

GREENPEACE

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VIA FAX

July 1, 2003

Secretary Norman Mineta
Department of Transportation
400 7th Street, SW
Washington, D.C. 20590

Dear Secretary Mineta,

Since the September 11th attacks, your candor in openly confronting security deficits (checked baggage, etc.) in the airline industry has been both refreshing and helpful in motivating Congress to act. Today Greenpeace is formally requesting immediate clarification of the policies of the Department of Transportation (DOT) regarding the shipment of highly toxic chemicals by railroad, highway and waterway through and near major population centers which are also potential terrorist targets, such as Washington, D.C., New York City and Los Angeles.

Since September 11th, the possibility of turning vulnerable railroad tank cars into weapons of mass destruction (WMD) has been the subject of much attention. Immediately following September 11th the railroad industry instituted a short-term moratorium on shipping highly toxic chemicals. Last October, in a letter to Congress, the CIA said that a war in Iraq could increase the risk of a terrorist attack within the U.S., estimating the risk at about 75 percent. In fact, federal officials have recently confirmed intelligence reports warning of a possible terrorist attack on Texas energy facilities early in July.

In addition, the most common "worst case" chemical accident scenario submitted to the Environmental Protection Agency (EPA) by chemical facilities is the sudden release of a poison gas, such as chlorine or ammonia, from a 90 railroad tank car. Such a release of poison gas would remain toxic as far as 20 miles from the accident or attack. According to the EPA over 100 U.S. facilities have accident scenarios that put more than a million workers and local residents at risk. A December, 2000 Argonne Laboratory referred to these substances as "toxic by inhalation" (TIHs) and warned:

"While review of the statistics alone might suggest that accidents associated with the transportation of hazardous materials should not be a major concern, these accidents can have enormous impacts when they occur. As a result, the failure to identify and evaluate opportunities to reduce the risks from these types of relatively rare accidents could ultimately lead to thousands of fatalities, injuries, and evacuations."

Recent derailments near Washington, D.C. (June 12) and Los Angeles, California (June 20th) combined with the May 1st guilty plea of an alleged al Qaeda “scout,” who may have assessed the feasibility of derailing trains near Washington, D.C., raises very serious questions about the adequacy of measures by the federal government to prevent such a disaster.

Clearly the actual “worst case” scenarios may be much worse than those submitted to the EPA if for example terrorists were to initiate simultaneous attacks, as they did on September 11th, against railroad tank cars approaching highly populated areas.

As you know, four blocks from the U.S. Capitol, major railroad freight lines and highways (395) cross South Capitol Street before going north under Capitol Hill neighborhoods and south near the offices of the DOT and the Pentagon.

As far as we know, the Washington, D.C. Emergency Management Agency is only beginning a “flow study” of hazardous cargoes through the District. Ten years ago the Local Emergency Planning Committee obtained from the railroads a list of the highest risk cargoes such as chlorine and ammonia. Yet we are not aware of any plans to ban such shipments from going through the District. The Eisenhower Freeway also brings truck shipments a few blocks from the Capitol and is even marked with hazardous cargo (HC) signs as if to encourage trucks carrying dangerous materials to use it as a shortcut through Capitol Hill.

The 2000 Argonne report estimated that there are 100,000 shipments a year of chlorine in the U.S. In fact, Argonne lists chlorine and hydrochloric acid (HCL) among the top 10 materials responsible for major injuries and evacuations and emphasizes the need to focus on these TIH materials. An FBI specialist on WMDs who addressed a chemical industry conference on homeland security June 20th warned, *“You’ve heard about sarin and other chemical weapons in the news. But it’s far easier to attack a rail car full of toxic industrial chemicals than it is to compromise the security of a military base and obtain these materials.”*

By prohibiting the shipment of these materials through populated areas in the first place, we could dramatically reduce the numbers of people at risk. However, to eliminate these risks for all communities, the federal government should convene a multi-agency task force to eliminate these risks. Under 112 r of the Clean Air Act, the EPA has authority to require chemical facilities to prevent such disasters but has failed to use this authority or even embrace new legislation such as Senator Jon Corzine’s (D-NJ) compromise Chemical Security Act (S. 157) which would clarify this authority.

A first step could be to implement the 1992 recommendations of the International Joint Commission which recommended that the U.S. and Canada *“sunset the use of chlorine and chlorine-containing compounds [such as HCL] as industrial feedstocks.”*

It is urgent that we begin an orderly conversion from obsolete hazardous chemicals to safer materials today because it could take years to implement. Keep in mind that the time between the first and second World Trade Center

attack was approximately six years. If we do not begin conversion as soon as possible, in a few years we could be lulled into complacency and become much more vulnerable.

Before September 11th, the Baltimore train tunnel fire July 18-23, 2001 was widely considered to be a wake-up call to the nation. On August 10, 2001 Greenpeace urged the DOT to order a halt to the shipment of hazardous materials through highly populated areas. As you know, the transport of hazardous materials through either of Baltimore's two highway tunnels is punishable by a year in jail.

In the DOT's September 5, 2001 response to Greenpeace, Administrator Allan Rutter stated that the DOT "*does not require that certain regions of the country should bear a greater load of these shipments...nor does it mandate that populated areas should have no hazardous materials at all...*"

In comments to the DOT on July 3, 2002 the chemical industry trade association, the Chlorine Institute, opposed new regulations proposed by the DOT. In their comments they instead proposed a voluntary industry program saying:

"it is clear beyond doubt that no plan, no matter how well-conceived and well implemented, can 'assure' that terrorists will be prevented from carrying out their acts of terror."

The ubiquitous nature of graffiti on railroad cars, trucks, "secure" walls and bridges are visible proof of the impossibility of guarding every mile of track and highway. Clearly prevention is the only prudent option.

Transportation costs are second only to chemical "feedstock" costs to the chemical industry. Rerouting hazardous cargo around urban areas would undoubtedly increase these costs. Industry representatives say that more direct "preferred" routes run on better maintained tracks. If this is true, we wonder why rural train routes have been allowed to deteriorate at the expense of safety, especially considering the nature of these substances and the times we are in.

Unfortunately, recent comments by the director of cargo security for the Transportation Safety Administration (TSA), George Rodriguez were not reassuring. In January he told a chemical industry audience in New Orleans, "If you develop standards like the railroads have, there'll be less need for intervention by government." This begs the question of whether the voluntary actions by the railroads were taking the place of federal regulations and how adequate they are to protect the public.

Therefore, pursuant to the Freedom of Information Act (FOIA), under, 5 U.S.C. 552, and regulations of the Department of Transportation (DOT), we are formally requesting copies of all documents that stipulate the current status of DOT policies, orders, regulations or guidance or the policies of any other federal agency with statutory authority to order, regulate or issue guidance prohibiting the shipment by railroad, highways or waterways of hazardous substances or

toxic by inhalation (TIH) substances such as, chlorine, ammonia, hydrogen fluoride and sulfur dioxide through highly populated areas, including Washington, D.C., northeastern New Jersey, New York City and Los Angeles.

This request should include, but is not limited to copies of:

*** documents that confirm whether any TIH substances are prohibited by the DOT or any other city, state or federal agency from transport through the above mentioned metropolitan areas by railroads, highways or waterways.

*** documents that stipulate any circumstances under which shipments of TIH substances are prohibited through these urban areas and routes, such as during a code "orange" or code "red" alert period.

*** documents indicating policies or plans to restrict or prohibit shipments of TIH substances in all other highly populated areas.

*** documents that indicate any long term plans by the industry or DOT to eliminate all shipments of large containers of TIHs on railroads, highway and waterways.

*** if there are no prohibitions, we would like copies of documents that explain why and whether the DOT is considering implementing any prohibitions or routing changes.

As you may also know, within eight weeks following September 11th Washington, D.C. eliminated their use of chlorine gas at the Blue Plains sewage treatment plant. At times they had as many as seven tank cars of chlorine on site.

Therefore, we also request copies of documents regarding a multi-agency task force, including the EPA, to examine the necessity of transporting and using TIH chemicals when safer substitutes are widely available.

As we are requesting these documents in the public interest, and we are a non-profit organization, we therefore request that all fees for copying these materials be waived.

Thank you for your prompt attention to this request. If you have any questions regarding this request I can be reached at (202) 319-2445.

Sincerely,

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