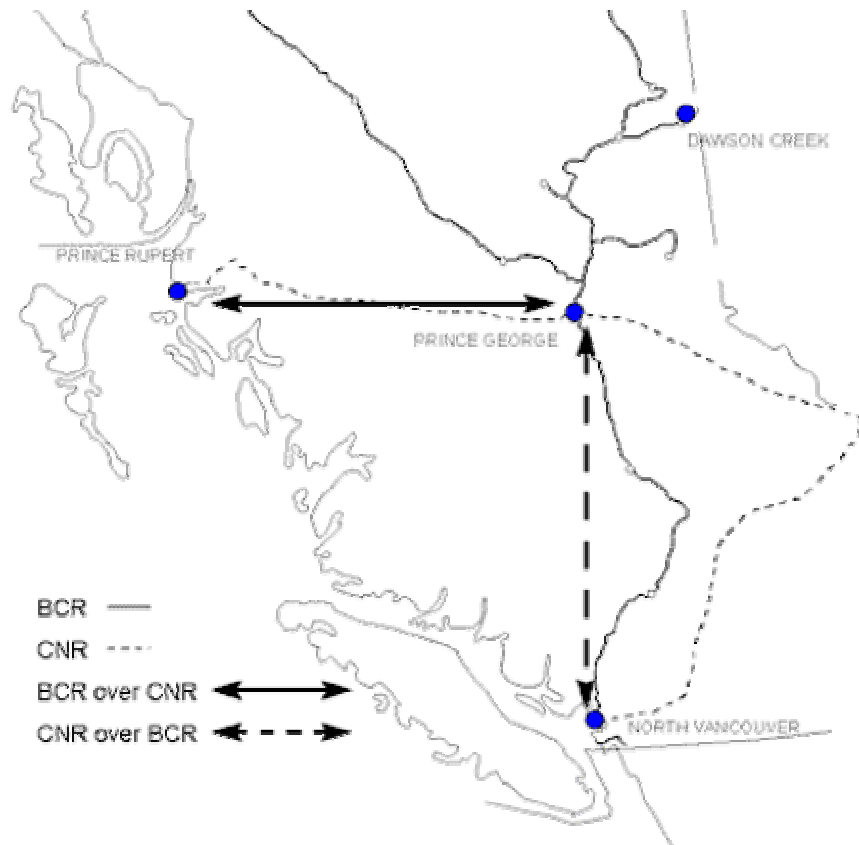
**New BC Rail / Canadian National  
Reciprocal Agreement**

October 27, 1997

Dear Customer,

I am pleased to announce that BC Rail and Canadian National have reached agreement to allow the seamless flow of new rail traffic over the Prince George interchange to either the Port of Prince Rupert or Vancouver. This agreement is consistent with announcements made today in Prince George by Paul McElligott, President and Chief Executive Officer, BC Rail and Gerald Davies, Executive Vice President - Marketing, Canadian National.

What this means to customers on BC Rail is they have access to the Port of Prince Rupert from BC Rail origins for a number of commodities including lumber, panel products, woodpulp, coal and general commodities excluding dangerous commodities and dimensional loads. For customers on CN, BC Rail will bridge the traffic from Prince George to the interchange in North Vancouver. This will significantly reduce CN miles.



Most importantly, this agreement provides competitive access provisions to the ports of Prince Rupert and Vancouver for rail customers in the province whether they are served by BC Rail or CN. This represents a significant effort on the part of BC Rail and CN to facilitate new growth and economic development for the province.

Customers located in the north or the central interior of British Columbia can now access all ports on a seamless rail transportation system. The primary features of the agreement are as follows:

- BC Rail will have commercial access on new business to the Port of Prince Rupert, and will be responsible for the marketing from points on BC Rail. Traffic to intermediate destinations on CN is not included.
- CN will have commercial access on new business to Vancouver via BC Rail trackage from Prince George. CN will be responsible for the marketing from points on CN.
- Commodities include forest products, general freight (excluding dangerous commodities and oversize or dimensional loads) and coal to Prince Rupert.
- Each railway will be responsible for providing adequate crews, locomotives power and transit times to handle the additional traffic volumes.



- Rail cars will be supplied by the originating railway.
- BC Rail and CN are exploring the options for the movement of grain from the Peace River region of British Columbia and Alberta under this reciprocal access agreement.
- The agreement is for five years.

To further assist the seamless flow of traffic between BC Rail and CN, both railways have also concluded an agreement to improve the interchange of rail cars at Prince George. CN will receive BC Rail forest products traffic directly into departing trains at Prince George thereby eliminating the marshalling that currently delays traffic. This initiative will reduce transit times by a minimum of 48 hours on shipments to Eastern Canada and Chicago.

This agreement provides shippers with competitive rates to access the ports of Prince Rupert and Vancouver and improves the flow of traffic over the interchange. This will benefit shippers by providing new opportunities to pursue markets and economic growth that will support the economies of both British Columbia and Alberta.

Sincerely,

W. C. Banks  
Vice President  
Sales and Customer Service Delivery

## APPENDIX I:

“An Examination of the District of Columbia Government’s Utilization of Emergency Preparedness Funding”

Monday, October 6, 2003 John A. Wilson Building  
1350 Pennsylvania Avenue, NW Washington, D.C. 20004

COMMITTEE ON GOVERNMENT OPERATIONS  
COMMITTEE ON THE JUDICIARY  
COMMITTEE ON PUBLIC SERVICES

*Testimony by Fred Millar -- Chairperson, Community Hazards Assessment Subcommittee, DC Local Emergency Planning Committee, and representing Friends of the Earth/US and the DC Chapter of the Sierra Club*

Chairpersons Orange, Patterson and Catania: Thank you for this hearing and for the opportunity to testify before you today.

**Summary: Our testimony today is that District residents, workers and federal officials are in grave danger from potential terrorist attacks on the massive, accessible and slow-moving ultrahazardous cargoes which continue to traverse the District, a designated High Threat Target City, by rail and highway. Federal officials say they have intelligence indicating that terrorists are intending to use such explosive and toxic gas cargoes in similar ways as they used jetliners in the 9/11 attacks. An Al Qaeda operative in Columbus Ohio was reportedly specifically tasked to derail a train in the District.**

Neither the District nor the federal government, however, has acted to reduce the risks posed by these cargoes, which the U.S. Department of Transportation has characterized as potential Weapons of Mass Destruction. The most sensible solution would be re-routing these cargoes to routes through non-Target Cities, which New York City has done for 20 years. Its safety permit and truck routing regulations, in its Fire Code Chapter 40, was upheld in federal court in 1982 as a permissible burden on commerce because of the huge benefit to public safety.

We will show that alternative routes are available around the District, and we urge the Council to enact legislation establishing a permit, fee and re-routing system. Similar to the District’s action to take the chlorine gas tank cars out of the Blue Plains sewage plant, re-routing of the most dangerous cargoes will eliminate a glaringly attractive set of targets for terrorism in the District. We will be candid in our assessment of the risks, and of some aspects of the District’s lack of preparedness, since it would be foolhardy to assume that the potential terrorists

**have not had access to the same information, and the same calculations of potential catastrophic impacts, as we have had.**

1. Having just observed the two-year anniversary of the September 11, 2001 attacks on New York City and Washington, D.C., the District and other major cities in the United States fear with good reason that they are likely to be targeted for continued terrorism. For example, Secretary Tom Ridge of the U.S. Department of Homeland Security in 2003 designated seven cities, including the Nation's Capital, as High Threat Target Cities for continued terrorism and gave them a total of \$100 million to beef up security and preparedness. Many other jurisdictions also worry about their attractiveness as major targets. But the District is uniquely rich in "trophy buildings and national institutions".

Many District and federal officials are keenly aware of the attractive terrorism targets posed by quantities of hazardous materials in facilities, in storage and in transport. FBI Special Agent Troy Morgan was quoted recently: "[It's] far easier to attack a railcar full of toxic industrial chemicals than it is to compromise the security of a military base and obtain [chemical warfare] materials." But protective action by government is non-existent. For example, in the District the federal General Services Administration building security task force reported no action: "We asked CSX if they could re-route but they said no, the volume was too high."

The District of Columbia's hurried action after the 9/11 attacks, in changing its Blue Plains sewage plant from chlorine gas to bleach, was an entirely appropriate "hardening of targets" in a preventive mode. In one stroke DC got rid of the 7-10 huge chlorine gas tank cars at the site, each of which if released could produce a toxic cloud 40 miles long and 10 miles wide over the Nation's Capital (according to the Chlorine Institute here in DC). This belated but commendable action certainly removed a serious terrorist risk for emergency responders as well as for citizens and public officials, and encouraged other cities to follow suit.

3. But dangerous through cargoes, with no origin nor destination point locally, are still unnecessarily being brought daily into the District. The most dangerous toxic and explosives cargoes, characterized flatly as potential Weapons of Mass Destruction by the U.S. Department of Transportation, continue to move through major U.S. cities, including all but one (NY City) of the seven DHS-designated High Threat Target Cities, by rail and by highway. [1]

District officials say they do not know currently what truck hazmats cargoes move through the city. CSXT has provided the District with a list of their ultrahazardous rail cargoes, a closely held set of competitive information. Rail officials and government regulators have suggested that we should assume "business as usual" – a similar list of hazardous cargoes as the DC LECP received some time ago, from toxic gases to

flammables, explosives, and military munitions. Our committee was unsuccessful at that time in getting worst case scenario information from the railroads.

CSXT officials say they most often ship their most dangerous cargoes through the District at night, in order to avoid congestion problems with competing commuter rail operations (MARC and VRE). The night shipments may be safer for the portion of the federal workforce that has dispersed to the suburbs, but are arguably less safe for District residents, because dense toxic gas clouds tend to disperse more slowly at night and are thus more dangerous.

4. It seems probable that the daily imposing on District citizens of the unnecessary catastrophic risks of through shipments of hazardous materials is possible only by keeping the citizens in the dark. Several District and federal agency officials have in house some vivid 3-D computer programs, produced by military-funded federal agencies, that predict how toxic clouds from a chemical release can move through the federal enclave and other target areas. But District and federal officials refuse to show these “release scenarios” to any but a few fellow officials, so citizens and workers have no idea how vulnerable their city might be. The officials’ (quietly) stated rationales for withholding the vivid risk information: “We don’t want to scare people to death” and “We don’t want citizens second-guessing our emergency response orders.” Especially after the World Trade Center experience, this is a shaky basis for building trust in any local government’s competence to manage a significant emergency response situation.

Virtually no District officials who know the potential huge consequences of a successful attack will tell the public, perhaps because they despair of doing something significant to reduce the risks of terrorist attacks on such easily available targets and in a city poorly prepared to respond. Many city officials seem concerned to protect a local tourist industry at the expense of candid assessments, shared with citizens, of real terrorism risks and of glaring gaps in emergency preparedness in case of attacks.

Deliberately kept in the dark on the true risks, treated like panic-prone children, citizens have few bases upon which to push for urgently needed counter-terrorism and preparedness improvements, even when these could provide significant economic and personal protection at relatively low cost. Major private building owners and federal workforces close to rail and highway lines have not been shown vivid scenarios of serious chemical releases.

This corporation and government secrecy violates the most basic principle in American emergency planning since the 1984 Bhopal toxic gas disaster, which killed 6000 and injured 100,000 in one night: Tell people the worst case toxic gas and explosion release scenarios, and then they can bring an appropriate level of concern and resources to the problem.

5. This problem of bringing potential Weapons of Mass Destruction into the District, as several local officials concede, has not been taken seriously in the Nation's Capital. Some of the most important evidence of the continued vulnerability of the District:

- Federal hazmats experts looking out their office windows say that at least every other day a fully loaded, relatively thin-skinned gasoline tank truck moves up 14<sup>th</sup> Street NW, passing within two blocks of the White House (Fleet Transport Co. is one of the regular carriers, sometimes also delivering at night). A successful rifle, bazooka, or explosive device attack on this cargo would be designed to cause a spectacular fireball, damage to nearby buildings and death and injury to pedestrians and motorists. Even if no hijacker successfully diverted the truck closer to the White House, the world press headlines would no doubt read: "Terrorists Attack White House!" – a major media coup.
- The federal lead agencies (and the NFL) planning for at least one recent huge special event in DC reported they had held no discussions of and made no efforts to divert the most dangerous rail cargoes onto alternative routes. The September 4, 2003 "Kickoff" event sponsored by the National Football League/Defense Department/Pepsi and other corporate sponsors, with a huge concert featuring Britney Spears/Aerosmith/MaryJBlige planned to draw 300,000 spectators and 25,000 uniformed soldiers to the Mall (but it rained), erected its main stage a few blocks from the major CSXT rail line and the Interstate-695 freeway route. As late as 11 AM that day, the lead agency U.S. Park Police had not contacted CSXT to ask for a temporary moratorium of dangerous shipments. Reportedly, even when prompted, they did not contact CSXT.
- The economic implications of a successful terrorist attack using a toxic gas tank car to cause mega-deaths or an explosives cargo to destroy a vital U.S. freight bottleneck route (for example, the railroad Long Bridge over the Potomac in DC) are obviously vast, both for commercial infrastructure and for tourism. Both industries obviously would benefit from real risk reduction efforts, such as mandatory rational routing and storage of the most dangerous cargoes away from dense populations in to reduce the risks of such attacks. [2] Surely just one successful terrorist attack using an unnecessary through shipment of ultrahazardous cargoes could deal a huge and long-lasting blow to the District's tourism industry and to the local government's credibility regarding homeland security measures.

But shortsighted protection of the tourism industry seems to trump public safety considerations, and certainly hinders a candid assessment of glaring District security gaps. Local District security agency officials go on TV before major tourism weekends with a PR message: "DC is a safe place." The translation seems to be: "Bring in your tourism dollars." And a Washington Post editorial recklessly headlined "It's OK, Bring

the Kids” (6/6/03) chastised fearful Anne Arundel County school officials who canceled their student trips to DC. The Post editors said: Yes, DC will be an “uncertain environment...[with] potentially dangerous circumstances...for many years,” but “no extraordinary threat.”

- The District shows little awareness that, although it has almost no chemical industry facilities, it is a major convergence point for through freight traffic in the East, both truck and rail. [See map, attached] The rail lines bring toxic cargoes right through downtown, close to the most visible terrorist targets such as the Capitol, right next to the Congressional and the main federal agency offices, sometimes elevated and sometimes in the Virginia Street Tunnel, crossing the Potomac parallel to the 14<sup>th</sup> Street bridge after rumbling through Anacostia and crossing the Anacostia in two places. The Southeast-Southwest Freeway truck route, a (non-rush-hour) shortcut through the city parallel to the rail line, even has red-circle “HC” signs erected by District officials indicating – to the astonishment of many – that it is an approved hazardous cargo route.
6. Alternative rail and highway routes are available. A glance at a consultant’s railroad map of East Coast alternatives [attached] shows that a chemical manufacturing facility in Georgia, for example, shipping chlorine gas to a user facility in New Jersey, has two main choices for its rail carrier. When the chemical company hires CSXT railroad, CSXT’s line carries the massive railcars of poison gas through Alexandria, Arlington, right through the main federal presence in Washington, DC, through miles of Anacostia, and then through the mile-long Howard Street rail tunnel under Baltimore, then Wilmington, Philadelphia, etc. in the densely-populated Eastern Urban Corridor. If, on the other hand, the shipper hires Norfolk Southern as the carrier, the most likely NS rail line swings out fifty miles west of DC, through such non-target cities as Elkton WV, Luray VA, Hagerstown MD and Reading PA. Currently no level of government requires that a rational, anti-terrorism routing choice, which effectively eliminates the terrorist threat, be made in such cases.

Public officials are not insisting that preventive counter-terrorism criteria drive freight route and schedule decisions. Railroad officials explain privately that they are doing much to beef up security, but they cannot talk about it. The Association of American Railroads post- 9/11 did a big risk study of the vulnerability of its most dangerous rail cargoes to terrorism – that study is not public. The rail industry told GAO “that [they] without government assistance lack the resources to counter a significant terrorist attack.” Individual railroads admit they have not overhauled the basic way they operate, and cannot imagine any way for one railroad to voluntarily hand over their most dangerous (and lucrative) chemical cargoes to their main competitor simply in order to use routes avoiding attractive target cities.

7. How can we evaluate the preparedness of the Nation’s Capital for a serious, terrorist-caused chemical release? The District’s Emergency Management Agency recently got an Emergency Management Accreditation Program award, but that is about the capabilities of District agencies, not the capabilities of the city to respond effectively to (much less prevent) a serious chemical release.

U.S. GAO recently reported on Rail Safety and Security (4/30/03): “While no standardized tool exists to gauge local preparedness, officials from nine of the ten cities that GAO visited said that they are generally prepared to respond to hazardous materials incidents.” But GAO concludes that without standards, and without adequate information, it is impossible to assess the railroads’ terrorism preparedness.

A similar lack of agreed-upon national standards exists regarding the capabilities of a community to deal with a serious hazardous release. For comparison, we should look at the hazmat release community preparedness capabilities insisted on (and funded) by the U.S. Army (with GAO oversight) in the eight Chemical Stockpile Emergency Preparedness Program communities where nerve gas is being incinerated.

As a premier High Threat Target City, the District should have a model program. The key question must be: What can this community reliably do, if a serious, terrorist-caused toxic release occurs? And what harm can it prevent?

The District lacks many of the “reliable, functioning capabilities” critically needed in any community that takes seriously the threat of a significant hazardous chemical release:

- ◆ A system for timely detection of a serious chemical release
- ◆ An outdoor alert system – the District’s \$1 million Civil Defense siren system was dismantled years ago
- ◆ An indoor alert system – the local Emergency Alert System is voluntary, and reportedly unreliable
- ◆ A reliable 9-11 system – in one year, the District’s system reportedly left unanswered 190,000 calls, one-quarter of the total calls made
- ◆ A functioning hazmat response team – 12 of 14 members recently flunked a competency exam and were kicked off the team. Political forces have seemingly even managed to block DC’s development of a fully-capable (“heavy”) National Guard Civil Support Team, which in other U.S. cities are trained and available to assist local officials in case of hazardous releases.
- ◆ A reliable and tested evacuation system
- ◆ Vigorous public education on Shelter in Place and other protective actions

8. The District need not feel helpless in facing the risks from through hazmats cargoes which provide attractive targets for terrorists. New York City -- alone of the top seven target cities -- has had a long-standing Fire Prevention Code ban (in Chapter 40) on the transportation of three of the most dangerous classes of truck hazmats (bulk gases, compressed gases and toxic-by-inhalation gases) through the city. New York City requires a permit, and will not grant it where alternative routes are available. As far back in 1982 this ban was challenged by the trucking industry in a lawsuit, but was decisively upheld by the Second Circuit Court of Appeals and has not been challenged since:

“New York City truck regs, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause ‘unnecessary delay’ ... and thus are not preempted.” *City of New York v. Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff’d*, *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982)

9. It is thus clearly legal, on safety grounds alone, for a densely-populated city to protect itself against unnecessary, through shipments of the most dangerous truck cargoes. The case of city bans on unnecessary, through hazmats shipments by rail has not been similarly thrashed out in courts, but the recent Ninth Circuit “Dunsmuir toxic release” decisions in California outline the basic legal principles that would be involved in promulgating legal, non-federal regulation on safety grounds alone. As in the District’s case, credible terrorism risks offer even more plausible grounds for re-routing the most dangerous cargoes.

In the counter-terrorism context, legislators in some cities, including the District, may want to consider new legislation similar to that in the New York City Fire Code, but also covering rail cargoes. Since on safety grounds the federal government has not regulated specifically on the routing of dangerous cargoes (with the exception of high-level nuclear waste, by truck only, in HM-164), cities and states are free to do so. [3]

Re-routing cargoes around highly attractive target cities or national icons is not a simple “shifting of risks” to other jurisdictions. Mandating rail and/or highway routes that go around high-threat areas and through non-target areas significantly reduces, perhaps to zero, the attractiveness of those hazmats cargoes for terrorist purposes. The Pentagon, for example, is re-routing all Route 110 traffic in Arlington to remove any possibility of using that route for a new and close-in terrorist attack. Similarly, terrorists are not likely to risk their lives to attack a rail tank car which has been re-routed from the District to go through Luray VA. In three recent Olympics in L.A., Atlanta, and Salt Lake City, officials asked railroads and truckers to avoid crowded stadiums.

10. A final word: creative and proactive re-routing of the most dangerous through shipments of the most dangerous cargoes seems urgent, for several reasons. There have been high-level, serious discussions over eighteen months in various federal agencies on



the security issues around placarding. There is a significant possibility that soon the US DHS may promulgate regulations to eliminate some of the placards from hazmats vehicles. A counter-terrorism steering group at US DOT has previously opposed this, underlining the critical need that emergency responders have for the placards. But some federal officials are reportedly now saying, “If you only knew what we know about the terrorists’ intentions to use hazardous cargoes as weapons, you would support the elimination of the placards.”

The Fire Service has vigorously opposed such a move, and the U.S. DOT has published an excellent report (“The Role of Hazardous Material Placards in Transportation Safety and Security”, June 15, 2003) outlining why taking placards off the vehicles would be counter-productive and risky. DOT concluded that “Enhancing security through alternative means [operational procedures and technological developments] is more appropriate than replacing placards.” See the report at [http://hazmat.dot.gov/hmt\\_security.htm](http://hazmat.dot.gov/hmt_security.htm)

Real reduction of terrorism risk, by local and state officials representing citizens at risk, rather than a useless new form of federally-mandated secrecy that endangers emergency responders and citizens, is a critical way we can exercise our democratic strengths and defeat terrorism both immediately and in the long term.

#### **Attachments:**

Chlorine tank car photo  
Accident photos  
DC map - rail routes  
Map of alternative routes  
Millar op-ed in Post

#### **NOTES**

[1] Knowledgeable hazmats experts, for example in the railroads, concede that it is not unreasonable to characterize their shipments through cities as “weapons of mass destruction”. Railroads and trucking companies are bringing, often unnecessarily, interstate through shipments which if released by terrorist attack could cause hundreds or thousands of deaths: poison gases, explosives, liquified petroleum gases. US DOT regulators recently characterized these cargoes as potential Weapons of Mass Destruction (RSPA Docket HM-232 on Security Plans for shippers and carriers, final rule March 25, 2003).

The Chlorine Institute, for example, has for years published for emergency responders its indispensable Pamphlet 74, which shows that just one standard 90-ton chlorine gas rail car, if punctured, can release a toxic gas cloud 4 1/2 miles long over a city. The former top U.S. DOT hazmats regulatory official has said publicly that just one ammonia tank truck, if released in an urban area, can cause a Bhopal-scale toxic gas disaster: 6000 dead, and 100,000 seriously injured.

Given that industry and government have for decades been providing detailed information on the “worst case release scenarios” involving explosions, fires and toxic gas clouds, we must assume that terrorists are fully aware of the most powerful cargo targets/weapons, can easily identify the characteristic shapes of the cargo tankers, and can readily gain access to the cargoes in many locations in the widely-open railyards and highways of the American transportation infrastructure. The American Association of Railroads, for example, has for years published its very useful “Field Guide to Tank Car Identification,” which has clear diagrams, instructions on how to find the tank car labels, and cutaways of how the tankcar valves work. Worst case toxic cloud and explosion release scenarios from many typical railcars and trucks, although taken down post- 9/11 from the Internet by U.S. EPA, have been publicly available in federal reading rooms for a decade, for those who know to look for them.

Even the California Highway Patrol, which has long designated truck routes for hazardous and radioactive shipments, has so far not acted to protect major target cities such as Los Angeles and San Francisco/Oakland by mandating the re-routing of through shipments.

[2] Federal agencies have recently had consultants provide cost estimates for potential successful bioterrorism attacks in major U.S. cities and ports. While not directly comparable to the impacts of a potential attack using an ultrahazardous cargo, the bioterrorism attacks indicate the types of costs that could be anticipated:

In its report, "The Economic Impacts of Bioterrorist Attacks on Freight Transport Systems in an Age of Seaport Vulnerability," the DOT's Volpe National Transportation Center estimates that a major release of a biological agent such as smallpox or plague in a crowded transportation terminal under current conditions could kill from 30,000 to 3 million people. The economic aspect of such an attack could amount to \$90 billion to \$9 trillion in the value of lives lost; \$1 billion to \$10 billion in direct property damage; \$20 billion to \$200 billion in trade disruption; and \$42 billion to \$420 billion in indirect costs. Such losses can be projected based on evaluations of the economic damage caused by the Sept. 11, 2001, terrorist attack of the World Trade Center in New York City. The U.S. government's response to those events -- to blockade its own seaports and airports for a week -- may have incurred losses as great as the estimated \$50 billion World Trade Center direct costs themselves, the report said.

"Airlines and airfreight companies lost billions of dollars," the DOT study added. "Container shipping fared worse, losing a billion dollars a day during months spent disentangling freight traffic.

[3] The federal regulatory agencies are missing in action, not up to speed in a terrorism context. US DOT's longstanding regulations, such as on container design and route choices by shippers have been based pre-9/11 on acceptable accident history (not on terrorism calculations as we now must do). For example, some ultrahazardous cargoes are not allowed to be shipped in bulk, or only with strict US DOT oversight (e.g., rocket

fuel, or N2O4). Some shippers voluntarily use higher visibility as a safety measure: e.g., Hydrogen Cyanide is shipped in bright white and red “candy-striped” rail cars.

DOT’s 49 CFR 397.61 says no hazmat trucks should go through cities, but has very weak language: “...unless impracticable to avoid” cities. And it is virtually unenforced in DC-Baltimore area, according to the Federal Motor Carrier Safety Administration regional official.

The brand-new Transportation Security Administration (in US DHS) “...has not yet developed specific plans to address the security of individual surface transportation routes, including rail. Such a [risk-based] plan is necessary to determine the adequacy of security measures already in place and identify security gaps.”

According to U. S. GAO’s April 2003 report [GAO-03-435], the adequacy of voluntary industry activities to assure even basic truck and rail hazmats security is in doubt. The new Transportation Security Agency within DHS has ample authority to regulate. Focused massively on aviation and port security, however, TSA has not developed the specific risk-based plans for highway and rail shipments that would enable one to assess security measures and identify gaps, says GAO. And on terrorism/security grounds, the US DOT explicitly declined to regulate specifically on hazmats routing as a mandatory part of the new Security Plan regulations (HM-232), so states and cities are free to do so on security grounds as well. No court cases have yet tested the scope of what cities and states can do in protective hazardous materials regulation on security grounds. The courts, as in the New York City case, may very well look favorably on protective action even if there is a minor burden on interstate commerce.

But DOT’s proposed regulations were said to be “extremely general...too vague to be enforced.” [Chlorine Institute. comments]

The rest of the Bush Administration has also unsurprisingly already declined its opportunity to regulate to reduce risks of through hazmats shipments in target cities. U.S. DOT in a timid final rule on security in March 2003 told the hazmats shippers and carriers they would remain virtually self-regulated: they should do their own risk assessments and formulate their own security plans, for which DOT would not specify standards or contents and would not take possession of for evaluation. And because of industry opposition, in the final rule the apparently inflammatory word “routing” (as a potential way to reduce terrorism risks) was dropped out and did appear even once. The DOT’s Federal Railroad Administration issued a June 2003 “notice” concluding that any new security regulation of explosives cargoes was unnecessary.

## APPENDIX II :

### *Frequently Asked Questions regarding the need for new state and local laws re-routing the most dangerous rail and truck hazmats through shipments away from dense High-Threat Target Cities.*

#### **What's the problem?**

Making it easy for terrorists. Many industry sources say it is “business as usual” in terms of moving the most dangerous truck and rail cargoes – very attractive to terrorists -- through even the highest threat Target Cities, including the Nation’s Capital. Our research shows many ultrahazardous cargoes are still moving through all the top target cities (with the exception of New York City, which has a 20-year-old local ban on hazardous trucks), with no effort at re-routing through non-target cities to make these cargoes unattractive to terrorists. The most basic prevention measure always is: get the risks away from the population at risk whenever possible – like keeping poisons and guns away from your children.

This recent (Sept. 2003) photo shows a loaded, placarded rail tank car of deadly chlorine gas, traveling slowly through perhaps the most attractive Target City in the nation, within a couple of blocks of the Rayburn House Office Building and the Capitol. The Chlorine Institute’s own calculations say the worst case release scenario from the 90-ton rail tankcar could involve a cloud 41.5 miles long and 4 miles wide. Depending on the wind and weather, the cloud could be lethal as far as 8-10 miles away. Just one ammonia tank truck, according to the former top regulator at U.S. DOT, if punctured by accident or terrorists in a city, could release a toxic gas cloud big enough to “cause a Bhopal-scale disaster” [i.e., 6000 dead and 100,000 injured in a toxic gas release in 1984].

#### **Surely the railroads and truckers are doing all they can to prevent terrorism?**

No. The transportation system is vast and spread out, easily penetrated, and with significant corporate profit-driven inertia that means the firms are very reluctant to consider re-routing of cargoes. The U.S. GAO reports say that there are no government standards for rail system preparedness, for example, and no way to tell if the railroads’ efforts are adequate.

#### **Are state and local officials on the case?**

No. In fact, one sees astonishing laxity here even in cities already struck once by Al Qaeda. For example, the truck shortcut through the Nation’s Capital, the Southeast-Southwest Freeway [technically I-695], is officially labeled with red-circle “HC” signs indicating that it is an approved hazardous cargo route. Risk-wary federal agency observers report that a fully loaded gasoline tank truck moves up 14<sup>th</sup> Street NW every

other day at least, within two blocks of the White House and comment: “This is not smart.”

Cargoes are moving through major target cities that the railroads’ own experts readily concede can fairly be termed as “Weapons of Mass Destruction”. Yet there is no systematic re-routing mandated by state or local officials, even by most experienced agencies such as the California Highway Patrol. State and local officials seem to meekly accept the railroads’ and truckers’ claims that it would be “too expensive” to re-route even the most dangerous cargoes. Luckily the Fire Chiefs and Fire Fighters disagree with that.

Public officials are not informing workers and residents in the major target cities of the risks. It seems they think that the only way one can continue to bring such risky toxic gas and explosive cargoes through High Threat Target Cities (as designated by the U.S. Department of Homeland Security in 2003) is to keep the populations in the dark as to the risks.

**Could a toxic gas cloud really move up Capitol Hill from a terrorist-caused release on the nearby rail line or on the parallel Southwest-Southeast Freeway and inundate many Hill buildings?**

Yes. Toxic gas cloud movement depends on the current weather, but escaping chlorine gas, for example, will be under tremendous pressure from inside the railcar, so could move forwards a long way under its own momentum. A dense gas cloud is likely to slump towards low-lying places, but winds could then affect the cloud movement significantly, even pushing it uphill and over 10-story buildings. In the absence of very strong winds, the cloud could hang around the city for hours before dissipating – as in recent accidental chlorine releases in Simi Valley CA and Henderson NV.

No one believes that an evacuation of an urban population in a worst-case release is likely to be successful. The US Coast Guard has suggested that a chlorine cloud can move 2 miles in 10 minutes, so even a sheltering strategy would be difficult to implement effectively. The U.S. Naval Research Labs gas cloud model suggests that in worst-case chlorine railcar release from the tracks near the Mall, during a crowded public event such as the Fourth of July or the Inauguration, 100,000 people could die in a half hour.

**Can the toxic gas and explosives railcars and trucks be punctured by a terrorist?**

Yes. The cars were built to withstand many accident possibilities (not all), and even the very robust chlorine car, with 1 inch steel walls, has been punctured in a Florida accident by an errant piece of rail sticking up, resulting in a large and fatal release of gas.

Terrorists might predictably have weapons like .50 cal sniper rifles, bazookas, land mines, or C-4 explosives – all capable of puncturing [one or more] rail cars or tank trucks. The vehicles move slowly, over predictable track and highways, are clearly identifiable because of placards and often distinctive shapes, and were designed to withstand accident-induced forces but not terrorist attacks.

**Does anyone think all dangerous shipments can be re-routed and all risks eliminated?**

No, only the most dangerous “through” shipments can potentially be re-routed, that is, only those who have neither origin nor destination in a target city. Some industrial re-location or substitutions of safer chemicals (e.g., many sewage plants have switched from chlorine to bleach or ultraviolet) might be desirable, depending on the risk analysis in each community. Some re-routing within cities might be possible and prudent.

**In considering local laws mandating re-routing to avoid target cities, doesn't one have to study the risks of the whole rail or highway route of the given dangerous cargoes and of any alternative route that might seem less attractive for terrorists?**

Of course. Right now, no level of government is doing that, as far as we can find out. Congress mandated a study of rational routing of rail hazmats cargoes many years ago. The resulting classic federal DOT study of hazardous materials routing [by Ted Glickman] called for a regional inquiry of whether rational re-routing could lower risks in each metropolitan area, but no agency or locality has done so to our knowledge.

**Since the federal government has chosen not to regulate in order to promote re-routing, who can do it and what about the often-invoked federal preemption of state and local activity (under the Federal Rail Safety Act and the Hazardous Materials Transportation Act)?**

Federal and industry transportation officials almost always want to overrule pesky state and local hazmats regulations, but the general legal principle is precisely that when the federal government has not ruled in a specific topic, in this case on the rail and highway routing of (non-nuclear) hazardous cargoes, the states and localities are free to do so [see *Massachusetts v. DOT*, 93 F.3<sup>rd</sup> 890 (D.C. Cir. 1996)]. The federal government on March 25, 2003 promulgated a national regulation, HM-232, on beefing up hazardous cargo security, but because of fierce industry resistance dropped any mention of routing from the final rule. So hazmats routing is clearly not covered by federal regulation, except for the routing of high-level nuclear waste trucks.

**Where is the best model for existing local ordinances or state laws that mandate re-routing of hazardous cargoes around a densely populated city?**

The New York City Fire Code, Chapter 40, was challenged in federal court by the truckers in 1982 and upheld. The federal Second Circuit Court of Appeals said that on balance, the protection of public safety outweighed the burden on commerce incurred by the truckers who had to take one more hour to go around the City. *City of New York v. Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd*, *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982)

For a copy of the Fire Code, ch. 40, call New York City Fire Department, Jim Hansen at 718-999-2375.

**Is re-routing dangerous cargoes a Not In My Backyard (NIMBY) tactic, merely shifting the risk of terrorism from one city to another?**

No. Re-routing to alternative routes away from High Threat Target Cities virtually eliminates the threat (known as “hardening the target” in homeland security jargon). No terrorist wants to blow up a railcar in Luray VA (where the Norfolk Southern rail line passes 50 miles west of the Washington DC area), but many will if the most dangerous hazmats continue to use the CSXT rail line which goes right through the federal enclave in DC – and through other prime target cities such as Baltimore and Philadelphia in the (roughly I-95) Eastern Urban Corridor. Rational routing (along the I-81 corridor) will thus take off the table a large number of attractive target cargoes.

Right after the attacks of 9/11/2001, Washington DC showed a valuable precedent in target hardening by hurriedly switching its sewage plant to bleach, thus getting rid of what local officials considered the greatest terrorist risk in the city: the nine full chlorine gas tank cars stored at the site. The site is no longer a catastrophic risk for terrorist- or accident-caused releases, and has therefore reduced security personnel. Costs to DC area residents of the safer facility: 25 cents per month on average added to water bills. Reportedly many other target cities have similarly switched away from chlorine gas to bleach or ultraviolet light. This question remains, however: Do we think the terrorists can only hit the huge 90-ton chlorine tank cars when they are sitting still at a facility, vs. moving through our target cities?

**Surely when a big special event such as the Olympics appears to be a significant target for terrorism, officials take measures to hold up or re-route hazardous cargoes passing nearby?**

Efforts are made in some cases, but not in all and not always successfully. For example, the Texas Transportation Institute says that when Texas A&M University has 80,000 fans for a home football game, TAMU arranges with the railroad not to bring hazardous cargoes on the line that passes next to the stadium. But during the recent Sex-and-Religion extravaganza (Britney Spears and the National Football League) designed to

draw 300,000 fans and 25,000 soldiers to the Mall in Washington, DC on September 4, 2003, and with a stage within a couple of blocks of the major rail freight line on the East Coast, NFL and U.S. Park Police officials said “The issue [of re-routing or holding up hazmats cargoes] was not even discussed in our planning meetings” [which presumably included representatives of DC Emergency Management Agency]. Earlier, in the case of the 2002 Salt Lake City Olympics, the truckers complied with, but the railroads reportedly refused, anti-terrorism officials’ requests to do such re-routing.

### **What’s the relationship between terrorism reduction and accident reduction?**

In any likely Target City, re-routing gives you a two-fer. Rational re-routing eliminates terrorism and accident risks of the most dangerous cargoes.

### **Who likes the re-routing solution?**

People at risk -- especially the Fire Chiefs and the Fire Fighters, whose personnel are therefore spared from having to deal with the worst case, Mega-Death release scenarios. They have argued their position in high-level meetings with federal DOT and DHS – see below.

### **What strategy is the U.S. Department of Homeland Security pushing as a way to reduce risks of the most dangerous cargoes?**

Taking off the diamond-shaped placards that transportation workers and emergency responders use to identify cargoes -- a dangerously misguided policy of more secrecy. DHS does not try to downplay the substantial risk of hazmats cargoes -- it has been telling the staunchly resisting Fire Chiefs and Fire Fighters in quiet meetings that “If you only knew what we know from our intelligence agencies about the intentions of terrorists to use dangerous cargoes as targets and weapons, you would support our proposal to take off the placards.”

In earlier U.S. DOT meetings, the Fire Chiefs and Fire Fighters successfully insisted on keeping the placards, and suggesting instead re-routing and other operational changes. [See the DOT report, “The Role of Hazardous Materials Placards in Transportation Safety and Security,” January 15, 2003, which concludes “Enhancing security through alternative means [operational procedures and technological developments] is more appropriate than replacing placards.” at [http://hazmat.dot.gov/hmt\\_security.htm](http://hazmat.dot.gov/hmt_security.htm)] The railroads have maintained that re-routing would be “too expensive.” CSXT and other railroads are among the top contributors to campaign finance warchests.



**Could a vivid re-routing debate, with public revelation of significant toxic gas and explosion hazards with current cargo routes, merely increase American citizens' fears about terrorism?**

Perhaps, but it offers an opportunity to demand an active, truth-telling, and protective government which could value overall public safety over corporate commercial criteria. It also rationally focuses on risk assessment, possible use of safer chemicals vs. those with catastrophic risks, prevention of terrorism and reduction of significant risks, vs. mere security add-ons whose effectiveness has been proven to be very limited. There is an important environmental justice component here as well, in that many who live close to (noisy and risky) major railyards, for example, are poor and minorities.

**Why might some local officials resist raising the issue of re-routing dangerous cargoes?**

- Inertia and lack of imagination – business as usual, existing commercial relationships between shippers and carriers, familiar routes and costs.
- The tourism industry is so important to many target cities that pointing up risks and gaps in local preparedness seems damaging to the tourist trade. The counter to this is that one successful attack using an unnecessary hazmats cargo in a major city might damage the tourist trade far more.
- A feeling of hopelessness – so many potential threats to deal with, with constrained resources.
- The political clout of the railroads and truckers, large political campaign contributors.
- The conviction that it is “a Federal matter”, not the responsibility of states and localities, which would be slapped down if they attempted to regulate transportation.

**How much do local citizens in High Threat Target Cities know about the risks imposed on them by these dangerous shipments?**

Almost nothing. Most citizens no doubt think/hope that the government at all levels, after the 9/11 attacks, is surely “taking care of business” regarding the most basic preparedness issues and in some of the most high-risk situations. Instead the government at all levels seems determined to withhold vital risk information from the public. Keeping the American public in the dark is not a shining example of the kind of vibrant democracy we hope to inspire the Mideast’s mullahs to adopt.

Many local agencies have sophisticated 3-D color models that can show graphically the movement of toxic gas clouds around buildings and through city neighborhoods --- the

displays are sobering. These models suggest huge gaps in local emergency preparedness. But these risks are deliberately kept secret from the population, and shown to some insiders only with the quiet agreement that these will not pass the information on to the public.

This violates the most basic principle of American local emergency planning – enshrined in two major federal emergency planning laws since the 1984 Bhopal India toxic gas cloud disaster that killed 6000 immediately and injured 100,000. People at risk should be shown the Worst Case Release Scenarios, so they can then bring an appropriate level of concern and devote an appropriate level of resources to the risks.

### **What do local officials say when asked why they are keeping citizens in the dark about the catastrophic risks of these shipments?**

They cite the same reasons the chemical and oil industry used for decades as they withheld their own worst case release scenarios and risk studies from citizens and local officials. A fed-up U.S. Congress finally passed two major “Right-To-Know” federal laws (in 1986 and 1990) requiring the most dangerous facilities to show their Worst Case Release Scenarios to the public and the local emergency responders.

Some local police and fire officials (who work for the mayors) say: “We don’t show the scenarios to citizens because we don’t want to scare them to death.” Ignorance is bliss, apparently.

The US Capitol Police say [a paraphrase]: “We won’t even admit publicly that we have such sophisticated toxic gas plume map computer programs, and we certainly won’t show anyone the possible release scenarios. We don’t want those undisciplined federal workers second-guessing our decisions: if we tell them to run we want them to run; if we tell them to stay in their offices we want them to stay. End of story.”

Some officials say they cannot release information about anything ( the most serious risks, vulnerabilities or security measures needed or taken) – because it might help the terrorists know what to attack. As if the terrorists are dummies, and as if we did not already know the terrorists go to flight schools, calculate the potential damage from jet fuel distributed into New York City skyscrapers, and hold chemical engineering degrees. This rationale, of course, also allows officials to get virtually completely off the hook in terms of public accountability as to the adequacy of their planning, preparedness and counter-measures.

Finally, we hear one new rationale: “If we re-route the most dangerous cargoes around the Highest Threat Target Cities, the terrorists will have won.” Of course the White House is ringed with re-routing barriers, truck-blocking devices, etc. Perhaps corporate shippers can be patriotic enough to adjust to some management inconveniences caused by re-routing, as DC citizens and visitors already have.

**APPENDIX III: POWERPOINT SLIDES WITH MAPS, ETC.**

***The Terrorism Prevention in Hazardous Materials Transportation Act of 2005***  
**Councilmember Patterson's Statement on Introduction**  
**January 28, 2005**

**Introduction**

We introduce this bill to eliminate a grave and immediate danger faced by residents of the District of Columbia -- the threat that terrorists might attack a large-volume shipment of ultrahazardous materials transported through the District, causing a massive explosion and/or release of toxic chemicals. Studies have shown that such an attack could create a deadly toxic cloud extending 14 miles, killing or injuring up to 100,000 people within 30 minutes and resulting in billions of dollars of economic damage. As noted by the District's congressional representative, the Honorable Eleanor Holmes Norton, this is the "single greatest unaddressed security threat to the City."

Two facts make the prospect of such an attack particularly dangerous to those who live and work in the District:

*First*, as the nerve center of our government, the District of Columbia is a prominent terror target, requiring extraordinary measures to protect its citizens, workers, and visitors against terror attacks. The District was one of two U.S. cities targeted by international terrorists in the attacks of September 11, 2001. Even before those attacks, the Capitol Building had a long and unparalleled history as a target for terrorists. Travelers are reminded of this every time they fly into or out of the airport closest to the Capitol (Reagan National Airport) and are subject to a precaution, required in no other airport in the United States, that they remain seated for 30 minutes after take-off and before landing. General aviation aircraft are barred from an FAA-imposed no-fly zone for 30 miles around the Washington Monument without special permission. As demonstrated by the tens of millions of dollars spent on security for the recent Inauguration Day festivities (including over \$11 million of the District's dedicated Homeland Security funds), the presence of numerous political figures in Washington makes it a singularly attractive terrorist target.

*Second*, notwithstanding that this massive danger has been obvious for a least three years, we remain vulnerable to a terror attack on the high-volume shipments of ultrahazardous materials that continue to travel through the District. No enforceable or regulatory action has been taken by the Federal Government to eliminate this threat. Trains and trucks filled with hazardous materials continue to be allowed to pass within blocks of the Capitol building on a regular basis. The presence of such dangerous shipments provides terrorists with the opportunity to cause hundreds of thousands of casualties with nothing more than a bazooka, grenade-launcher or readily available conventional explosives. There is no reason to permit such dangerous and

vulnerable shipments to pass a short distance away from American's center of government (and the neighborhoods surrounding it) when they can be transported just as efficiently and far more safely through rail or truck routes that avoid major terrorism targets such as the District.

Based on the legislative findings detailed below, the D.C. Council should enact this Bill as a necessary and appropriate measure to protect the lives and well being of District residents.

## **Findings**

### **A terrorist attack on a large quantity hazardous materials shipment within the Capitol Exclusion Zone would be expected to cause tens of thousands of deaths and catastrophic economic impacts of \$5 billion or more.**

Recently the Federal Bureau of Investigation ("FBI") reported that terrorists are specifically interested in "targeting hazardous material containers" in attacks on rail cars on U.S. soil. (October 24, 2002 FBI alert). The Department of Homeland Security ("DHS") has reported that terrorists also may seek to use trucks carrying such materials as weapons. (July 30, 2004 DHS advisory).

If terrorists succeeded in such an attack in the area surrounding the Capitol, the result would be catastrophic. A chlorine cloud emanating from a ruptured railcar can move 2 miles in 10 minutes, (U.S. Coast Guard Report cited in Jan. 23, 2004 Testimony of Fred Millar before the Council of the District of Columbia) and produce a cloud of deadly gas stretching over 14 miles. (The Chlorine Institute, Pamphlet 74.)<sup>1</sup>

The casualty count resulting from such an attack would be enormous, dwarfing the number of fatalities in the attacks of September 11, 2001. A recent simulation found that if an attack occurred during a celebration or political event in a setting similar to the National Mall, people could die at a rate of over 100 per second and up to 100,000 people would die within the first 30 minutes. *See* Presentation of Dr. Jay Boris, U.S. Naval Research Laboratory, to D.C. Council, October 6, 2003. A July 2004 study by the Homeland Security Council estimated that even under less crowded conditions, an attack in an urban area would result in 17,500 deaths, 10,000 severe injuries and 100,000 hospitalizations. *See* Planning Scenarios: Executive Summaries Created for Use in National, Federal, State and Local Homeland Security Preparedness Initiatives, The Homeland Security Council, July 2004, Scenario 8.

Existing transportation safety regulations designed to protect against spills or other accidents were not designed to address these risks, and will not prevent such outcomes. A typical railroad tank car will not withstand readily available conventional terror weapons. Unlike a hazardous

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<sup>1</sup> A report by Jay Boris of the U.S. Naval Research Laboratory similarly found that a plume of hazardous materials would reach 3 to 4 miles away from the site of the attack in less than 30 minutes. *See* Presentation of Dr. Jay Boris, U.S. Naval Research Laboratory, to D.C. Council, October 6, 2003.

materials accident, the location and timing of which will largely be due to chance, a hazardous material release caused by terrorism likely would be planned to occur under conditions that are most difficult to manage and that would inflict maximum casualties. Indeed, while the studies described above assume that hazardous chemicals would only be released from a single rail car, terrorists might well attack and cause releases from multiple rail car tanks simultaneously, just as they used multiple planes to target the World Trade Center on September 11, 2001. Doing so would cause an even greater number of deaths and serious injuries.

The District's emergency services providers are not equipped to respond to such events. As the Council was told by a physician testifying during hearings, first responders -- such as police, firefighters, and medical personnel -- would be overwhelmed and the release of toxic gases would "kill people immediately before all of our emergency readiness can be of any use." Jan. 23, 2004 Testimony of Benjamin A. Gitterman, before the Council of the District of Columbia, at 2. Like everyone else remaining inside the cloud of ultrahazardous materials extending 3 to 4 miles from the attack, first responders in that area would also likely die within 30 minutes.

Such an attack would also cause immense damage and disruption to the local economy. Apart from the large numbers of deaths, the neighborhoods surrounding the city may be uninhabitable for many days, as Graniteville, South Carolina was in the wake of a limited accidental chlorine release on January 6, 2005. The cost of repairing and recovering from the damage would be immense. The likely economic impact of a large chlorine release could easily exceed \$5 billion.

Federal agencies have recognized that the security concerns raised by possible terror attacks on hazardous rail shipments are not adequately addressed by rules pertaining to accidental releases. *See, e.g.*, 68 Fed Reg. 14514 (March 25, 2003) (existing regulations "focused on safety, not security" and are insufficient for preventing products from being used "as weapons of opportunity" or as ingredients in "weapons of mass destruction").

**The terrorism threat facing D.C. residents and workers in the vicinity of the Capitol Exclusion Zone requires a response that recognizes and addresses the unique status of this area in American political life and history, and the terrorism risk that results from this status.**

The Capitol's status as the nerve center of American political life has long made it highly attractive for terror groups. Even before September 11, 2001, the Capitol building has been subject to repeated attacks (or attempted attacks) by terror organizations. In 1954, members of a Puerto Rican nationalist group wounded five representatives while shooting onto the House floor. Bombs were detonated inside the Capitol Building in 1971 and in 1983. On September 11 itself, the Capitol area was the target of the plane that crashed in Shanksville, Pennsylvania. *See* "Details Emerge on Flight 93," New York Times, July 22, 2004 (indicating flight was heading for Capitol or White House). And in October 2001 the Capitol had to be closed and decontaminated after members of Congress received letters laced with anthrax.

The extraordinary terrorism concern facing Washington D.C. is reflected in numerous recent measures taken in the war on terror. The airport closest to the Capitol Building -- Reagan National Airport -- was the only airport whose re-opening was in doubt, because of its proximity to the Capitol. It ultimately remained closed far longer after September 11 than any other

airport. Although it has since re-opened to air traffic, Reagan National has done so subject to security restrictions more stringent than those at other airports. It is the only airport where travelers must remain seated for 30 minutes after take-off or before landing. Washington D.C. is also the only region where the federal government subjects commercial and general aviation aircraft to a 30-mile no-fly zone.

An attack on the Capitol with ultrahazardous materials would likely prove especially attractive for terrorists because -- by creating an attack with deadly results for miles around the Capitol Building itself -- they could cause numerous deaths and damage a large number of other D.C. buildings that have symbolic importance in American political life, among them the White House, numerous federal agencies, and the monuments on the National Mall.

The only other metropolitan area that has been subject to a similar level of terror attacks and terror alerts in the recent past is the New York metropolitan area. Unlike the District, however, New York City has already imposed restrictions on hazardous materials routing. *See* New York City Fire Code, Chapter 40. By contrast, there are no restrictions on trains carrying ultrahazardous materials within four blocks of the Capitol.

**The Federal Government has not acted to prevent the terrorist threat resulting from the transportation of dangerous volumes of ultrahazardous materials through the Capitol Exclusion Zone.**

The Research and Special Programs Administration of the Department of Transportation has stressed that government “cannot limit [its] actions on security to efforts to prevent terrorist attacks that have already occurred” and that it must “proactively assess future terrorist threats and take actions to try to prevent future attacks.” Department of Transportation-RSPA, Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule, March 25, 2003, 68 Fed. Reg. 14511. We must thus focus not only on restricting or re-routing aircraft that could be hijacked and used as weapons to attack the Capitol or other federal buildings, but also on whether other equally significant (or more dangerous) terror threats -- such as rail cars filled with toxic chemicals -- also need to be re-routed or restricted in the vicinity of the Capitol.

The Federal Government has not issued any rule or order addressing this issue. The U.S. Department of Transportation has issued rules requiring each hazardous materials shipper and carrier to develop and implement a security plan and provide its employees with security training. *Id.* But these measures do not even purport to address the threat that the mere presence of high volumes of ultrahazardous materials creates as described above, and they could not do so effectively.

The U.S. Department of Transportation has issued rules regarding hazardous materials accidents. But restrictions that safeguard against accidents are ineffective in protecting against the very different risk of a terror attack.

In the absence of any federal regulation addressing the risks of routing ultrahazardous chemicals in proximity to the most likely terror target within the District, the D.C. Council is compelled to respond to this grave threat to the welfare of its citizens, businesses, and visitors. We have

extensively examined the data relative to terrorism risks that shipments of such chemical create, the effects that such an attack would have on the local community, and the costs of diverting such shipments away from the Capitol region.

**Ultrahazardous materials shippers do not need to route large quantities of ultrahazardous chemicals through the Capitol Exclusion Zone in order to ship such chemicals to their destinations, and alternative routes would substantially decrease the aggregate risk posed by terrorist attacks.**

We have found, in the hearings leading to this Bill, that there is no reason to continue providing terrorists with the opportunity to create a release of toxic chemicals over a singularly attractive terrorist target. Indeed, the only reason such dangerous chemical shipments *do* pass within blocks of the Capitol appears to be historical happenstance. The routing of the rail lines over which hazardous materials are transported today is determined by the way that the “Nation’s rail infrastructure was laid out nearly a century ago,” when existing terrorism threats were unimaginable. Jan. 23, 2004 testimony of George Gavella, Associate Administrator for Safety, Federal Railroad Administration, before the Council of the District of Columbia at 1. It defies logic to think that we would continue to strictly adhere to existing routes even when they present significant problems in protecting primary terrorist targets (and those that live, near, or congregate near them) from a catastrophic attack. Indeed, the National Capitol Planning Commission has embarked on a study of the feasibility of relocating CSX’s downtown rail line, precisely in order to eliminate the risk of terrorist attacks on ultrahazardous cargoes.

There are other rail and road routes that could be used to deliver the same shipments, and these routes have been frequently used for such shipments. For example, the Norfolk Southern Railway -- 50 miles west of the District -- has and can be used to carry hazardous material. There are no such prominent terrorist targets on the alternative Norfolk Southern route that would be taken, and there would be no significant increase in any risk to locations along that route. As a result, the overall risk of death and economic damage posed by this form of potential attack would be virtually eliminated if the materials are not shipped through the Capitol Exclusion Zone.

**Excluding ultrahazardous shipments from the Capitol Exclusion Zone (in circumstances where there is a practical alternative) would impose no significant burden on interstate commerce.**

Although transportation of hazardous materials plays an important role in the commercial life of the United States, there is no necessity to ship such materials in close proximity to one of the most prominent terrorist targets in the United States. New York City has already passed regulations addressing hazardous materials risks. The District should follow suit. Nor is there any evidence of significant cost increases that would result, and certainly nothing that compares to the billions of dollars being spent annually on federal homeland security measures. To the contrary, transporters of hazardous materials themselves appear to have indicated they can afford to avoid creating such a risk. Truckers often avoid the Capitol Hill area to avoid congestion and



thus stay on the Beltway instead. Jan. 23, 2004 Testimony of Fred Millar before the Council of District of Columbia, at 7. As mentioned above, there is also an alternative rail line running through western part of Virginia, and the only rail company that carries hazardous materials through the Capitol Exclusion Zone, CSX, has stated that it has already re-routed hazardous materials shipments around the Capitol area – and there is no evidence that it (or shippers of ultrahazardous materials) would suffer significant economic damage from simply continuing a practice it has already reportedly been able to adopt and sustain over a period of months.

Other evidence before the Council indicated that the Bill’s requirements would not create significant burdens upon interstate commerce. Professor Theodore S. Glickman, who has analyzed risk assessment as it relates to transportation safety, testified that routing hazardous materials shipments away from a vulnerable, highly populated area such as the District would be less costly than preparing for, or sustaining the actual costs of, a terror attack on such shipments. Nov. 22, 2004 Testimony of Theodore S. Glickman before the Council of District of Columbia (stating that “there are ample opportunities here and elsewhere for re-routing hazardous material tank car traffic to avoid locations with dense population concentrations in ways that yield high benefits and low costs”). While one might worry that re-routing could lengthen routes and thus increase the risk of accidents, Professor Glickman’s analysis showed that rail shipments of hazardous materials could be routed away from the District while *decreasing* the route length. *Id.*

The number of cars that would have to be re-routed is only a small sub-set of the 8,500 rail cars of hazardous materials that CSX ships now ships through the District. Nov. 22, 2004 testimony of Rick Hind before the Council of District of Columbia, at 5. The D.C. Bill only affects a subset of hazardous materials (and only certain quantities of those materials) likely to threaten thousands of lives in the event of a terror attack. “[O]nly 10 toxic-by-inhalation substances are among the 150 most shipped by rail hazardous substances according to a December 2000 report by Argonne National Laboratory.” Nov. 22, 2004 Testimony of Rick Hind before the Council of District of Columbia, at 3. And re-routing under the Bill would require only the interchange re-routing of a small number of railcars of a sort that railroad cars already do on a routine basis. Jan. 23, 2004 Testimony of Fred Millar at 5. It is the Council’s expectation that the District will consult with other jurisdictions that may be affected by the provisions of this bill as appropriate.

Finally, railroad and trucking companies will continue to be able to ship even dangerous amounts of ultrahazardous material through the Capitol Exclusion Zone in the event of an emergency or where it can be shown that there is no practical alternative route.

### **Explanation of Specific Measures in Bill**

In broad outline, the Bill establishes a circular “Capitol Exclusion Zone,” around the Capitol Building and requires a permit to ship specified large quantities of ultrahazardous materials (defined by reference to U.S. Department of Transportation regulations) within the “Zone.” In order to make the Bill enforceable, the permit requirement applies equally to large trucks and rail cars that are marked in such a way as to indicate that they contain small amounts or no ultrahazardous materials.

Permits may issue where it has been shown that re-routing shipment(s) would be “cost-prohibitive.” The permit requirement would be automatically lifted whenever DDOT determines that an emergency exists. These terms and concepts are described more fully below.

Emergency (Definition 1) - It is anticipated that in the event of an emergency that threatens the immediate safety of individuals or property (such as a tunnel fire in Baltimore or track flooding west of the District), the District Department of Transportation (DDOT) will issue an announcement to the effect that a hazardous materials emergency exists. Such an announcement should be posted on the Department’s web site, and transmitted immediately to CSX and Norfolk Southern, in order to minimize any burden on carriers, or any delay in learning that unrestricted passage through the Exclusion Zone is temporarily permitted.

Capitol Exclusion Zone (Definition 2) - This zone has been drawn in a circle 2.2 miles from the Capitol Building in view of the extraordinary security concerns centered on this area and the likely effects of a terrorist attack on a hazardous materials shipment of the minimum quantities described in the Bill.

Practical Alternative Route (Definition 4) - It the Council’s intent that permits be issued only upon a showing that re-routing ultrahazardous materials around the Exclusion Zone would be prohibitively expensive. The task for DDOT is to balance the potential burdens on interstate commerce against the potential economic and non-economic harm, including human losses and suffering, that would occur in the event of a successful attack on a shipment of ultrahazardous materials (the department may assume that all shipments pose the same risk; there is no need for a shipment-by-shipment risk assessment). Given the significant loss of life and likely economic impact of a large chlorine release, and that the probability of an attack is higher than one-per-one hundred thousand shipments, the permit applicant would have to show that the marginal cost of re-routing for any shipment or series of shipments would be extremely high.

Regulated substances (Section 2(a)) – The bill requires shipment permits for only a few very select categories of ultrahazardous materials, probably representing less than 5% of the conventional hazardous materials that move regularly through Washington. Of the 16 categories of hazardous materials listed in 49 C.F.R. § 173.2, the bill would regulate only four. Further, the bill would regulate only selected segments of these four categories, representing only the most lethal materials within those sub-categories. For example:

Explosives - Only two of the six federally-denominated categories of explosives are covered, and only in amounts greater than 500 kg. 500 kg represents an amount of such explosives that could inflict significant structural damage to an office building if detonated in the Capitol Exclusion Zone.

Flammable Gasses - Flammable gasses, if released, can seep into buildings and subway tunnels before igniting, thus causing catastrophic damage. The minimum quantity of 10,000 liters, if released at street level in downtown Washington, could kill great numbers of people.

Poisonous gasses - Poisonous gasses, such as liquefied chlorine, pose one of the greatest threats in this area. The bill regulates only the most highly toxic of the poisonous gasses denominated by the U.S. Department of Transportation -- those falling into Hazard Classes A and B (see 49 C.F.R. § 173.116). Poisonous gasses falling into Classes C and D are not regulated by the bill. The threshold quantity of 500 kg is intended to encompass shipments with the potential to inflict mass casualties. Of the containers that are most commonly used to transport chlorine, the smallest that would fall within the ambit of this provision would be the one-ton cylinder.

Poisonous materials, other than gasses - The bill regulates only the most lethal of this category of substances -- those that fall into Hazard Class A or B, according to 49 C.F.R. § 173.133.

Regulation of transport vehicles (Section 2(b)) - The bill regulates not only shipments of the materials discussed above in the quantities specified; for enforcement purposes, and because of the security threats posed by vehicles marked as containing hazardous materials, it also regulates movements of transport vehicles (chiefly trucks and rail cars) that are capable of transporting such substances in such quantities if the vehicles in question are marked in a manner indicating that they contain regulated substances. For example, if a conventional rail car that is marked “chlorine” and has its placard open (indicating that it is not empty) were to travel through the Exclusion Zone, a permit would be required.