



March 21, 2023

The Honorable Maria Cantwell
Chair
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

RE: Hearing on Improving Rail Safety in Response to the East Palestine Derailment

Dear Chairwoman Cantwell and Ranking Member Cruz:

On behalf of the American Chemistry Council, I would like to thank the Senate Committee on Commerce, Science and Transportation for holding this hearing on Improving Rail Safety in Response to the East Palestine Derailment. The tragic events related to the derailment and the impacts on the community of East Palestine, Ohio have understandably raised questions and concerns that this hearing can help to address.

ACC shares the Committee's goal to advance transportation safety and protect public health and the environment. We also share the Committee's gratitude to the emergency responders, government officials, and rail workers for their tireless efforts responding to this incident.

ACC represents the leading companies in the business of chemistry. Our members apply the science of chemistry to provide innovative products and services that make people's lives better, healthier, and safer. As a \$517 billion enterprise, the business of chemistry is a key element in the nation's economy and a major user of the U.S. freight transportation system. ACC and its members are committed to the safe transportation of hazardous materials throughout the supply chain. As part of Responsible Care[®], the chemical industry's world-class environmental, health, safety and security performance initiative, our members have invested billions of dollars in training, technology, and packaging safety.

Chemicals are essential for growing food, protecting the safety of our water and food supply, producing energy, and making life-saving medicines and equipment. From farms to factories, more than 25 percent of the U.S. economy and 4.2 million jobs depend on chemistry. The nature and properties of chemicals, including hazardous materials, are typically the very thing that makes them useful. For many critical uses, there are no suitable substitutes that can provide the same measure of performance. We ship chemicals because the country needs chemicals to support virtually every aspect of daily life.

Railroads are vital to the safe transportation of our products. As stated by the Federal Railroad Administration (FRA), rail is recognized as the safest land-based mode to move large quantities of chemicals over long distances. Mainline rail accidents are down 44% since 2000, and rail accident rates involving hazardous materials have declined by 78 percent over the same period. But the East Palestine incident is a strong reminder that more work is needed to improve safety. We should carefully examine the factors that contributed to this derailment and other rail incidents and review the emergency response procedures so we can learn from them.

Safety is a shared responsibility between railroads, shippers, and equipment suppliers, along with the federal government. ACC supports a multi-layered approach to hazardous material transportation safety. This includes a range of measures: first, to further reduce derailments and other accidents; second, to minimize the risk of a rail accident resulting in the release of hazardous material; and third, to strengthen emergency response and mitigate the impacts of any hazardous material incident that does occur.

ACC supports the legislative intent of the Railway Safety Act of 2023 (S. 576) and other proposals to further improve the safety of the nation's rail network, reduce hazardous material risks, and enhance emergency response capabilities. ACC welcomes the opportunity to work with the Committee as it further develops and refines rail safety legislation.

The following sections highlight specific priorities that ACC supports so that chemicals and other hazardous materials can be transported from where they are produced to where they are needed – safely and without incident.

Establishing Federal Standards for Railcar Defect Detectors

The rail industry and federal regulators have long recognized the risks posed by defective wheel bearings. Railroads have voluntarily installed wayside defect detectors and have committed to do more. Following the East Palestine derailment, increasing and improving the use of these technologies should be a top priority.

ACC supports the development of federal regulations for railcar defect detectors. Such regulations should address the frequency and placement of detectors, standardized criteria for triggering an alert of a potential failure, and appropriate actions to be taken by the rail crew upon receiving an alert. Requirements should be developed through a federal rulemaking process, be risk- and performance-based, and allow for continued technological progress and advancement.

Improving Tank Car Performance

Chemical shippers own or lease the rail cars used to ship their products, including tank cars equipped with special safety features to help prevent the release of hazardous materials in the

event of a rail accident. Tank car performance is critical to the safe transportation of these materials. Shippers have made significant investments in recent years to upgrade their fleets and will continue to do so.

Shippers and tank car owners are in the process of upgrading tank cars used to transport Class 3 flammable liquids, replacing cars built to earlier DOT standards (DOT-111 cars) with cars built to newer standards (DOT-117 cars). Current law mandates a commodity-specific phaseout schedule based on risk-based priorities and railcar production capacity. For Packing Group II and III flammable liquids other than unrefined petroleum products and ethanol, the current phase out deadline is May 1, 2029.

ACC supports an earlier phaseout deadline. However, we believe that a proposed 2025 deadline is simply not feasible based on the rail equipment industry's capacity to manufacture new cars and retrofit existing cars to meet DOT-117 standards. This could undermine the ability to supply critical materials used to produce food, fuels, pharmaceuticals, and construction materials.

Congress established the current 2029 deadline after extensive collaboration with industry partners and a review of all relevant data. ACC supports a similar process to establish a new deadline based on current data.

Supporting Emergency Responders

It is critical that emergency responders have the information, training, and resources they need to respond to a rail incident, particularly one involving hazardous materials.

Chemical shippers comply with a multitude of federal regulations, including Pipeline and Hazardous Materials Safety Administration (PHMSA) rules for shipping and communicating about hazardous materials. In addition, ACC members support communities and local emergency responders through the CHEMTREC® and TRANSCAER® programs that provide resources and training to respond to hazardous material transportation incidents. This includes immediate critical response information about chemicals and hazardous materials.

Following the East Palestine derailment, Ohio Governor Mike DeWine raised concerns that state officials were not provided specific information about the hazardous materials transported by rail through the state. In fact, most trains carrying hazardous materials do not meet the statutory definition of a high-hazard flammable train (49 CFR 171.8) and, therefore, do not trigger federal requirements for railroads to report specified information about these shipments to State agencies (49 CFR 174.312).

ACC supports expanding information sharing requirements to a broader range of hazardous material rail shipments. DOT should develop risk-based criteria for additional hazardous

material shipments that would be subject to the information reporting requirements currently applicable only to high-hazard flammable trains.

In addition, ACC supports fully funding PHMSA's Hazardous Materials Grants Program. The grant program is funded by hazardous material registration fees paid by both shippers and transportation carriers and supports emergency response planning and training activities. However, the current fee structure currently raises only approximately \$23.6 million while the Infrastructure Investment and Jobs Act (IIJA) increased the authorized level of the program to \$46.8 million.

ACC supports Congressional action to replace the current \$3,000 statutory fee limit with a two-tiered limit of \$500 for small businesses and \$5,000 for large businesses. This approach would provide flexibility to nearly double the funding emergency response training programs while preventing a disproportionate impact on small businesses.

Conclusion

ACC supports a comprehensive and data-driven approach to advance the safe transportation of hazardous materials by rail. Safety is a shared responsibility, and shippers, rail carriers, equipment suppliers, and the federal government have made progress by working together. But we can, and must, do more. ACC welcomes the opportunity to collaborate with policymakers and our transportation partners to apply the lessons learned from the East Palestine derailment so the products of our industry can be delivered safely and without incident.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Jahn', with a long horizontal flourish extending to the right.

Chris Jahn
President and CEO

cc: Senate Commerce Committee Members