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ACTION ON HAZMAT RAIL SECURITY CANNOT WAIT UNTIL SEPTEMBER '04

July 20, 2004

Admiral David Stone, Administrator
Transportation Security Agency (TSA)
400 7th Street, SW
Washington, D.C. 20590

Dear Admiral Stone,

Following the January 23rd hearing by the D.C. City Council on the astounding vulnerability of hazardous cargo shipments to terrorist attacks in Washington, D.C., your agency convened a multi-agency "working group" on February 18th. In your April 6th letter to Greenpeace you stated that this working group was "established to explore and determine solutions in securing the District of Columbia rail corridor" and that a **"written report"** would **"serve as the baseline for shaping national policies in the transport of hazardous materials..."** As a result, the D.C. City Council agreed to temporarily postpone action on re-routing legislation while the federal government explored options.

Working Group Work Completes Three Reports

By early May the working group had completed a "vulnerability assessment," a "buffer zone protection plan," and a "Hazard Analysis of Control Points (HACC)." At a June 29th meeting with the working group we were told that funding sources were now being identified and an "implementation" target date of September 1st was established for recommendations, including possible "regulations" and/or "directives." As we have pointed out re-routing is the only immediate and cost-free option available to government with minimal cost to industry. However, we have NOT been assured that this option is still on the table.

Threat(s) Still Imminent?

Keeping in mind Secretary Ridge and Attorney General Ashcroft's warnings of new domestic terrorist attacks sometime this summer, it is all the more critical that your agency make a policy decision as soon as possible. With no written report or public recommendations until nearly the third anniversary of the September 11th attacks, it is only reasonable to request an immediate clarification of your agency's next steps.

Delays Have Jeopardized Legislation

The failure to produce a “written report” before the D.C. City Council’s July 15th to September 15th recess has already jeopardized the City Council’s legislation (B15-0525) for this year (Congress has 30 legislative days to approve DC laws). This failure also undermines the quality of debate at today’s mark up vote on a re-routing proposal (H.R. 4824) by Representative Edward Markey (D-MA) in the House Select Committee on Homeland Security.

In good faith, Carol Schwartz (R), the D.C. City Council member who chaired the January 23rd Public Works Committee hearing agreed to postpone action while the newly formed “working group” assessed the issue. She strongly favors re-routing but wanted to reach a cooperative solution with the federal government. Delay in producing a report has abused that good will.

Government Experts Not Consulted

At our June 29th meeting with the federal working group we were also informed that independent experts at other government agencies had NOT yet been consulted. Although CSX railroad has been consulted extensively by the TSA, we urged the working group to consult experts at agencies such as:

*** U.S. Naval Research Laboratory. The lab previously testified at the January City Council hearing. They warned that more than 100,000 people are at risk of death or injury within the first 15 to 30 minutes of an attack and estimated that “lethally exposed people can die at the rate of 100 per second.”

*** National Transportation Safety Board which has just completed a report finding the majority of hazardous materials rail cars do NOT meet industry safety standards;

*** U.S. Environmental Protection Agency (EPA) which receives thousands of accident scenario report from industry, most of which involve 90 ton rail cars;

*** Argonne National Laboratory which produced a report on hazardous materials transport for the Department of Transportation in December, 2000;

*** U.S. Chemical Safety and Hazard Investigation Board which has recently investigated fatal chemical accidents.

Another concern that we expressed to the working group is the Bush administration’s previous opposition to re-routing prior to the completion of its recommendations. The Federal Railroad Administration’s opposed re-routing at the January 23rd D.C. City Council hearing and Deputy Administrator McHale of the Transportation Security Administration opposed it in testimony before the May 12th House Select Committee on Homeland Security.

Unfortunately this is consistent with the Bush administration’s 2002 about-face on chemical security at the EPA and in Congress. This stubborn resistance to regulation combined with the unwillingness to take action until there is an attack fails to incorporate key lessons learned from the September 11th attacks.

Unlike airline travel, the shipping of ultra-hazardous chemicals through highly populated cities such as Washington, D.C. is completely preventable. In the case of D.C. we know that there are safer routing options (eg., the Norfolk Southern rail line). If there are any cities where there are no safer routing options, smaller quantity shipments and non-toxic substances are also available for most chemicals. In fact, Washington, D.C. converted its sewage treatment plant from chlorine within eight weeks following the September 11th attacks.

Protect the Public Not Only VIPs

According to the railroads these trains are held back during VIP events such as the September, 2003 NFL Britney Spears concert on the Mall and the President's State of the Union message. In October, 2001 following the September 11th attacks, U.S. and Canadian railroads imposed a 72 hour moratorium on shipping "poison by inhalation" chemicals. While this acknowledges the threat these shipments pose we continue to gamble with the lives of millions of Americans the rest of the days of the year.

Warnings in 2002 & 2003

On October 24, 2002 the FBI warned that, "operatives may try a variety of other attack strategies, such as destroying key rail bridges and sections of track to cause derailments or targeting hazardous material containers. Recently captured al-Qa'ida photographs of U.S. railroad engines, cars, and crossings heighten the intelligence community's concern of this threat."

In June, 2003 an FBI specialist on weapons of mass destruction (WMD), addressing a chemical industry conference on homeland security, 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."*

Threat is Real -- al Qaeda "Scout" Sentenced to 20 Years

In October, 2003 an alleged al Qaeda "scout" was sentenced to 20 years for planning to derail trains in or near Washington, D.C. The impossibility of guarding every mile of railroad is vividly illustrated by the ubiquitous presence of graffiti on railroad cars, tunnels and walls. British intelligence has used graffiti as an indicator of where the terrorists may have easier access to various targets in the UK.

Re-routing's Impact on Commerce is Minimal

CSX has estimates that 8,500 rail cars of hazardous materials pass through Washington, D.C. each year. Based on a December, 2000 Argonne Laboratory report for the Department of Transportation, only 10 of the 150 most shipped hazardous

materials are toxic-by-inhalation (TIH). These are the most likely substances (chlorine, ammonia, hydrogen fluoride, etc.) to be turned into WMD.

The chemical industry's standard scenario reported for a "worst-case" accident involving a 90-ton rail car of chlorine assumes a disaster zone with a fourteen-mile radius. With the D.C. freight line (four blocks from the Capitol) as ground zero, census data show that 2.4 million area residents, plus the Capitol and the White House and Department of Transportation are well within this zone. In fact, the CSX tracks are shared with Amtrak, VRE and MARC trains and they travel parallel to the Metro trains.

The Re-routing Solution

Representative Markey's amendment (H.R. 4824) to the Homeland Security authorization bill would simply give the Department of Homeland Security authority to re-route certain substances around "areas of concern" both to be determined by the Secretary. The D.C. City Council bill (B15-0525) introduced in October, 2003 by Council members Kathy Patterson (D), Carol Schwartz (R) and David Catania (R) would prohibit the transport of large quantities of extremely hazardous substances through D.C. unless:

- There is no safer practical alternative route.
- The shipment is destined for use in D.C.
- An emergency requires passage through D.C.

The delay in taking effective action on this risk until the third anniversary of September 11th is unacceptable. Hopefully it will not be unforgivable.

FOIA Request

Pursuant to the Freedom of Information Act, U.S.C. 552, and to the regulations of the U.S. Transportation Security Agency (TSA) we are requesting copies of documents created by and for the multi-agency "working group" that was "established to explore and determine solutions in securing the District of Columbia rail corridor."

This request includes copies of documents by and for the TSA, the Department of Homeland Security, the Department of Transportation, Federal Railroad Administration and other relevant agencies. The documents we are requesting relate to the development of policies, including the re-routing of hazardous rail shipments through Washington, D.C. and policy options. These documents should include but not be limited to: memos, reports, meeting notes, meeting agendas, emails, phone logs, letters to and from the railroad industry (eg. CSX Transportation) and other agencies since January 1, 2004.

We would appreciate a response at your earliest possible convenience. If this request should be denied, we would also appreciate a written explanation of the

reasons under the Freedom of Information Act. Greenpeace reserves the right to appeal any denial of this request.

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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