

ORAL STATEMENT OF
TRAVIS P. DUNGAN, ADMINISTRATOR

SURFACE TRANSPORTATION SUBCOMMITTEE OF THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
JULY 13, 1989

I'd like to thank you for this opportunity to discuss with you hazardous material transportation and specific legislation which DOT has proposed this week.

Accompanying me today are Alan Roberts, Director of the Office of Hazardous Materials Transportation and George Tenley, Chief Counsel of the Research and Special Programs Administration (RSPA).

During the past three months, I have been very impressed with RSPA's OHMT. It is a program that leverages a very small resource base into an effective program which protects the public. A great deal of credit for this should go to my predecessor, Cindy Douglass. Under her leadership, the agency reached out to state and local officials, industry, and other affected groups in an effort to build a more balanced system of hazardous materials transportation regulation.

Our hazardous materials transportation safety program is structured along functional lines into four key areas: rulemaking, inspection and enforcement, information and analysis, and prevention and response. We have delivered on commitments made to improve programs in each of these areas. I will not describe these improvements in detail at this point, as they may be found in my written statement, but I want to quickly mention some highlights:

-- Issued a final rule mandating safety improvements of cargo tanks that carry hazardous materials by establishing for the first time, qualifications for persons who manufacture, repair or certify cargo tanks.

-- Issued a final rule that substantially improves the availability of emergency response information. It requires that additional information, such as a 24-hour emergency contact telephone number, be placed on shipping papers, and that emergency response information, such as the Emergency Response Guidebook, be carried in transport vehicles and be kept at transport facilities that handle hazardous materials.

-- We will shortly issue a notice of proposed rulemaking that will propose comprehensive training requirements for persons involved in the transportation of hazardous materials. These proposals are designed to complement the Federal Highway Administration's commercial drivers' license regulations and the Occupational Safety and Health Administration training requirements.

-- Initiated 121 enforcement cases in 1988, up 32%. RSPA has collected \$392,900 in civil penalties, up 176% from the prior year.

[It should be noted that RSPA's authorized inspection force of 17 is a small part of DOT's total force of 1674 full and part-time hazardous materials inspectors.]

Together, RSPA's programs present a balanced and forceful agenda for meeting demands from many sectors of the hazardous materials industry, Congress and state and local jurisdictions to build and maintain a safe and effective hazardous materials transportation system.

REAUTHORIZATION OF THE HMTA

But with a stronger basis of Federal law, we can do better. That's why we are proposing reauthorization legislation that was submitted to Congress by Secretary Skinner this week.

Preemption

Our proposal is aimed primarily at clarifying respective Federal, state and local roles in regulating the hazardous materials transportation industry, and in extending that regulation to intrastate commerce. It establishes three areas of Federal jurisdiction to reduce any existing confusion over non-federal jurisdictional responsibilities.

First, it carves out exclusive Federal statutory authorities prohibiting non-Federal jurisdictions from enacting their own laws or regulations affecting hazard communication, written incident reporting and container manufacture and use.

Secondly, state and local rules addressing subjects not identified in the HMTA as regulated exclusively by DOT would be tested against statutory preemption standards for possible conflicts with HMTA. Currently, HMTA preempts only those state or local regulations that are inconsistent with the Act, but "inconsistency" is not defined in the present statute, nor are there standards for determining what non-Federal requirements are inconsistent.

Thirdly, the bill would establish, for the first time, concurrent Federal/state highway routing jurisdiction. We propose to mandate uniform Federal highway routing standards for state routing designations. State and local governments would be prohibited from adopting their own hazardous materials route designations unless they conform with Federal standards to be established by rulemaking.

Each state would coordinate and approve the routing activities of its own local jurisdictions, making sure they conform to Federal standards. States would settle interjurisdictional disputes and seek agreements between localities and neighboring states. DOT would resolve disputes only among states, assuring that DOT's resources would not be expended on numerous conflicts among a large number of political subdivisions.

If a state has complied with all Federal standards in adopting a highway route and can demonstrate that the route provides the greatest level of safety without unreasonably burdening commerce, DOT may resolve a dispute in favor of that state. Rules would be issued outlining dispute resolution procedures.

Safety Permitting

The Administration bill authorizes DOT to establish a limited safety permit program which applies only to highway carriers of hazardous materials presenting either a high degree of risk in transportation or which are of significant concern to the public.

DOT would designate by rulemaking a select number and quantity of materials for which a Federal safety permit would be required including highway carriers of about 100 materials already identified as extremely toxic by inhalation, Highway Route Controlled Quantity shipments of high-level radioactive waste and Class A and Class B explosives.

A limited Federal permit program would generate names and addresses of carriers transporting specific materials, allowing DOT and the states to focus inspections and enforcement of the regulations on these carriers. The program would ensure that shippers use only permitted carriers for these materials.

A permit fee would be set at a pro rata level sufficient to assure that DOT

recovers the entire cost of the permit program. It is anticipated that the program would apply to about 1,500 carriers, and that carrier costs may average about \$500 per permit.

Emergency Response

I would like to return now to the issues of preparedness and response. Over the past five years, there has been a great deal of interest and concern about emergency response to transportation incidents involving hazardous materials, and our Haz Mat office should take some credit for stimulating this interest.

The development of our Emergency Response Guidebook (ERG), aimed at helping first responders avoid uninformed or unnecessary risks, dates back to 1973 when DOT first issued a series of Emergency Action Guides covering the transportation of 20 chemicals. RSPA has distributed over 2.5 million copies of the ERG to police, fire and emergency services personnel nationwide. The third revised edition of the ERG is now being finalized and will be produced in FY 1990.

We have sought to improve emergency response communication. On June 27, 1989, RSPA issued a final rule requiring shippers to more accurately convey hazardous materials information to transportation emergency responders. New rules also mandate the use of the ERG or other appropriate guidance in vehicles, terminals and in all other places where hazardous materials are transported.

To help on-scene responders obtain immediate material-specific information, we will require shippers to include on their shipping papers a 24-hour telephone number of knowledgeable individuals or organizations. The new rules become effective on April 2, 1990, giving RSPA time to update the ERG.

RSPA has also entered into formal agreements or cooperative ventures with the

Environmental Protection Agency, Federal Emergency Management Agency and the Nuclear Regulatory Commission, in part, to advance Federal response capabilities. For example, our agreement with FEMA helps both agencies identify emergency preparedness roles and responsibilities and to establish joint program efforts in planning, training and information development, dissemination and exchange.

We foresee continuing our efforts in this area as part of a larger governmental effort. For example, use of the evolving system of local emergency planning committees established under the Superfund Amendments and Reauthorization Act of 1986 to develop transportation emergency response planning and training capabilities should be fully explored.

With a new Administration and my own short tenure, we have not yet had time to develop a position or proposal on emergency response. However, I have taken an active leadership role within DOT to develop a position that makes sense. As you know, this involves coordination with several different modal administrations and offices of DOT. Following that, coordination is needed -- most likely through OMB -- between the several federal agencies that are currently or potentially involved in emergency response.

Given these constraints, we elected to send our reauthorization bill to Congress without an emergency response provision, but we will continue to work within the Administration on this important issue. Some of the questions to be raised include:

- What are appropriate Federal/state/local roles in emergency response?
- What level and type of emergency response is needed?
- What authority has Congress already granted to Federal agencies for emergency response?
- If new authority is needed, what agency should take the lead?

-- How much federal funding is currently provided to states for emergency purposes that could apply equally to hazardous materials emergencies?

DOT alone cannot provide all of the answers to these questions, but we will work with other appropriate Federal agencies and the Subcommittee to develop a comprehensive approach to this issue.

CONCLUSION

Despite my own recent arrival at RSPA, I have developed a great deal of confidence in the programs RSPA has put forth under the HMTA, but more can and must be done. I am hopeful that the program I have described today will receive the additional tools provided in the Department's legislative proposal and I look forward to working with the Subcommittee to achieve that result.

This concludes my oral testimony and I am prepared to answer any questions you may have.