

Preventing a “Bhopal on wheels”

Infrastucture improvements may be at the top of the to-do list for Secretary of Transportation Ray LaHood, but another problem urgently calls for hands-on leadership. Catastrophic release of deadly cargo, whether by accident or an act of terror, could cause higher casualties and more widespread damage than we saw on 9/11.

The 9/11 Commission noted how often explosives, radioactive materials, and toxic chemicals move on American roads and rails. It urged Congress to give a single agency responsibility to keep terrorists from “weaponizing” these building blocks of the American economy. Congress established the Transportation Security Administration within DOT, then transplanted it to the Department of Homeland Security. Accountability for secure transportation of hazardous materials got split between departments, with TSA on one side and specialized DOT agencies with tongue-twisting acronyms like PHMSA, FMCSA, and FRSA on the other.

Federal agencies have worked hard to prevent an American version of the 1984 disaster in Bhopal, India, where an accidental chemical release killed thousands of people in a neighboring community. The U.S. chemical industry has developed stringent security procedures and work-site requirements. But these cannot, by themselves, guarantee safe transit. New security measures for hazmat shipments have developed slowly and, with few exceptions, are still not in place almost eight years after 9/11.

In rail transportation, for example, the Bush Administration waited until its last days to finalize the Rail Hazmat Routing rule, designed to reduce the risks of cargo-related catastrophes. The rule directs railroads to carry “security sensitive” hazmat only on routes posing the “fewest overall safety and security risks.” DOT retains authority to override the carriers’ choices.

Another rule, published in December 2008, encourages rail shippers to buy and use tank cars that would hold up better in

an accident or terrorist attack.

In the footsteps of the Bush Administration’s activities, Congress weighed in late last year and required DOT to make Positive Train Control (PTC) systems a reality. For 18 years, the National Transportation Safety Board pleaded with federal regulators to require passenger and freight railroads to deploy systems that can identify a potential train wreck scenario and stop it, literally, in its tracks.

Head-on collisions and derailments caused the release of dangerous cargo in several cases. The final wake-up call came in September 2008, when a Los Angeles Metrolink passenger train rammed a Union Pacific freight train. With many killed and hundreds injured, the Bush Administration dropped its veto threat against legislation to expedite PTC’s deployment. By 2015, railroads must install this technology wherever passengers or “poisonous by inhalation” hazmat travel.

Congress did not pass the Law of Unintended Consequences, but it still rules. Shippers of hazmat, including chlorine and anhydrous ammonia, fear that railroads, worried mostly about the potential liability from a catastrophic release, are trying to squeeze this cargo off the rail, possibly refusing to carry products essential to the purification of drinking water and the growth of crops that feed our nation. But Secretary LaHood should consider what will happen to all his new roads and bridges if four million tons of anhydrous ammonia in 50,000 annual rail shipments suddenly shift to the highways in 200,000 tank trucks, each weighing more than 20 tons. Beyond that, the increased cost for highway repairs pales before the prospect of any one of those tank trucks jackknifing on a downtown stretch of Interstate or, far worse, getting hijacked and placed in just the right spot to kill a ballpark full of fans.

If DOT moves aggressively to enforce

the new rail security rules and deadlines, push will come to shove between shippers and carriers. But there is a way to improve our nation’s safety and security without obstructing transportation of dangerous cargo or unduly raising costs.

As part of the legislation that created the Department of Homeland Security, Congress passed the Support Anti-terrorism by Fostering Effective Technology (SAFETY) Act, a little-known law with the stated purpose of encouraging the development and deployment of technologies that counter terrorism. It provides a degree of liability protection for

processes, such as hazmat security routing, and systems, like PTC, that are designed, in part, to mitigate the effects of terrorist activities or defeat them altogether.

The SAFETY Act can enable industries affected by the new regulations to eliminate, as the law says, “unquantifiable” liability in the wake of terrorist acts. With one less poten-

tial enterprise-ending issue to consider, shippers and carriers should be better able to make manageable business arrangements within normal insurance practices. This will help keep hazmat off the highways and create a safer situation for the public at large.

There’s a hitch: DOT has responsibility for safety regulations and DHS has responsibility for the SAFETY Act. The new DOT and DHS secretaries, Ray LaHood and Janet Napolitano, would be wise to begin a long talk about transportation safety and security.

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