

Hazardous Materials Unsecured: Terrorist Use of Trucks and Trains a Major Threat

Tens of millions of tons of toxic chemicals, radioactive nuclear waste, commercial explosives, flammable gasoline and other hazardous materials are transported every year by trucks and trains across the country, through American cities and towns. Since September 11, 2001, little has been done to assure that these shipments are secure from attacks by terrorists, which could, in the worst case scenario, expose cities to leaks of deadly chemicals or explosions that could kill or seriously injure thousands, possibly even millions, of Americans.

In its final report released in the summer of 2004, the 9/11 Commission concluded that concern for such consequences is warranted and that little has been done to address the risks:

While commercial aviation remains a possible target, terrorists may turn their attention to other modes. Opportunities to do harm are as great, or greater, in maritime or surface transportation.¹

Commonsense measures would reduce the possibility that terrorists could exploit these vulnerabilities, yet the Bush administration has not taken the key steps needed to close the gaps. The 9/11 Commission concluded that the administration's Transportation Security Administration (TSA) "despite congressional deadlines ... has developed neither an integrated strategic plan for the transportation sector nor specific plans for the various modes – air, sea and ground."²

Among other failures, the administration has not supported a critical effort to reroute trains carrying hazardous materials away from Washington, D.C., and other major population centers. The administration is also seeking to carry out a controversial plan to dramatically increase the volume of high-level radioactive nuclear waste shipped across the country by pushing for a storage facility in Yucca Mountain, Nevada.

Overall, Surface Transportation Remains at Risk

There are many indications that both trains and large trucks are tempting targets for terrorists. Terrorists attacked surface transportation systems 195 times between 1997 and 2000 alone.³ The tragic March 11, 2004, terrorist bombings of four commuter trains in Madrid are just one indicator that terrorists are making large transit vehicles a prime target.

The plan need not be complicated to wreak havoc and cost lives. A weapon as simple as the legal, widely available 50-caliber rifle, which al Qaeda terrorists have purchased in the past, has the potential to inflict serious damage on a train car or truck carrying lethal materials, by penetrating tanks and causing an explosion or derailment.⁴

Every day, up to 76,000 tanker trucks carrying hazardous cargo travel across the United States.⁵ A typical gasoline tanker truck carries as much fuel as the planes that hit the World Trade Center.⁶

Al Qaeda undoubtedly realizes the possibilities for such action. The FBI's October 2002 alert warned that al Qaeda's attack strategies could include "destroying key rail bridges and sections of track to cause derailments, or targeting hazardous material containers. Recently captured al Qaeda photographs of U.S. railroad engines, cars and crossings heighten the intelligence community's concern about this threat."⁷

And in October 2003, an Ohio truck driver, Iyman Faris, was sentenced to 20 years in prison after pleading guilty to participating in a plot involving top al Qaeda leader Khalid Sheik Mohammed to destroy the Brooklyn Bridge and derail trains in the Washington, D.C., area.⁸

Yet the Bush administration and the newly created Department of Homeland Security (DHS) have done little to protect Americans from these risks. Thus far, there has not been a comprehensive assessment of the risk of attacks from terrorist use of rail and transit systems.⁹ In April 2004, the Senate Commerce Committee approved legislation providing \$350 million for DHS to assess rail security and develop recommendations within six months.¹⁰ But the bill remains stalled, blocked by members of the president's party.¹¹

HazMat Train Cars Particularly Vulnerable to Attack

The United States has more than 100,000 miles of rail track.¹² As the Government Accountability Office has written, "The extensiveness of the infrastructure creates an infinite number of targets for terrorists."¹³ Chemical products accounted for 9 percent of all major rail-carried commodities in 2002.¹⁴ More than 1.7 million carloads of hazardous materials – such as chlorine, ammonia, hydrogen fluoride or phosphoric acid – are carried each year by trains traveling across the United States.¹⁵

Trains also run dangerously close to the nation's political infrastructure. Ninety-ton rail cars that regularly pass within four blocks of the U.S. Capitol building in Washington, D.C., contain enough chlorine to kill 100,000 people within 30 minutes and would endanger 2.4 million people.¹⁶ According to CSX, owner of the freight rail lines in Washington, D.C., about 8,500 rail cars of hazardous material pass through our nation's capital each year.¹⁷ The trains move slowly, and the hazardous material tank cars are labeled with codes indicating the presence of dangerous materials (a necessary situation so that fire and rescue responders can identify risks in event of a crash).¹⁸

Moreover, terrorism experts have fully identified the risks. Troy Morgan, an FBI specialist on weapons of mass destruction in a June 2003 speech at a chemical industry conference, 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."¹⁹

Chemical companies that send shipments by train have made clear the magnitude of possible harm. A chemical plant near Detroit estimates that the rupture of one of its 90-ton rail cars of chlorine could endanger 3 million people.²⁰ A southern California chemical plant regularly loads chlorine into 90-ton railroad cars that, if ruptured, could poison more than 4 million people.²¹

In March 2004, the National Transportation Safety Board concluded that more than half of the nation's 60,000 rail tank cars carrying hazardous materials are too old to meet current industry standards and thus are more likely than newer cars to break open after derailing.²² Crashes that have recently occurred with grave results demonstrate the possible harm. In July 2002, a tanker train carrying hydrochloric acid and other hazardous chemicals derailed in a Baltimore tunnel. The tunnel fire burned for five days, shutting down large areas of the city.²³

And in January 2002, a 122-car freight train derailed near Minot, North Dakota, because of track damage. Five cars broke open, spilling nearly 150,000 gallons of anhydrous ammonia, which formed a vapor cloud that killed one person and injured 333 more.²⁴ In yet another incident the summer of 2004, a Union Pacific train carrying chlorine collided with another train 14 miles from San Antonio, Texas. The resulting chlorine leak sent a plume of gas into the air and killed the Union Pacific conductor and two residents living near the impact site. Another 50 people were hospitalized, two in critical condition.²⁵

Efforts to Reduce Risks of HazMat Trains Derailed

Even the most obvious risks posed by train shipments of hazardous materials through the nation's capital and other major population centers remain unaddressed. In January 2004, the City Council of Washington, D.C., held a hearing on a bill authored by Councilmember Kathy Patterson to require rerouting of hazardous materials-carrying trains away from the city.²⁶ Testimony of experts at the hearing illustrated the serious vulnerability of hazardous train shipments to terrorist attacks in the capital. Dr. Jay Boris of the U.S. Naval Research Laboratory made clear the potentially lethal nature of an attack on a chlorine car, with up to 100,000 casualties in the first half hour and as many as 100 people dying per second.²⁷

The Transportation Security Administration (TSA) responded by agreeing to establish a "working group" to address the issue. As a result, the D.C. Council agreed to postpone action. But as the working group proceeded, Steven McHale, deputy administrator of TSA, testified before Congress in May 2004 that the government intended to continue to allow trains with hazardous materials to pass close to the Capitol and that, overall, efforts to reroute trains away from major cities would be "quite limited."²⁸

Nationwide, the problem is just as serious. U.S. Rep. Ed Markey (D-Mass.) has introduced legislation to remedy the danger of rail transport of hazardous materials (H.R. 4824). His bill would provide obvious and necessary fixes, such as additional physical

security for the most hazardous materials carried by rail, pre-notification to law enforcement of such shipments, coordination between authorities to create a response plan for a terrorist attack on a hazardous shipment, and rerouting of the most hazardous shipments if a safer route is available.

The impact of such rerouting would be manageable because the Markey bill would require it only if the shipment contains substances that are acutely toxic. According to the Argonne National Laboratory, “toxic-by-inhalation” (TIH) materials, such as chlorine, ammonia and hydrogen fluoride, the substances most likely to be turned into weapons of mass destruction, account for only 10 of the 150 most frequently shipped hazardous substances.²⁹

On September 29, 2004, the House Judiciary Committee approved the Markey legislation by voice vote, but it was stripped from the version of the 9/11 Recommendations Implementation Act by the Republican leadership before the bill was brought to the House floor, leaving no provision in either Senate- or House-passed 9/11 legislation. In addition to opposition from TSA officials, the measure to reroute trains around the capital was aggressively opposed by 33 trade groups, including CSX, the company that owns the freight rails running through Washington, D.C., and the Association of American Railroads.³⁰

In another surprising development, the Federal Railroad Administration (FRA) is currently considering a petition from Union Pacific Railroad asking the FRA to allow trains entering the U.S. from beyond the U.S.-Mexico border to avoid safety inspections at domestic border facilities. The FRA has not yet conducted an examination of the Mexican inspection facility to determine if it meets U.S. standards and is considering the petition in a notice-and-comment rulemaking thus far dominated by train interests.³¹

Although the Research and Special Programs Administration (RSPA), within the Department of Transportation (DOT), issued new rules for rail tank car crashworthiness in 1989 and again in 1995,³² a 2004 report by the National Transportation Safety Board (NTSB) investigating the fatal crash in Minot, North Dakota, found that the government has “not established adequate testing standards to measure the impact resistance for steels and other materials used in the construction of pressure tank cars.”³³

The NTSB noted that more than half of the nation’s 60,000 railroad tank cars that carry hazardous materials pre-date the 1989 standards and therefore were not designed to withstand predictable levels of stress and are more likely to break open after derailing.³⁴ In particular, the NTSB found that pre-1989 cars constructed from “non-normalized,” or weaker, steel, some of which are expected to remain in use until 2038, pose a much higher risk than post-1989 cars.

Yet both the FRA and the industry raised objections to the NTSB’s efforts, citing the expense and questioning the benefits of requiring all cars in use to meet the safer standard.³⁵ In response to these failures, the NTSB recommended that the FRA conduct an analysis of the impact resistance of older cars, rank the cars according to their risk of

catastrophic fracture, and implement measures to eliminate this risk in older cars. In addition, the NTSB recommended development of a better performance standard for impact resistance for new cars.³⁶

The departments of Transportation, which contains the FRA, and Homeland Security only recently, in August 2004, initiated a very preliminary public discussion on measures to improve security requirements for rail transportation of hazardous materials to protect against their misuse by would-be terrorists.³⁷

The FRA and Homeland Security rulemaking seeks feasibility and cost information to initiate specific security enhancements, including: improvements in security plans, modification of methods to identify shipments; enhanced requirements for temporary storage, strengthened tank car integrity, and implementation of tracking and communication systems. The comment period closes on October 18, 2004. It is unclear when the agencies will move forward to complete a rule and whether any requirements would be phased in over time, a process that could take years.

Large Trucks Make Tempting Targets for Terrorists

Terrorists have used trucks filled with explosives in some of the worst terrorist attacks in history, including the 1998 Africa embassy bombings and the first World Trade Center attack in 1993. The 1993 Oklahoma City domestic terrorism attack by Timothy McVeigh killed hundreds and destroyed a federal building with a truck carrying common agricultural chemicals.³⁸ Terrorists also could attack or hijack a commercial truck carrying hazardous materials and use it as a weapon. Thousands of commercial trucks on the road carry more hazardous materials every day than any of the trucks used in those previous notorious attacks.

Commonsense Steps to Improve Oversight of Hazmat Carriers Ignored

Government monitoring of trucks carrying hazardous material remains weak. There are insufficient checks on where trucks carrying hazardous materials may drive and little oversight as to the types, amounts and locations of trucks moving these potentially lethal loads. Though better monitoring of trucks is technologically feasible and cost-effective, the government has failed to pursue many critical advances in monitoring capabilities.

For instance, equipping trucks with Global Positioning System (GPS) technology and establishing a monitoring center to track trucks would help protect against, and reduce the consequences of, both terrorist attacks and hazardous material spills. Such a measure would incur costs of just a few hundred dollars per truck but could prove invaluable in the event a truck is stolen and misused by terrorists. It also would eliminate maintenance costs associated with keeping manual logs of truck hours-of-service compliance.³⁹ Many trucking companies already equip their trucks and drivers with electronic monitoring for business purposes but have resisted using the devices for safety- and security-related monitoring.

A monitoring center with GPS data on trucks would allow the government to watch for suspicious activities (for example, a truck departing from its intended travel route), to find stolen vehicles, and to designate and enforce high-risk zones in which hazardous materials are not allowed. Equipping trucks with a device that would allow a monitoring center or the police to remotely and safely disable a renegade vehicle would provide critical supplemental powers.

A monitoring center would also reap gains for public health by improving emergency responses to crashes involving trucks carrying hazardous materials. In the event of a crash, the center would receive immediate notification of the event and could supply emergency personnel with the exact crash location and all relevant information about the materials the truck was carrying. The need for prompt communication is often raised by first responders as critical to a meaningful and safe response for workers and the public, and receiving an inadequate response today.

One federal agency with oversight in this area is the DOT's Research and Special Programs Administration (RSPA), which registers carriers that transport hazardous materials for tax and other purposes. Final agency decisions since 9/11 on that topic have, egregiously, lacked many of the needed requirements for its safe transport.

Following pressure from industry, in March 2003 the agency backed away from a proposed requirement that each truck carry a current copy of the vehicle's registration papers.⁴⁰ And while it adopted a requirement that carriers must develop a "security plan," the agency declined to specify the elements needed for any such plan. This approach is like telling a child to do his or her homework but failing to provide any assignment or to check whether it has been done.

Similarly, while requiring that employee hazmat training contain a security component, the agency did not specify the contents of that training or provide employers with guidance on what should be included. These types of content-free rules do little to improve safety or obviate legitimate security concerns.

In May 2003, a rule issued by the RSPA failed to extend placard, or labeling, requirements to include greater quantities of hazmat transported in quantities of less than 1,000 pounds and refused to include agricultural chemicals, such as the ammonium nitrate used to blow up the Murrah federal building in Oklahoma City in 1995.⁴¹ Ammonium nitrate – farm fertilizer – is extremely dangerous and can be easily purchased by terrorists. Yet only two states – Nevada and South Carolina – require retailers that sell this fertilizer to maintain records on all purchasers.

Federal law enforcement officials say they cannot control sales of the chemical. Agricultural states and the chemical industry – two extremely powerful influences in the federal government – have blocked measures to extend the labeling requirements, saying that placarding rules would burden farmers, while first responders have strenuously objected to the lack of rules requiring safety markings. Firefighters and emergency personnel remain deeply concerned that first responders will not have the information

they need to protect workers and the public after an accident or deliberate misuse of the chemicals.

The other agency charged with maintaining truck safety, the Federal Motor Carrier Safety Administration (FMCSA), has similarly dropped the ball as to new terrorist threats from the misuse of large trucks. Although FMCSA exercises nominal oversight over new carrier companies entering the trucking marketplace through safety inspections within the first nine months of operations, the initial application for operating authority consists merely of a short application form and small fee, both transmittable over the Internet.

There is only minimal federal oversight of a change in a carrier's status from a regular trucking company to a hazmat carrier. Any carrier company with an acceptable operating authority application could upgrade from non-hazmat cargo to hazmat cargo by merely informing the RSPA of the change and complying with the RSPA's rules on placarding and fees. In other words, a company can seek authority from the FMCSA for transporting apples one week and ship hazardous materials the next. So long as the RSPA was notified and paid an additional fee – for tax, and not security, purposes – no rule would be violated.

FMCSA's FY2005 budget request to Congress on hazmat security notes that:

Terrorists can potentially use trucks transporting hazardous materials to conduct attacks against the United States. Certain materials such as explosives, poison gases, radioactive materials, and flammable gases have the potential to be used as weapons of mass destruction to inflict catastrophic consequences, including loss of thousands of lives, environmental degradation, interruption to mobility and commerce, and destruction of vital infrastructure if these materials are released, either accidentally or deliberately.

Yet FMCSA's 2004 budget proposal indicates that both the "leading indicators" and "performance goal for the FMCSA's hazmat security program [are] still under development."⁴²

While the agency from 2002 to 2004 conducted a large number of outreach and "security sensitivity" visits to carriers that transport hazmat, it failed to evaluate the outcome of this outreach in terms of improved security. FMCSA also targeted for "enhanced" security visits carriers that transport highly dangerous materials, yet, as below, the agency demonstrated considerable hesitancy in issuing regulations to achieve the same goal.

October 2004 news reports indicated that FMCSA soon will publish results from its evaluation of hazmat security technologies, tests conducted since 2002. Yet it was again unclear whether rules mandating the technologies would be forthcoming.⁴³

Rules for Transporting Highly Toxic or Explosive Materials Seriously Deficient

When asked by Congress to develop a safety permit system for carrier companies transporting highly hazardous materials, including explosives and materials that are toxic upon inhalation, FMCSA issued a loophole-riddled final rule. While the rule establishes some preconditions for motor carriers to receive a safety permit, including a security plan registered with the RSPA and a crash and out-of-service rate below the top 30 percent of the national average, the rule also fails in several key ways to provide adequate safety and security.

Specifically, the final rule specifies that only motor carriers transporting *radioactive* materials are required to prepare and provide drivers with a written route plan, rather than all carriers of non-radioactive explosive and other very dangerous materials. This decision was a step backward from the agency's proposed rule, which had contemplated a written routing plan for all affected hazmat carriers.

The final rule also backtracked from the proposal in terms of the communications plan requirements, requiring far less frequent communications between the driver and carrier than initially proposed. A driver carrying extremely deadly chlorine gas, making a 7.5-hour trip from Boston to Washington, D.C., could be hijacked near the beginning of the trip and the truck could be more than 400 miles away before the motor carrier would necessarily have reason to suspect a problem.

Moreover, both the final rule and proposal required only a pre-trip inspection if the shipment contains radioactive materials. Considering the massive risks posed by a crash or terrorist attack involving explosives or toxic materials, the agency should insist upon a pre-trip inspection for all such shipments.

As this suggests, the routing of hazardous materials is a matter of particular concern for security. Many in the security community suggested after 9/11 that routing patterns should be revised so that dangerous materials may not be trucked through densely populated and vulnerable areas. Yet FMCSA's rules on routing patterns for hazmat make it difficult to adopt a security-based approach, instead facilitating industry challenges of such efforts on economic grounds.

Non-radioactive hazmat routing is done by the states and Indian tribes, not by the federal government. The FMCSA has not issued any regulations that require states and American Indian tribes to create and enforce highway routing controls for transporting these types of hazardous materials.

If states and tribes do implement routing controls, FMCSA sets out specific procedures they must follow, many of which place industry's interest in reducing costs above safety- or security-based routing plans. For example, under FMCSA's rules, states and tribes must designate routes that are as short as possible and that do not unnecessarily delay transport of the materials. Moreover, trucking interests may appeal to FMCSA to

challenge routing designations made by states or tribes, and seek federal pre-emption to overrule particular state or tribal routing designations.

It is clear that routing rules in the wake of 9/11 should apportion some greater weight to safety and security concerns than is currently available to concerned states and localities. Federal regulations concerning routing allow carriers to appeal decisions and seek preemption on cost grounds, undermining the clear duty of states and localities to minimize the risks to citizens.

Checks on Drivers of Commercial Trucks and Licensing Fraud Also Inadequate

Reports published soon after 9/11 indicated that a number of individuals connected with terrorist networks had obtained or applied for licenses to drive trucks carrying hazardous materials.⁴⁴ In June 2004, DHS announced that it had conducted computer background checks on 2.7 million drivers licensed to carry hazardous materials; 29 were determined to have possible connections to terrorist activity.⁴⁵ Industry groups have opposed the new security measures, including a fingerprint-based background check requirement for commercial truck drivers. That program fell eight months behind schedule and likely will not begin to be phased in until January 2005.⁴⁶

Fingerprint-based background checks could be combined with driver identification technology that would lock a truck until a registered driver signed in with his or her fingerprint. Fingerprint-based driver identification technology would protect against theft, including the possibility of terrorists stealing a truck to use in an attack while a driver is sleeping, eating or filling out paperwork away from the truck.

The FMCSA has done little in this area to alleviate security concerns. Indeed, the agency's foot-dragging on mandates enacted by Congress throughout the 1990s was so acute that Public Citizen was forced to sue to get five of these safety rules issued in 2001. A settlement agreement stemming from that litigation set out a schedule for the issuance of the proposed and final rules.

As agreed in the lawsuit, in May 2004, FMCSA finally issued a long-overdue rule – pending since 1991 – intended by Congress to establish training requirements for entry-level truck drivers. However, the rule as issued merely requires instruction on certain technical and legal issues (such as how to comply with hours-of-service laws). It does not set out any mandatory requirements, or even guidelines, for hands-on or operational driver training, as Congress had intended, and as studies of the issue in the mid-1990s recommended as necessary for improved safety.⁴⁷

The rule's focus on testing rather than real training requirements is the subject of another, still-pending legal challenge by Public Citizen. The lack of genuine training rules for entry-level drivers means that commercial truck driver positions are far easier to obtain than they should be, in violation of both safety and security concerns.

The system of state licensing programs for drivers of commercial trucks is equally sketchy. The Department of Transportation's Office of Inspector General (DOT OIG) found in an audit last year that the current level of state checks on issuance of commercial driver's licenses still provides ample opportunities for individual would-be drivers to fraudulently obtain commercial driver's licenses (CDLs).⁴⁸

The inspector general's findings were sobering. Since 1998, suspected fraud in the testing and licensing of commercial drivers has been identified in 16 states. Their enforcement efforts have uncovered numerous scams involving foreign and illegal workers who fraudulently obtain CDLs from corrupt state licensing officials, often through licensing mills that provide fake CDLs for several dozen untrained drivers.

The inspector general concluded that the FMCSA should strengthen its oversight of the state's CDL programs and made key recommendations to reduce the incidence of fraud and improve state licensing protocols. Currently, the DOT does not require annual state certifications of licensing programs to be supported by any reviews or monitoring procedures. It also does not conduct functional reviews, monitor key data on CDL licensing transactions or do an assessment of the adequacy of controls in place in the states during its oversight reviews.

In its audit, the DOT's inspector general recommended commonsense steps to tighten state programs for issuance of CDLs, including:

- Requiring CDL applicants to prove they are U.S. citizens or otherwise legal. Only four of 13 states visited had such laws.
- Requiring CDL applicants to prove their state residency. Only one of the 13 states did this independently.
- Requiring states to verify applicant Social Security numbers.
- Establishing training and qualification standards for CDL driver examiners.
- Requiring a CDL applicant to have a passing score on the knowledge test before a learner's permit could be issued. (FMCSA had drafted proposed regulations related to this but had not released it for comment at the time of the report.)
- Establishing performance-oriented English proficiency standards and agreed-to testing protocol. (FMCSA had said it was considering a revision to the standard in 1997, but nothing has been issued.)

In addition, the DOT inspector general's recommendations that FMCSA strengthen its oversight of state programs included the following:

- Prescribing sets of requirements for annual state certifications.
- Performing nationwide reviews targeted at specific state functions across states (*i.e.*, oversight of third-party testers). (FMCSA stated that it plans to conduct these reviews, but none had been scheduled or initiated.)
- Regular monitoring of key data on CDL transactions. The CDL license information system generates routing management reports showing the volume of CDL transactions, but FMCSA has not monitored key data in the system.

- Improving the compliance indicators FMCSA uses as a tool for determining state compliance with CDL standards. Right now, the indicator does not include questions or tests to determine implementation of federal standards.
- Improving oversight of third-party testers.
- Using sanctions to enforce compliance and promote corrective actions. Neither FMCSA nor its predecessor withheld federal highway funds for enforcement.

Yucca Mountain Disaster Rolls on Due to Administration's Efforts

On top of its failures to take decisive action in a number of areas, the Bush administration is proposing to increase hazardous materials transport risks by proceeding with the controversial plan to deliver some 100,000 shipments of highly radioactive nuclear waste across 44 states for storage at Yucca Mountain, Nevada.⁴⁹

Most of America's nuclear waste is generated at power plants east of the Mississippi River, so the waste would have far to travel.⁵⁰ The environmental risks of storing the material at Yucca Mountain are serious enough, but the dangers of shipping the radioactive waste by truck or rail – one to six shipments a day for 24 years⁵¹ – make the decision even worse. As U.S. Sen. Harry Reid (D-Nev.) has said, “Every one of those trucks, every one of those trains, is a target of opportunity for a terrorist.”⁵²

Over time, terrorists could learn the pattern of deliveries, identify shipments and attack these nuclear train cars and trucks with explosives or anti-tank weapons, causing a leak of material that could threaten thousands or millions of people. Each train car would carry 240 times the amount of long-lived radioactive material that was released by the Hiroshima bomb.⁵³

Department of Energy (DOE) and Nuclear Regulatory Commission (NRC) testing has found that truck casks are vulnerable to sophisticated anti-tank weapons and high-energy explosive devices, which can breach the wall of the cask. But, as the “backpack” bombings in Madrid on March 11, 2004, show, it does not take a sophisticated missile to successfully attack a train or train tracks. According to testimony by former Undersecretary of Energy Robert Card at a House Energy and Commerce Committee hearing on March 25, 2004, the DOE does not intend to include a specific analysis of the Madrid train bombings in developing its transportation security plan.

Other regulatory agencies that are supposed to be involved in regulating the transport of high-level waste should also be examining these threats. According to testimony by officials from the Government Accountability Office (GAO) on March 23, 2004, before the Senate Committee on Commerce, Science, and Transportation, “The lack of clearly delineated roles and responsibilities [between the Transportation Security Administration and the Department of Transportation] could lead to duplication, confusion, and *gaps in preparedness*”⁵⁴ [emphasis added].

Ultimately, the robustness of the shipping casks will determine whether radioactivity is released if there is an accident or an attack. Yet the NRC does not require full-scale testing as part of its cask certification process. None of the casks that are now used in the United States have undergone full-scale testing. And there are no plans for full-scale testing of the casks that could be used for waste shipments to Yucca Mountain.

The DOE, Transportation Security Administration, Department of Transportation, and NRC should assess the Madrid bombings and other terrorist risks and determine the types of security measures that would be needed to protect shipments of nuclear materials to Yucca Mountain.

Campaign Contributions by the Railroad and Trucking Industries

The railroad industry, its main trade association, the Association of American Railroads, and their employees have contributed nearly \$2.5 million to Bush campaign efforts since the 2000 election cycle, according to Public Citizen’s analysis of data provided by the Center for Responsive Politics. [See Figure 1.]

Ninety-three percent of that total came from the nation’s three largest railroads: Union Pacific, Burlington Northern and CSX.⁵⁵ [For a complete list of campaign contributions by company, see Figure 4.]

The political influence of the trucking industry is harder to quantify because the industry is so decentralized – with thousands of small companies and independent

operators hauling the nation's freight. However, the trucking industry trade associations – primarily the industry's main lobbying arm, the American Trucking Associations – contributed nearly \$418,000 to the Bush presidential campaigns, the Bush-Cheney Inaugural Committee and the Republican National Committee.

The chemical industry also had a major interest in laws or regulations governing the transport of hazardous materials. As detailed earlier in this report, though not included in the totals for this section, chemical companies and their trade associations have contributed more than \$8 million to Bush campaign efforts.

Figure 1
Hazmat Transport Industry Contributions to Bush & RNC,
2000-2004

Company/ Organization	Election Cycle						Total	
	2000		2002		2004			
	Bush	RNC	Inaugural	RNC	Bush	RNC		
Railroads	\$70,550	\$921,690	\$100,000	\$956,258	\$294,451	\$120,475	\$2,463,424	
Trucking	\$8,093	\$107,000	\$100,000	\$223,042	\$20,100	\$4,125	\$462,360	
TOTAL	\$78,643	\$1,028,690	\$200,000	\$1,179,300	\$314,551	\$124,600	\$2,925,784	

Source: Public Citizen analysis of data provided by the Center for Responsive Politics. Totals include contributions from political action committees and individual members or employees of an organization, as well as unrestricted "soft money" donations from individuals and corporate treasuries before the 2004 election cycle (when such donations became illegal). Contribution data are as of October 1, 2004.

Hazmat Rangers and Pioneers

Five top railroad executives and two top representatives of the American Trucking Associations were named “Rangers” or “Pioneers” – the honorary titles given by the Bush campaign to those fundraisers who collect at least \$200,000 or \$100,000, respectively. These individuals personally brought in at least \$1.3 million – and almost certainly much more – for Bush campaign efforts in 2000 and 2004. [See Figure 2.]

Figure 2
Hazmat Transport Industry Rangers and Pioneers, 2000 & 2004

Name	Employer	Occupation	Fundraising Status	Minimum \$ Bundled
Duane Acklie	American Trucking Associations	Immediate Past Chairman ⁵⁶	2004 Ranger†	\$500,000
Alvin R. Carpenter	CSX	Vice Chairman ⁵⁷	2000 Pioneer	\$100,000
Hussein Cumber	Florida East Coast Industries	Vice President	2004 Ranger	\$200,000
Richard K. Davidson	Union Pacific	Chairman, CEO & President	2004 Ranger	\$200,000
Bill Graves	American Trucking Associations	President & CEO	2004 Pioneer	\$100,000
Drew Lewis	Union Pacific	Retired Chairman & CEO ⁵⁸	2000 Pioneer*	n/a
Matthew K. Rose	Burlington Northern Santa Fe	Chairman & CEO	2004 Ranger	\$200,000
TOTAL	--	--	--	\$1.3 million

Source: Public Citizen research and analysis of Bush campaign disclosures, www.WhiteHouseforSale.org.

*Pledged to become a Pioneer in 2000 but campaign would not confirm if bundler reached the goal or how much was collected.

†Achieved “Super Ranger” status after collecting \$300,000 for the Republican National Committee in 2004, in addition to at least \$200,000 raised for the 2004 Bush campaign. This money is included in the “Minimum \$ Bundled” total.

In 2000, two top railroad executives pledged to become Pioneers – Alvin R. Carpenter of CSX and Drew Lewis of Union Pacific. Carpenter, then the railroad’s vice chairman, collected at least \$100,000 for Bush. Also a major fundraiser for Florida Gov. Jeb Bush, who has appointed him to several state advisory panels, Carpenter retired in February 2001 but remains a consultant for CSX.⁵⁹ Carpenter’s donations may have helped his then boss, CSX Chairman and CEO John Snow (who had supported Sen. John McCain’s presidential aspirations), to secure a spot on the Department of Transportation transition team.⁶⁰

Of course, Snow – whom Bush would nominate in late 2002 to replace the ousted Paul O'Neill as Treasury Secretary – previously had served at the Department of Transportation under President Nixon and President Ford (whose chief of staff was Dick Cheney). Snow rose to the position of deputy undersecretary of the DOT before being tapped to head the National Highway Traffic Safety Administration (NHTSA) in 1976, Ford's last year in office.⁶¹ Returning to the government 17 years later – but keeping his annual CSX pension of \$2.47 million – Snow brought along several CSX colleagues, such as the company's top lobbyist Arnold Havens, who became general counsel of the Treasury Department.⁶²

The Bush campaign never confirmed whether Drew Lewis, retired chairman of Union Pacific and secretary of transportation under President Reagan, ever reached his \$100,000 fundraising goal. Any involvement Lewis hoped to have with the new administration may have been sidelined by personal problems.

But Union Pacific – the country's largest railroad – had an inside track to the Bush administration through Dick Cheney, who had been a member of its board of directors.⁶³ Lewis' successor at Union Pacific, Richard K. Davidson, served on the DOT transition team, as did officials from the Association of American Railroads, the American Short Line & Regional Railroad Association, and Norfolk Southern.⁶⁴

In a 2003 profile, Davidson told *Railway Age* that he “firmly believes that government regulation of critical infrastructure companies must be avoided. Instead, we should rely on market forces.”⁶⁵ In September 2002, Bush appointed Davidson as chairman of the National Infrastructure Advisory Committee and member of the Homeland Security Advisory Council, which is charged with advising the president on “developing and coordinating the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.”⁶⁶ Last year, Davidson was succeeded as chairman by NIAC member and Ranger Erle Nye, CEO of electric utility TXU.⁶⁷

Davidson became a Ranger in 2004. Also raising at least \$200,000 for Bush was Matthew K. Rose, CEO of Burlington Northern Santa Fe, the country's second largest railroad. Rose took the reins of Burlington Northern in 2002.

The other railroad industry Ranger, Hussein Cumber of Florida East Coast Industries, is less notable for his work as a lobbyist and spokesman for the short line freight hauler than his precocious fundraising prowess. The campaign's youngest Ranger, he raised at least \$200,000 for Bush at age 29. His fiancé has collected an additional \$50,000 to qualify as a “Maverick,” and Cumber helped put together a \$1.3 million fundraiser featuring the president in Fort Lauderdale in September 2003. His fellow Rangers are impressed. “He's of the caliber of men and women who run the country in a big-time position,” one told *The New York Times*. “If this is 29, what will he be when he's 39 or 49?”⁶⁸

For its part, the trucking industry produced a pair of Bush rainmakers from its main lobbying group, the American Trucking Associations (ATA). Bill Graves, ATA president and CEO, raised at least \$100,000 for the Bush campaign in the current cycle. Graves filled the top spot at the ATA just two days after completing his second term as governor of Kansas. An interim president had been keeping his seat warm since the trade group announced his hiring while he was still in office in 2001. Graves is reportedly close to Bush, who appointed Graves' wife to head the Commission on Presidential Scholars. As Timothy P. Lynch, president of the Motor Freight Carriers Association, told a trucking trade publication shortly before Graves arrived in Washington: "I can assure you, given his relationship with the resident at 1600 Pennsylvania Ave., he will have no problem getting his phone calls returned."⁶⁹

Duane Acklie, the immediate past chairman of the ATA and CEO of Crete Carrier Corp., is one of the Republican Party's biggest fundraisers. A Republican National Committeeman from Nebraska, Acklie not only raised at least \$200,000 for the Bush campaign, but achieved "Super Ranger" status after collecting an additional \$300,000 for the RNC. Acklie also served as co-chairman of Bush's Nebraska finance team in 2000 before joining the Bush transition team at the DOT. In 2003, Bush named Acklie chairman of the Student Loan Marketing Association. He received the Sallie Mae appointment just a few weeks after co-hosting a \$500,000 Bush fundraiser in Omaha with Union Pacific's Davidson at which Dick Cheney appeared.⁷⁰

At least 13 different trade associations, railroads and trucking companies lobbied the federal government on hazmat transport security issues during the past three years. Lobbyists are not required to itemize their lobbying expenditures, so it's impossible to know exactly how much was spent to thwart stricter federal security requirements. However, Public Citizen's analysis of federal lobbying disclosure records does provide a measure of the industry's clout in Washington. Since 2002, these groups and companies have spent nearly \$43 million on federal lobbying. [See Figure 3.]

Figure 3
Hazmat Transport Industry Lobbying, 2002-2004

Company/Organization	2002	2003	2004*	Total
Railroads	\$16,378,040	\$16,856,429	\$2,140,000	\$35,374,469
Trucking	\$3,347,578	\$4,008,028	\$100,000	\$7,455,606
TOTAL	\$19,725,618	\$20,864,457	\$2,240,000	\$42,830,075

Source: Public Citizen analysis of lobby disclosure reports filed with the Secretary of the Senate and Clerk of the House, 2002-2004. Dollar amounts reflect the total federal lobbying expenditures by companies and organizations during reporting periods in which they lobbied on hazmat and transportation security issues. Lobby disclosure reports do not itemize expenditures for specific lobbying issues or bills.

*Totals include lobbying through June 30, 2004. As of October 1, mid-year 2004 lobby disclosure forms were unavailable for some firms that lobbied on hazmat and transportation security issues in prior years.

Two-thirds of the total lobbying spending came from the Association of American Railroads (\$12.6 million) and its four biggest members – Burlington Northern (\$3.1 million), CSX (\$4.9 million), Norfolk Southern (\$4.4 million) and Union Pacific (\$8.4 million). The American Trucking Associations spent \$5.4 million from January 2002 through June 2004 on efforts to influence the federal government. [See Figure 5 for annual lobbying totals for all hazmat transport industry companies and trade groups.]

The lobbying by the railroad and trucking industries were bolstered further by the chemical industry. As chronicled elsewhere in this report, chemical companies and their trade associations spent \$101.8 million on federal lobbying during the same period.

Leading experts on hazardous materials transport security:

Jay Boris, U.S. Naval Research Laboratory, Washington, D.C.

Matthew Brzezinski, journalist, author of *Fortress America*, Washington, D.C.

Stephen E. Flynn, senior fellow, Council on Foreign Relations, New York

Wenonah Hauter, Critical Mass Energy and Environment Program, Public Citizen

Rick Hind, legislative director, Toxics Campaign, Greenpeace USA, Washington, D.C.

Gerry Poje, member, U.S. Chemical Safety and Hazard Investigation Board,
Washington, D.C.

Figure 4
Hazmat Transport Industry Contributions to Bush/RNC,
2000-2004

Company/ Organization	Election Cycle						Total	
	2000		2002		2004			
	Bush	RNC	Inaugural	RNC	Bush	RNC		
American Trucking Associations	\$6,843	\$69,450	\$100,000	\$204,800	\$12,750	\$1,000	\$394,843	
Association of American Railroads	\$2,500	\$15,000	--	\$15,000	--	--	\$32,500	
Burlington Northern Santa Fe	\$6,750	\$297,625	--	\$398,066	\$106,751	\$1,000	\$810,192	
CN / Canadian National Railways	\$1,000	--	--	\$66,251	--	\$625	\$67,876	
CNF	--	\$25,000	--	--	--	--	\$25,000	
CSX	\$25,750	\$168,750	--	\$80,400	\$13,000	\$31,000	\$318,900	
Genesee & Wyoming Inc.	\$2,000	--	--	--	\$2,000	\$200	\$4,200	
Florida East Coast Industries	--	--	--	--	\$9,750	--	\$9,750	
Kansas City Southern	\$4,000	\$15,000	--	--	\$4,000	\$250	\$23,250	
Motor Freight Carriers Association	\$250	\$11,100	--	\$11,272	\$500	--	\$23,122	
Norfolk Southern	\$1,000	\$18,665	--	\$11,655	\$7,700	\$1,500	\$40,520	
RailAmerica	\$1,250	--	--	--	--	--	\$1,250	
Union Pacific	\$26,300	\$406,250	\$100,000	\$379,886	\$150,250	\$85,900	\$1,148,586	
Wheeling & Lake Erie Railway	--	\$400	--	\$5,000	\$1,000	--	\$6,400	
Yellow Roadway ⁷¹	\$1,000	\$1,450	--	\$6,970	\$6,850	\$3,125	\$19,395	
TOTAL	\$78,643	\$1,028,690	\$200,000	\$1,179,300	\$314,551	\$124,600	\$2,925,784	

Source: Public Citizen analysis of data provided by the Center for Responsive Politics. Totals include contributions from political action committees and individual members or employees of an organization, as well as unrestricted "soft money" donations from individuals and corporate treasuries before the 2004 election cycle (when such donations became illegal). Contribution data are as of October 1, 2004.

Figure 5
Hazmat Transport Industry Lobbying by Company, 2002-2004

Company	2002	2003	2004*	Total
American Short Line & Regional Railroad Assn.	\$140,000	--	\$200,000	\$340,000
American Trucking Associations	\$2,767,578	\$2,588,028	\$60,000	\$5,415,606
Association of American Railroads	\$5,625,984	\$6,760,000	\$220,000	\$2,605,984
Burlington Northern Santa Fe	\$1,480,200	\$1,420,000	\$220,000	\$3,120,200
CNF	\$420,000	\$1,300,000	--	\$1,720,000
CSX	\$2,375,000	\$2,496,500	--	\$4,871,500
Genesee & Wyoming Inc	--	\$280,000	--	\$280,000
Kansas City Southern	\$400,000	\$800,000	\$220,000	\$1,420,000
Motor Freight Carriers Assn	\$40,000	\$40,000	--	\$80,000
Norfolk Southern	\$2,280,000	\$1,000,000	\$1,100,000	\$4,380,000
Owner-Operator Independent Drivers Association	\$60,000	\$40,000	\$20,000	\$120,000
Union Pacific	\$4,076,856	\$4,099,929	\$180,000	\$8,356,785
Yellow Roadway	\$60,000	\$40,000	\$20,000	\$120,000
TOTAL	\$19,725,618	\$20,864,457	\$2,240,000	\$42,830,075

Source: Public Citizen analyses of lobby disclosure reports filed with the Secretary of the Senate and Clerk of the House, 2002-2004. Dollar amounts reflect the total federal lobbying expenditures by companies and organizations during reporting periods in which they lobbied on hazmat and transportation security issues. Lobby disclosure reports do not itemize expenditures for specific lobbying issues or bills.

*Totals include lobbying through June 30, 2004. As of October 1, mid-year 2004 lobby disclosure forms were unavailable for some firms that lobbied on hazmat and transportation security issues in prior years.

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