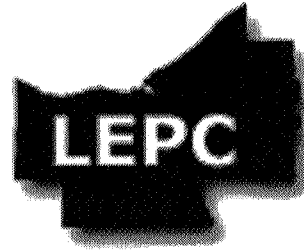


COMMISSIONERS
Jimmy Dimora
Peter Lawson Jones
Timothy F. Hagan



OFFICERS
Chief Bryan Sloan
Melissa Rodrigo

February 1, 2010

Congressman Tim Ryan
Youngstown Office
241 West Federal Street
Youngstown, Ohio 44503

Dear Congressman Ryan,

The Cuyahoga County Local Emergency Planning Committee believes that too many Ohio residents are endangered by unnecessary rail transport of hazardous cargo through major cities when safer alternative routing may be available. For example, an urban area release of chlorine gas from a rail tank car, whether accidental or by terrorists taking advantage of these conveniently located "mobile weapons of mass destruction," could be catastrophic. In this context, it is important to note that Cleveland, Columbus, Cincinnati and Toledo are all High Threat Urban Areas (HTUA), as identified in the Rail Transportation Security Rules (Appendix A to Part 1580 CFR).

A major chlorine gas shipper, PPG Industries in West Virginia, "captive" to their railroad CSXT, recently revealed to federal agencies graphic evidence of routing that unnecessarily endangers Ohio residents. The route is 300 miles longer than need be and traverses the HTUA cities of Cincinnati and Columbus (See Attachment). Railroads such as the Chicago South Shore & South Bend Railway made similar revelations of avoidable urban routing, and Union Pacific Railway protested that shipper requests for 2000-mile long routes with chlorine gas railcars would unnecessarily endanger "millions" along the route, including in Kansas City and Ft Worth.

Regulations issued last year give the railroads too much control over secret rail routing decisions that impact public safety. The regulations leave little opportunity for input and no role in decision-making for state and local officials. The Administration and Congress should revisit the rail routing regulations. State and local public safety officials will be a critical source of input for Congress and the Administration in assessing the adequacy of the current routing law and regulations. To provide that input, state and local officials need information on just what the railroads are doing to protect the public.

Under current federal regulations, the railroads transporting hazardous cargoes are making the decision whether or not to protectively re-route their most hazardous cargoes around densely populated urban areas and on to available routes which traverse less populous areas. This is essentially a secret process with no input from state and local authorities responsible for public safety.

September 1, 2009 was the deadline under the current regulations for the railroads to notify the Federal Railroad Administration about the availability for review by FRA officials of their routing analyses and route selection decisions regarding their most dangerous chemical cargoes. It is our understanding that CSXT and Norfolk Southern have notified FRA that their plans are available for FRA review.

It is likely that the FRA will not take possession of the railroad-produced documents, but will instead review them on-site at the railroad offices. If so, the documents will not be available to citizens and media under the Freedom of Information Act. Under the current implementing regulations, all the documentation will in fact remain secret.

EMERGENCY MANAGEMENT
Office (216) 443-5700
FAX (216) 443-4923

HAZARDOUS MATERIALS/LEPC
Office (216) 443-7597
FAX (216) 443-4923

Department of Justice Affairs, Emergency Management
1276 West 3rd Street, Suite 325, Cleveland, Ohio 44113
Ohio Relay Service (TTY) 1-800-750-0750

Although State and local officials may have contributed some iconic target information, under the rationale of preventing terrorists from learning which cities are vulnerable, they have had no say in the routing decisions. The result is that Ohio citizens and our state and local government officials will have no idea whether cities are still at risk from a toxic gas release. The railroads themselves estimate a large release of hazardous cargo could cost \$10 billion in damages.

Current federal law preempts state regulation of hazardous rail cargo routing. State public safety agencies have only a reactive role – to respond to rail hazmat emergencies should they occur. To that end they have a "partnership" with the railroads under which state agencies can view railroad computer system information and "track" some portion of the dangerous cargoes as they move through Ohio cities. Presumably some state agencies can by this means discover which major target cities in Ohio are being protected by rail hazmat re-routing. But under "need to know" provisions, these agencies are prohibited from passing this information along to state or local officials and from reporting to the state legislature.

Although state and local officials (including Local Emergency Planning Committee members and elected officials) may not have an "operational need to know" detailed rerouting information, we think that there should be a "policy need to know," in general terms, about the re-routing decisions made by the railroads. This is needed to make informed recommendations to the FRA and Congress regarding the adequacy of the current regulations in protecting Ohio residents from the danger of rail tank car quantities of dangerous chemicals transported through urban areas.

Concerns about the inadequacies of current regulation of hazardous materials routing, particularly regarding the lack of local input, have been expressed by numerous local officials in Ohio. A re-routing ordinance was introduced in Cleveland City Council some years ago, the Cuyahoga County LEPC and County Emergency Services Board analyzed current rail routes and alternatives, and the Cleveland Law Department filed objections to then-proposed federal regulations. (See FR Vol.73 page 72187 Attached/Also see attached related resolutions and documentation on this issue.)

We ask your assistance in answering the critical question: Are the railroads protectively re-routing around major cities in Ohio? Ohio officials and citizens should have the right to know the answer and we ask that you insist that state and local officials have a meaningful access to information on routing decisions. This information need not be at the level of detail that raises legitimate concerns about operational security.

We would appreciate an opportunity to talk with you about securing an effective role for state and local officials in hazardous rail cargo safety decisions.

Thank you for consideration of these comments.

Sincerely,

Chief Bryan Sloan, Chair
Cuyahoga County Local Emergency Planning Committee

Sheldon Lustig, Chair, LEPC Transportation Subcommittee

cc: Shirley Tomasello, City of Cleveland Director of Law, Assistant Director
Melissa Rodrigo, Cuyahoga County Emergency Management Agency
Hugh B. Shannon, Acting Director Department of Justice Affairs Administration
Nancy Dragani, Executive Director Ohio Emergency Management Agency
Martin L. Flask, Department of Public Safety
Councilman Matt Zone, City of Cleveland
Cindy DeWulf, Ohio Environmental Protection Agency
Mayor John Licastro, President Cuyahoga County Mayors & City Managers Association
Michelle M. Fitzgibbon, Emergency Management Association of Ohio