

REPORT TO THE BOARD OF DIRECTORS
MANUFACTURING CHEMISTS ASSOCIATION

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TRANSPORTATION AND DISTRIBUTION COMMITTEE

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In my initial report for the Transportation and Distribution Committee on April 8 of last year, I restricted my comments to two items of major significance having future impact on the chemical industry. A more detailed report on the Committee's activities was appended to my remarks. Today my oral report will focus on three topics and I refer you to the filed report for the balance.

The chemical industry owns or operates approximately 67,000 tank cars and is compensated by the railroads through a mileage allowance of from 11.07¢ to 23.81¢ per loaded car mile depending on the value of the car. The railroads pay an allowance to suppliers of private rail cars in that freight rates take into consideration a cost to the railroads of supplying cars. Prior to 1964, the allowance per mile was a one-level allowance. A car owner or operator was paid the same rate per mile irrespective of whether a car had a value of \$5,000 or \$25,000.

The chemical industry, having the newer and higher valued cars, was of the opinion that the compensation paid by the railroads should recognize the difference of investment in the cars and pay a higher allowance to the more valuable cars than paid to cars of lower value. After long negotiations, a tri-level system of compensation was established in November 1964. However, because of disagreement among the railroads as to how the system was to work, the matter was contested before the Interstate Commerce Commission (ICC) with the car suppliers on one side and the railroads on the other.

Commencing in 1964 through May of this year, three major car compensation cases have been adjudicated before the ICC. In 1971, after a favorable ICC decision to an MCA complaint, the three-level system of compensation established in 1964 was changed to a six-level system. However, the rates of compensation to be paid by the railroads were frozen to car values established in 1968. The final case, ICC Docket 35537 instituted by MCA over four years ago, is about to be discontinued as a result of an interim agreement negotiated between the litigants. The negotiations followed a favorable decision by Division 2 for MCA. MCA's complaint was supported by the American Petroleum Institute, the Corn Refiners Association, the Institute of Shortening and Edible Oils, the major tank car leasing companies and Allied Chemical Corporation.

The interim agreement accomplishes the following:

- (1) The mileage rate for all six levels of compensation was to be increased on thirty days' notice by 22-1/2%. This increase became effective May 1, 1976. Tank car compensation had not been increased since January 1, 1971. It is estimated that the increase annualized will return to the tank car operators an additional \$40 million. The chemical industry's share is estimated at \$20 million.

- (2) Since 1964, the railroads only adjusted tank car compensation upward after adjudication of a complaint before the ICC. The agreement provides that tank car compensation will be adjusted in relation to and at the time the railroads adjust the compensation paid one another for use of each other's cars. The railroads have increased the compensation paid to each other four times, aggregating 45%, since the last time tank car compensation was increased. We expect the new rates of compensation, effective May 1, will again be increased in the first quarter of 1977 when the railroads increase car compensation to each other.
- (3) New tank cars entering the rail fleet, frozen at 1968 valuations for the purpose of compensation, will now enter the fleet at their fair market value. For example, a car valued in 1976 dollars at \$27,000 will call for a mileage rate of 23.81¢ per loaded mile whereas prior to this agreement, such cars would have been adjusted by a formula to a value of \$18,500 and compensated at a rate of 21.89¢. Existing cars will be re-evaluated and if the fair market value of the car places it in a higher mileage group, the car will be reassigned to the higher group.
- (4) Tank car owners and operators will support the establishment of an equalization rule whereby, the railroads will be compensated for excess empty miles when empty miles exceed loaded miles by more than 105%.
- (5) The ICC will issue an order commencing a rule making proceeding for the purpose of establishing rules and methods for determining tank car compensation in the future. When completed, the ICC will issue another order canceling the interim agreement and prescribing the basis on which tank car compensation is to be paid and the mechanisms for its implementation. Rule making may take as long as three years to complete.

In summary, we not only see the light at the end of the tunnel, but we can see the end of the tunnel. During the next three years, complex and difficult negotiating will be carried out with the railroads under ICC supervision. MCA's objective will be to do its best to assure that the rules finally prescribed will provide equitable compensation for those who supply tank cars.

My last report dealt at length with Public Law 92-500, the Federal Water Pollution Control Act, and in particular, the 1972 amendments covering spills of hazardous polluting substances and the civil penalties provided for such spills in section 311. I advised that an ad hoc inter-industry committee, including MCA, was seeking legislative relief from the punitive provisions of this section. H.R. 9560 was introduced September 11, 1975 to amend several sections of the law and section 12 of the bill, while not totally to the liking of the ad hoc committee, would have been a vast improvement from the existing law. MCA testified in support of the bill with caveats as to the

meaning intended by certain language in the bill. MCA offered to work with the Environmental Protection Agency (EPA) on the development of guidelines to carry out the intent of the dubious language along the lines of MCA's testimony. EPA Administrator, Russell Train, testified in support of H.R. 9560, including support of section 12. The desired revisions in the law, as encompassed in section 12, were recommended by the House Public Works Subcommittee handling the bill.

However, in mark-up before the full House Committee on Public Works and Transportation, the penalty language in section 12 underwent a significant and unfortunate twist. The bill provided for a maximum penalty of \$50,000. In mark-up, to placate certain Committee members who were seeking to preserve the maximum penalty of \$5,000,000 when from a vessel and \$500,000 when from a shore-based facility, as provided in the 1972 amendments, the Committee approved a three-tier approach to penalties. The amendment, in effect provides a maximum penalty of \$50,000 for a first spill, a maximum of \$100,000 for a second spill, and a maximum of \$500,000 for spills in excess of two during a three-year period. The mark-up made no change in the language concerning spills involving willful negligence or willful misconduct.

H.R. 9560 is expected to obtain a rule from the Rules Committee for consideration by the House some time this month. It is the best judgment of those who are familiar with legislative procedures that the mark-up committee has made such a "Christmas Tree" of the bill, that it stands a very good chance of being voted down by the House. If this does not occur, because S. 2710, the Senate's companion bill is so different than H.R. 9560, an effort will be made to return the penalty language to its original form during the House and Senate conference. The fallback position will be to eliminate section 12 in its entirety.

The transportation of hazardous materials continues to receive adverse publicity far out of proportion to the safety its transportation record deserves. The Department of Transportation (DOT), through its Director of the Office of Hazardous Materials when testifying on the Transportation Safety Act of 1974, estimated that there are over two billion tons of hazardous materials shipped annually with as many as 250,000 shipments tendered daily. Major accidents involving hazardous materials have been relatively few when considering the exposure, but each one raises new cries for increased regulation.

Since 1968, the Department of Transportation has been attempting to develop a new hazard information system integrating vehicle placards and shipping papers with the ability for a quick emergency response. The DOT's most recent effort is an advance notice of rule making identified Hazardous Materials Docket No. 126. The DOT requested that responses to the docket evaluate nine hazard information systems proposed by respondents in a past docket against nine criteria that a hazard information system should meet. MCA's response was a modification of its prior proposal and it is believed more adequately meets the nine criteria than any of the other systems. It integrates the vehicle placards, the shipping papers, an immediate ability to respond, and CHEMTREC. The system is not only practical for implementation domestically including intermodal transportation, but is readily adaptable for international shipments. We believe the MCA response is the leading candidate to be adopted by the DOT as a basis for a rule making proceeding.

The committee has a roster of thirty-six members and is organized around eight standing subcommittees with the following areas of responsibility--hazardous materials, highway carriers, legislation, marine, physical distribution, rail carriers, transportation environmental regulations and a steering subcommittee. The steering subcommittee is comprised of the other subcommittee chairmen and the committee officers.

Important matters currently involving the Transportation and Distribution Committee are:

- I. Hazardous Materials Regulations. The hazard information (HI) system proposed in HMRB Docket No. 103; Notice 73-10, involved a two-digit number for use on the vehicle placard and shipping paper as a key to a response manual giving guidelines for an emergency response in the event of a spill, leak or fire. DOT has discontinued HM-103 with regard to the HI numbers. Simultaneously with the discontinuance of part of HM-103, DOT instituted HM-126, and advance notice of rule making inviting responses to evaluate nine HI systems received in response to HM-103. MCA filed a timely response to HM-126 on March 25, 1976. The revised MCA HI system filed is believed to meet more closely the nine criteria against which each HI system is to be evaluated than any other system.

Hazardous Materials Docket 127--Exemption Procedures. The Transportation Safety Act of 1974 authorized the Secretary of Transportation to grant exemptions from the Hazardous Materials Regulations similar to those formerly granted by DOT under the title of "Special Permits." The rules and procedures for obtaining exemptions became effective October 15 on conclusion of HM-127.

Prior to January 4, 1975, authority for the regulation of hazardous materials was vested in each modal administrator (rail, highway, water and air). Under the new Act, the Secretary has created the Materials Transportation Bureau (MTB) with responsibility for the operational functions of regulations, exemptions and compliance with the Hazardous Materials Regulations. The MTB replaces the Hazardous Materials Regulations Board (HMRB) which formerly coordinated such matters.

- II. Rail Carriers. Since April 1975, numerous freight rate dockets substantially escalating charges for switching loaded and empty cars appeared with little or no justification. MCA challenged these dockets and, in all but isolated situations, the dockets were later withdrawn by the carriers.

DOT issued Emergency Order No. 5 requiring DOT Specifications 112A and 114A, on uninsulated pressure tank cars containing flammable gases, to be shoved to rest, prohibiting humping or rolling switches, as a result of railroad accidents in which such cars ruptured. Through their freight rate dockets, the railroads proposed an arbitrary charge of from \$100 to \$300 per car per shipment for extra handling. MCA challenged this arbitrary action and the carriers later withdrew the proposal.

- III. Highway. ICC Docket MC-32155 (Sub.4) was an investigation undertaken after petition by the National Tank Truck Carriers, Inc. to identify, segregate and accumulate cost for the cleaning of cargo tanks. ICC accounting requirements did not make provision for such segregation. MCA filed statements supporting the segregation and identification of those costs. The proceeding has been successfully concluded.

National Classification Board Docket 744. Subject 40, proposed the arbitrary reclassification of Class A and B poisons to 200 times first class for LTL shipments and 100 times first class for truck-load shipments regardless of the classification rating for a particular product. Challenged, this arbitrary action by the National Classification Board has been placed in suspension by the Board and is believed dead.

The Federal Government, as an offset to the truckers because of the national maximum speed limit of 55 miles per hour, authorized an increase in the maximum weight for trucks on the Defense and Interstate Highway System from a gross weight of 73,280 to 80,000 pounds. In order for vehicles to leave the Interstate System to pick up and deliver freight, state weight limits must be increased allowing the higher gross weight. The committee has recommended support for state actions raising state weights to the interstate level.

- IV. Physical Distribution. At a one-day educational seminar preceding the May Transportation and Distribution Committee meeting, MCA member companies described the interface of transportation information with order entry and data base concepts. Several systems for computerization of freight rates and routes were described.

During the October meeting, representatives of the National Tank Truck Carriers, Inc. discussed service and economic problems faced by the tank truck carrier industry. Arrangements are being made to continue such dialogues with other major transportation services at future meetings.

- V. Marine. The development of regulations to implement the civil penalties of section 311 of P.L. 92-500, the Federal Water Pollution Control Act, has been monitored. Action seeking legislative relief from the punitive penalties of section 311 has not been successful so far.

- VI. Environmental Regulations. The State of Illinois, through its Pollution Control Board, has been considering, for some time, proposed toxic substances regulations. Transportation, in and through the state, would have been seriously affected by the proposed regulations. MCA participated in hearings opposing inclusion of transportation in the regulations of the EPA. The latest draft of the proposed regulations eliminates application to transportation equipment.

MCA and the National Tank Truck Carriers, Inc. have scheduled a seminar on " Tank Truck Waste Water Effluents--Regulations and Disposition" on June 10-11, 1976 at the University of Wisconsin in Madison. Although the EPA currently has assigned a low priority to waste water treatment discharged from transportation equipment, an understanding of the problems is being sought through such meeting.

- VII. Legislative. 1975 was the year for transportation legislation. In September, MCA testified on several bills bearing various titles affecting the rail industry (H.R. 9802, S. 1876 and S. 2718). The composite of legislation eventually became S. 2718--"The Railroad Revitalization and Regulatory Reform Act of 1976." Several of the points made by MCA were adopted in the legislation.

The Administration presently has before the Congress, a major reform of the common and contract carrier regulatory system. The legislation is termed the "Truck Regulatory Reform Act." The T&D Committee has adopted positions with regard to principles incorporated in the bill. To date, hearings have not been scheduled. Meanwhile, meetings with framers of the bill in the Department of Transportation have provided insight as to the basis for the proposal and allowed explanation of chemical industry reaction.

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