

**WRITTEN STATEMENT OF CHARLES W. MOORMAN
CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER
NORFOLK SOUTHERN CORPORATION**

BEFORE THE

**SUBCOMMITTEE ON RAILROADS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

JUNE 13, 2006

I am Wick Moorman, and it is my privilege to serve as Chairman, President and Chief Executive Officer of Norfolk Southern Corporation.

As you know, the Interstate Commerce Act makes railroads common carriers, which basically means that railroads have a statutory obligation to provide rates and service upon request by a shipper. 49 USC 11101. Under current law, this common carrier obligation includes the duty for each railroad to accept shipments of highly hazardous materials for movement over its rail network. Absent this obligation, Norfolk Southern would not transport these materials.

Norfolk Southern does not make these highly hazardous materials. Norfolk Southern does not use these highly hazardous materials. And Norfolk Southern does not make enough money transporting these highly hazardous materials to justify the risks the Federal Government requires us to take. Nevertheless, Norfolk Southern assumes an enormous risk every time we comply with this Federal statutory requirement by transporting a carload of highly hazardous material.

Unfortunately, Norfolk Southern has first hand experience with the dangers and risks to our company associated with transporting highly hazardous materials. In January 2005, a Norfolk Southern train approached an industrial switch in Graniteville, South Carolina, that was misaligned due to human error. The train diverted into a siding containing a parked train and derailed. A tank car containing chlorine ruptured and released chlorine gas. Nine people died, including the train engineer, many others presented to local hospitals, and many more were evacuated from the area within a one-mile radius of the accident.

Although the Graniteville accident resulted from human error by a railroad employee, an accident involving a train with carloads of highly hazardous materials can occur at any time and without any fault of the railroad. Consider the following examples of accidents that occurred on Norfolk Southern in recent years in which the incident occurred because of the actions of others.

- In Hagerstown, Indiana, a driver came to a signalized rail crossing. The Honda Civic in front of him stopped because the signals were flashing and the automatic gate at the rail crossing was down. The driver drove his car around the Civic, around the crossing gate, and onto the tracks into the path of one of our trains.
- In Greensboro, North Carolina, the driver of a gasoline truck stopped his truck across our tracks after allegedly not seeing the warning signals. Our train struck the truck, causing a fiery crash.
- In Augusta, Georgia, a tractor-trailer driver drove through a crossing gate and flashing signal lights and rammed into the side of one of our passing trains, which resulted in the derailment of 24 rail cars.
- In Oakwood, Georgia, a drunk driver ran through a stop sign, continued through a field, and broadsided our train. Twelve cars derailed, including five with hazardous chemicals, which forced the evacuation of 250 people. Fortunately, the only spill was a load of plastic pellets.

- In New Orleans, Louisiana, a tank car containing more than 30,000 gallons of liquid butadiene that we had interchanged to another railroad began to leak. Vapor from the butadiene tank car rolled out across a neighborhood until the vapor ignited. More than 900 people were evacuated. The National Transportation Safety Board found that the probable cause of the accident was an improper gasket that a chemical company had installed on the tank car that the railroads did not own.¹ Nevertheless, a state court jury entered a punitive damages verdict against the railroads in the amount of \$2.8 billion.
- In Goshen, Indiana, vandals were able deliberately to derail eleven rail cars that were stored on our tracks for interchange with another railroad.

In each of these instances, the acts of others caused incidents for which Norfolk Southern could potentially have been or was exposed to tremendous liability from a release of highly hazardous materials. In these real life examples, the train crews did everything exactly according to rules and procedures. But one impatient driver, one faulty repair by the owner of a tank car, or one prankster– not a terrorist – caused an incident that could have been disastrous if the accident had involved the release of these materials. The simple fact is we are putting our company at risk every single time we couple a carload of these highly hazardous materials to one of our trains – no matter how safely we operate.

It simply is not good public policy to force railroads to bear all the substantial risks of catastrophic damages associated with transporting highly hazardous materials – risks we would not take absent the common carrier obligation imposed by the Federal government. Such damage payments would significantly retard a railroad’s ability to finance maintenance efforts (which could itself have adverse safety consequences) and

¹ National Transportation Safety Board, NTSB/HZB-88/01, Hazardous Materials/Railroad Accident Report, Butadiene Release and Fire From GATX 55996at the CSX Terminal Junction Interchange in New Orleans, Louisiana, Sept. 8, 1987, at 62.

infrastructure improvements that enhance safety and expand capacity. As you know from this Committee's April 26 hearing entitled "The U.S. Rail Capacity Crunch," our country needs that investment to occur. These damage payments could even bankrupt a railroad.²

It is time for Congress to remedy the inequity in the law that forces us to assume risks that we would not assume on our own without any protection against those risks.

Accordingly, Norfolk Southern supports the position of the Association of American Railroads that Congress must act. Congress could (1) create a statutory liability cap for the railroads similar to the one that applies to the National Railroad Passenger Corporation or (2) enact a Price Anderson-like solution. If it will not, then it should not mandate that our shareholders assume that risk. This Committee should relieve railroads of their common carrier obligation so that Norfolk Southern can decide for itself whether to accept and at what price it is willing to accept such materials for transportation.

While awaiting government action, Norfolk Southern continues to examine every possible option to share the risk it assumes when it complies with the common carrier obligation with those who make and use these materials. Those options include petitioning the Surface Transportation Board to recognize that highly hazardous materials are outside the scope of regulation, requiring shippers to indemnify the railroad or carry insurance to cover the transportation of those materials, increasing rates or applying new charges to cover our risk, and passing along any costs we incur to implement

² Today, insurance coverage for railroads is even more limited than it was before the Graniteville accident and other recent incidents on other railroads. Currently, there is a maximum of about \$1 billion in insurance coverage available in the market. Moreover, the number of companies willing to underwrite coverage is shrinking – making the insurance market thin, and rates have risen dramatically. I fear that one day soon insurance may not be available to us at a reasonable price at any level.

governmental security or safety recommendations or regulations related to the transportation of these materials. We are aware that many of our customers may not like these options, but absent legislation, they may be our only alternatives.