

TESTIMONY OF ELIZABETH HANFORD DOLE,  
SECRETARY OF TRANSPORTATION,  
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE  
OF THE SENATE COMMERCE COMMITTEE  
JUNE 6, 1984

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I VERY MUCH APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU THIS MORNING. THIS SUBCOMMITTEE IS UNDERTAKING IMPORTANT HEARINGS ON THE ROLE OF ALCOHOL AND OTHER DRUGS IN SURFACE TRANSPORTATION AT A TIME WHEN THE DEPARTMENT OF TRANSPORTATION IS MAKING SOME OF ITS MOST SIGNIFICANT DECISIONS CONCERNING THIS PERSISTENT PROBLEM. AS SECRETARY OF TRANSPORTATION, SAFETY IS MY HIGHEST PRIORITY, AND I AM HEARTENED BY THE GROWING RECOGNITION AROUND THE COUNTRY THAT ALCOHOL AND DRUG ABUSE IS A SERIOUS THREAT TO TRANSPORTATION SAFETY THAT CANNOT AND SHOULD NOT BE IGNORED.

MR. CHAIRMAN, I RECOGNIZE THAT YOU AND YOUR SUBCOMMITTEE HAVE LONG PLAYED A KEY ROLE IN SURFACE TRANSPORTATION SAFETY. I WELCOME YOUR INTEREST IN THE ALCOHOL AND DRUG ISSUE. I LOOK FORWARD TO WORKING WITH YOU, AND WITH THE RAIL INDUSTRY AND ITS EMPLOYEES AND THE GENERAL PUBLIC, TO SUSTAIN AND TRANSLATE THE CURRENT MOMENTUM INTO MEANINGFUL ACTION ON THE ISSUE.

THE SUBJECT OF TODAY'S HEARING IS THE IMPACT OF ALCOHOL AND OTHER DRUG ABUSE ON THE RAILROADS, AND YOUR TIMING IS PROPITIOUS. AS YOU KNOW, THE FEDERAL RAILROAD ADMINISTRATION HAS BEEN HARD AT WORK ON A RULEMAKING PROCEEDING FOR THE PAST YEAR. BETWEEN 1975 AND 1983, AT LEAST 34 LIVES HAVE BEEN LOST IN 45 ALCOHOL AND DRUG-RELATED ACCIDENTS AND INCIDENTS ON THE RAILROADS. IN 1983 DOLLARS, PROPERTY DAMAGE HAS EXCEEDED \$28 MILLION. THESE TOTALS DO NOT INCLUDE ACCIDENTS PRESENTLY UNDER INVESTIGATION. THERE IS NO EVIDENT ABATEMENT IN THE RATE OF ACCIDENTS AND INJURIES, AND WE KNOW THAT WE ARE MEASURING ONLY A PART OF THE PROBLEM.

THE RAILROADS' OWN PROHIBITION ON ALCOHOL AND DRUG USE, "RULE G", IS AN IMPORTANT PROVISION BUT HAS NOT PROVED ADEQUATE TO THE CHALLENGE. EMPLOYEE ASSISTANCE PROGRAMS HAVE MADE IMPORTANT CONTRIBUTIONS, BUT THE MAJORITY OF ALCOHOL AND DRUG ABUSERS REMAIN UNIDENTIFIED AND UNSERVED.

THEREFORE, I AM PLEASED TO HAVE THIS OPPORTUNITY TO ANNOUNCE THE ISSUANCE OF A NOTICE OF PROPOSED RULEMAKING ON THE CONTROL OF ALCOHOL AND DRUGS IN RAILROAD OPERATIONS. THESE PROPOSALS ARE BASED ON A THOROUGH EXAMINATION OF ALTERNATIVE SOLUTIONS AND BENEFIT FROM THE ACTIVE

PARTICIPATION OF INTERESTED PARTIES IN RESPONSE TO AN ADVANCE NOTICE OF PROPOSED RULEMAKING ON THIS SUBJECT.

THE PROPOSED RULES WOULD ESTABLISH A FIRM FEDERAL REGULATORY POLICY THAT CAN SERVE AS A FOUNDATION BOTH FOR ENFORCEMENT AND PRIVATE VOLUNTARY ACTION.

OUR PROPOSALS WOULD PROVIDE ENHANCED MEANS OF DETECTING AND DETERRING ALCOHOL AND DRUG USE. THOSE MEANS MUST BE FAIR TO THE VAST MAJORITY OF RESPONSIBLE EMPLOYEES AND PROPORTIONAL TO THE PROBLEM, BUT THEY MUST ALSO BE EFFECTIVE.

THE PROPOSALS WOULD FOSTER THE EARLY IDENTIFICATION OF THOSE EMPLOYEES WHO FALL INTO THE GRIP OF CHEMICAL AND PSYCHOLOGICAL DEPENDENCIES. ALL OF THE RULES IN THE WORLD WILL NOT STOP THE LOSS OF LIFE AND PROPERTY IF WE CANNOT IDENTIFY THESE PEOPLE AND ASSURE THAT THEY ARE PROVIDED THE OPPORTUNITY TO PURSUE REHABILITATION.

FINALLY, THE PROPOSALS WOULD HELP US TO DEFINE THE PROBLEM WITH GREATER PRECISION. WE KNOW THAT EXISTING INVESTIGATORY TECHNIQUES AND REPORTING SYSTEMS MISS ALCOHOL AND DRUG INVOLVEMENT IN MANY ACCIDENTS. THIS INFORMATION GAP HAS, AT TIMES, LURED GOVERNMENT, THE RAILROADS, AND EMPLOYEES INTO A FALSE SENSE OF SECURITY. WE MUST DO BETTER IF WE ARE TO SUSTAIN AND REFINE OUR REGULATORY EFFORT AND ENCOURAGE IMPORTANT VOLUNTARY INITIATIVES.

TODAY'S NOTICE CONTAINS THE FOLLOWING SPECIFIC PROPOSALS:

FIRST, WE PROPOSE TO ADOPT A FEDERAL RULE PROHIBITING ALCOHOL AND DRUG USE IN RAILROAD OPERATIONS. THE RULE WOULD REQUIRE THAT EMPLOYEES REPORT TO WORK UNIMPAIRED. USE OR POSSESSION OF ALCOHOL OR DRUGS ON THE JOB WOULD BE FORBIDDEN, EXCEPT FOR UNOPENED ALCOHOLIC BEVERAGES IN AN EMPLOYEE'S VEHICLE AND THERAPEUTIC DRUG USE UNDER A PRESCRIPTION ISSUED BY A MEDICAL PRACTITIONER WHO HAS BEEN MADE AWARE OF THE NATURE OF THE EMPLOYEE'S DUTIES. THE RULE INCLUDES A PER SE IMPAIRMENT STANDARD FOR ALCOHOL OF .05 PERCENT (BAC).

SECOND, WE PROPOSE TO REQUIRE MANDATORY POST-ACCIDENT TESTING AFTER --

a. ANY TRAIN ACCIDENT THAT INVOLVES A FATALITY, REPORTABLE INJURY, DAMAGE TO RAILROAD PROPERTY OF \$150,000 OR MORE, OR RELEASE OF HAZARDOUS MATERIALS; AND

b. ANY TRAIN INCIDENT THAT INVOLVES A FATALITY OR LOSS OF AN EYE OR LIMB.

GRADE CROSSING ACCIDENTS AND INCIDENTS INVOLVING TRESPASSERS WOULD BE EXCUSED FROM THE TESTING REQUIREMENT, SINCE THE PRINCIPAL CAUSES OF THESE OCCURRENCES SELDOM INVOLVE ERROR ON THE PART OF RAILROAD EMPLOYEES. WE ESTIMATE THAT APPROXIMATELY 550 EVENTS PER YEAR WOULD REQUIRE TOXICOLOGICAL TESTS.

THIS PROGRAM WOULD REQUIRE THE COOPERATION OF THE RAILROADS, EMPLOYEES AND THE DEPARTMENT OF TRANSPORTATION, WHICH WILL BE RESPONSIBLE FOR ANALYSIS OF THE BLOOD AND URINE SAMPLES PROVIDED. THE TESTS WILL BE CONDUCTED ON SAMPLES SHIPPED BY THE RAILROADS TO THE FAA'S CIVIL AEROMEDICAL INSTITUTE LABORATORY IN OKLAHOMA CITY, OKLAHOMA.

THIRD, WE PROPOSE TO REQUIRE IMPROVED ACCIDENT REPORTING. THE PROPOSED RULE WOULD REQUIRE THE RAILROADS TO MAKE SPECIFIC INQUIRY INTO POSSIBLE ALCOHOL AND DRUG INVOLVEMENT IN TRAIN ACCIDENTS AND TO REPORT ANY INFORMATION OBTAINED, WHETHER OR NOT THE RAILROAD DEEMS THE INFORMATION MATERIAL TO THE CAUSE OF THE ACCIDENT.

FOURTH, WE PROPOSE TO REQUIRE PRE-EMPLOYMENT DRUG SCREENING FOR EMPLOYEES IN SAFETY-SENSITIVE FUNCTIONS. THE RULE WOULD REQUIRE THAT URINE SAMPLES FROM ALL FINAL APPLICANTS FOR HOURS OF SERVICE POSITIONS BE SUBJECTED TO A DRUG SCREENING AS A PART OF EXISTING PRE-EMPLOYMENT PHYSICAL EXAMINATIONS. LET ME MENTION THAT ONE RAILROAD HAS BEEN DOING THIS WITH SUCCESS FOR YEARS.

FIFTH, WE PROPOSE TO AUTHORIZE THE RAILROADS TO TEST EMPLOYEES WHERE THERE IS JUST CAUSE. RAILROADS WOULD BE AUTHORIZED TO TEST EMPLOYEES --

(i) ON REASONABLE SUSPICION OF CURRENT IMPAIRMENT;  
(ii) AFTER REPORTABLE ACCIDENTS AND INCIDENTS; AND  
(iii) AFTER CERTAIN SERIOUS OPERATING OR SAFETY RULE VIOLATIONS INVOLVING THE POTENTIAL FOR TRAIN ACCIDENTS.

EMPLOYEES COULD BE REQUIRED TO PROVIDE BREATH OR URINE SAMPLES, OR BOTH. ANY EMPLOYEE TESTED WOULD HAVE THE RIGHT TO DEMAND A BLOOD TEST AT A MEDICAL FACILITY. THE PROPOSED RULE CONTAINS OTHER APPROPRIATE SAFEGUARDS TO ASSURE THAT RESULTS ARE RELIABLE.

WE ARE PROPOSING A LIMIT OF 3 NEGATIVE TESTS PER YEAR. IT IS NEITHER FAIR NOR EFFICIENT TO SUBJECT SOBER EMPLOYEES TO REPEATED TESTS.

SIXTH, WE PROPOSE TO INSTITUTE POLICIES THAT WILL PROMOTE THE IDENTIFICATION OF TROUBLED EMPLOYEES. THE RULE MANDATES ADOPTION AND IMPLEMENTATION OF TWO COMPLEMENTARY POLICIES:

a. VOLUNTARY REFERRAL POLICY. EACH RAILROAD WOULD BE REQUIRED TO PERMIT AN EMPLOYEE AFFECTED BY ALCOHOL OR DRUG DEPENDENCE (OR A RELATED CONDITION) TO MAINTAIN AN EMPLOYMENT RELATIONSHIP WITH THE RAILROAD. THE EMPLOYEE WOULD BE ALLOWED ADEQUATE LEAVE TO FACILITATE TREATMENT. THIS POLICY WOULD APPLY UNDER THE FOLLOWING CIRCUMSTANCES:

(i) THE EMPLOYEE WOULD HAVE TO STEP FORWARD AND REQUEST ASSISTANCE OR THE EMPLOYEE'S UNION WOULD HAVE TO DO IT FOR HIM OR HER; AND

(ii) THE EMPLOYEE WOULD HAVE TO AGREE TO UNDERTAKE, AND SUCCESSFULLY COMPLETE, AN APPROPRIATE COURSE OF TREATMENT. CONFIDENTIALITY WOULD BE MAINTAINED UNLESS THE EMPLOYEE FAILED TO COMPLETE PRIMARY TREATMENT. RAILROADS WOULD BE FREE TO IMPLEMENT MORE LIBERAL POLICIES IN THE INTEREST OF PROMOTING REFERRALS.

b. CO-WORKER REPORT POLICY. HISTORICALLY THE RAILROADS HAVE ATTEMPTED TO HOLD CO-WORKERS RESPONSIBLE FOR

REPORTING RULE G VIOLATIONS THROUGH THE STANDARD CODE OF OPERATING RULES. SINCE THE RAILROADS HAVE DISMISSED VIOLATORS IDENTIFIED IN THIS MANNER, THERE HAVE BEEN FEW CASES WHERE CO-WORKERS HAVE ACTUALLY TURNED IN RULE G OFFENDERS, AND MOST VIOLATIONS HAVE GONE UNDETECTED. EACH RAILROAD WOULD INSTEAD BE REQUIRED TO ADOPT A POLICY PERMITTING FIRST OFFENDERS UNDER RULE G TO MAINTAIN AN EMPLOYMENT RELATIONSHIP IF THE OFFENSE IS DETECTED AS A RESULT OF A REPORT FROM THE CO-WORKER THAT THE EMPLOYEE IS APPARENTLY UNSAFE TO WORK WITH. THIS WILL PERMIT A LIMITED "BYPASS" OF THE DISCIPLINARY PROCESS AND IS SIMILAR TO BYPASS AGREEMENTS IN EFFECT ON A MINORITY OF RAILROADS. THE FOLLOWING CONDITIONS WOULD APPLY:

- (i) THE EMPLOYEE WOULD BE REQUIRED TO WAIVE THE DISCIPLINARY HEARING AND REPORT TO THE EMPLOYEE ASSISTANCE COUNSELOR (OR OTHER PROFESSIONAL ENGAGED BY THE RAILROAD) FOR EVALUATION.
- (ii) IF THE EMPLOYEE REQUIRES TREATMENT, THE RAILROAD WOULD BE REQUIRED TO PROVIDE A LEAVE OF ABSENCE TO PERMIT TREATMENT. ON SUCCESSFUL COMPLETION OF PRIMARY TREATMENT AND A "RETURN TO SERVICE" PHYSICAL, THE EMPLOYEE WOULD BE REQUIRED TO BE RETURNED TO SERVICE.
- (iii) IF THE EMPLOYEE DOES NOT REQUIRE TREATMENT, THE EMPLOYEE WOULD BE RETURNED TO SERVICE WITHIN 15 DAYS, BUT THE RAILROAD COULD REQUIRE COMPLETION OF AN EDUCATION AND AWARENESS PROGRAM.

MR. CHAIRMAN, THE RULES I HAVE OUTLINED WOULD APPLY TO EMPLOYEES SUBJECT TO THE HOURS OF SERVICE ACT. I UNDERSTAND THAT ALCOHOL AND DRUG ABUSE ARE NO RESPECTERS OF CRAFT LINES AND THAT EMPLOYEES SUCH AS CAR INSPECTORS AND MAINTENANCE-OF-WAY EMPLOYEES WORK IN THE RAILROAD OPERATING ENVIRONMENT. HOWEVER, WE HAVE ATTEMPTED TO ADDRESS EMPLOYEES IN THE FUNCTIONS MOST DIRECTLY RELATED TO OPERATIONAL SAFETY, AS DEMONSTRATED BY THE ACCIDENT DATA. THIS IS AN INITIAL REGULATORY EFFORT, AND WE BELIEVE OUR FOCUS SHOULD BE SPECIFICALLY DIRECTED AT THOSE AREAS OF GREATEST NEED.

LET ME CONCLUDE MY REMARKS BY SAYING THIS IS ONLY A BEGINNING, ALBEIT AN IMPORTANT ONE. WE EXPECT TO ENCOURAGE FULL AND FRANK PARTICIPATION IN THE PUBLIC HEARING PROCESS.

OUR ULTIMATE OBJECTIVE IS TO REACH INDIVIDUAL RAILROADERS WITH A MESSAGE THAT IS CREDIBLE -- A MESSAGE THAT THEY PERCEIVE TO BE IN THEIR BEST INTERESTS. THIS KIND OF COMMUNICATION WILL REQUIRE MORE THAN REGULATIONS. TODAY THE NATIONAL PLANNING COMMITTEE ON ALCOHOL AND DRUG PREVENTION PROGRAMS WILL BE MEETING HERE IN WASHINGTON. IT IS COMPOSED OF SENIOR LEADERS OF LABOR AND INDUSTRY AND IS SUPPORTED BY A WORKING GROUP OF PERSONS WITH EXPERTISE IN THE ALCOHOL AND

DRUG FIELD. THE WORKING GROUP HAS BEEN MEETING REGULARLY OVER THE PAST SIX MONTHS. WE HOPE AND BELIEVE THAT THE PLANNING COMMITTEE WILL SET IN MOTION A NATIONAL PREVENTION PROGRAM. IN TIME, THIS SHOULD BECOME A SUSTAINED EFFORT TO EDUCATE MANAGERS, SUPERVISORS, AND EMPLOYEES IN THE DANGERS OF ABUSING ALCOHOL AND OTHER DRUGS AND THE IMPORTANCE OF REACHING THOSE WHO NEED HELP. THE NATIONAL PLANNING COMMITTEE CAN ALSO HELP TO STRENGTHEN EMPLOYEE ASSISTANCE PROGRAMS ACROSS THE INDUSTRY, ASSURING THAT SUCCESSFUL TECHNIQUES ARE SHARED AMONG THE PARTICIPATING COMPANIES AND LABOR ORGANIZATIONS.

SOLVING ALCOHOL AND OTHER DRUG PROBLEMS WILL REQUIRE REGULATIONS, BUT REGULATIONS ALONE CANNOT DO THE JOB. WE EARNESTLY SOLICIT THE SUPPORT, COUNSEL AND COOPERATION OF ALL THOSE INTERESTED IN SAFETY ON THE RAILROADS, AS WE PROGRESS ON THESE PARALLEL AND COMPLEMENTARY PATHS.

MR. CHAIRMAN, THAT CONCLUDES MY OPENING STATEMENT. I ALSO HAVE A SOMEWHAT MORE DETAILED WRITTEN STATEMENT WHICH I WOULD APPRECIATE HAVING INCLUDED IN THE RECORD. FEDERAL RAILROAD ADMINISTRATOR JOHN RILEY IS WITH ME TODAY, AND WE WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

