National Transportation Safety Board

Washington, D.C. 20594

Office of the Vice Chairman

OCT 2 0 2004

Mr. Samuel G. Bonasso
Deputy Administrator
Research and Special Programs Administration
Washington, D.C. 20590

Dear Mr. Bonasso:

Thank you for your April 1, 2004, response to the National Transportation Safety Board regarding Safety Recommendations H-92-6, H-99-58, R-89-52, and I-01-1 stated below. The National Transportation Safety Board issued these recommendations to the Research and Special Programs Administration (RSPA) between 1989 and 2001 as a result of various hazardous materials accidents.

Safety Recommendation H-92-6 was issued to RSPA as a result of the Safety Board's special investigation of cargo tank rollover protection.

H-92-6

> Implement, in cooperation with the Federal Highway Administration, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a Department of Transportation [DOT] specification cargo tank.

The Safety Board notes that on December 3, 2003, RSPA published the HM-229 final rule, titled "Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form." RSPA initiated the rulemaking to increase the usefulness of data collected for risk analysis and management by government and industry. The major changes in the final rule include (1) collecting more specific information on the incident reporting form; (2) expanding reporting exceptions; (3) expanding reporting requirements to persons other than carriers; (4) reporting undeclared shipments of hazardous materials; and (5) reporting non-release incidents of cargo tanks. In the final rule, RSPA revised Section 171.16 to require the submission of a hazardous material incident report when a specification cargo tank with a capacity of 1,000 gallons or greater suffers structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, even if no hazardous materials are released. Although 12 years have passed since the issuance of the Board's recommendation, the publication of this final rule satisfies the intent of Safety Recommendation H-92-6, which is classified "Closed—Acceptable Action."

Safety Recommendation H-99-58 was issued to RSPA as a result of the Safety Board's investigation of an accident that occurred on August 9, 1998, in Biloxi, Mississippi, in which gasoline from an underground storage tank at a convenience store overflowed and ignited.

H-99-58

> Require that a hazardous materials incident meeting the immediate notification requirements in 49 *Code of Federal Regulations* [CFR] 171. 15 be reported within a specific time period to Federal authorities.

The Safety Board notes that RSPA established a time period for telephonic notification of a hazardous materials incident as requested. However, the Board provided the following comments on October 10, 2001, to the notice of proposed rulemaking under HM-229:

> ...we believe improvements can be made in the proposed requirement that telephonic notification be made within 12 hours. As noted in the Safety Board's July 26, 1999, letter, the Safety Board is concerned that the current reporting criteria (49 CFR 171.15) require a telephonic notification to be provided "at the earliest practicable moment" but do not provide any specific time limit. However, RSPA's proposal that the maximum time limit for providing telephonic notification be 12 hours after the event is not adequate for investigative purposes. The Safety Board itself requires railroads, under 49 CFR 840.3, to provide telephonic notification through the National Response Center not later than 2 hours after an accident resulting in a fatality, the release of hazardous materials, or evacuation of the public, and not later than 4 hours after an accident resulting only in damages exceeding specified thresholds. The Safety Board believes that telephonic notifications within 2 hours after the event would assist the Safety Board and other Federal agencies in responding rapidly to serious transportation accidents involving the release of hazardous materials.

Given that the final rule retained the 12-hour notification timeframe, which we continue to believe is excessive for notification purposes, the Safety Board has no alternative but to classify Safety Recommendation H-99-58 "Closed—Unacceptable Action."

Safety Recommendation R-89-52 was issued to RSPA as a result of the Safety Board's investigation of a head-on collision between two freight trains near Altoona, Iowa, on July 30, 1988, which caused the release and ignition of hazardous materials.

R-89-52

> Establish procedures that require carriers reporting hazardous materials incidents under 49 CFR Part 171.16 to notify shippers whose hazardous materials shipments are involved.

The Safety Board notes that RSPA agreed that there are benefits to notifying shippers about incidents involving their shipments, but RSPA did not agree with the Board's recommendation to accomplish this by distributing the incident reports to the shippers and did not make this change under HM-229. The Board also notes RSPA's indication that the Board's recommended action may replicate existing practices. RSPA stated in the preamble to the final rule that some type of shipper notification is incorporated into most standard business practices to account for shipment tracking, product loss, or damage reporting by carriers and consignees.

In addition, the Safety Board acknowledges RSPA's efforts to work with the FAA to identify problem shippers by analyzing incident data, inspection reports, and enforcement actions; to work with other modal administrations to provide selective notification of incidents to shippers; and to work with these agencies to make incident report information available on RSPA's Web site.

Safety Board staff also spoke with the Federal Railroad Administration's (FRA's) hazardous materials staff and with the manager of the Association of American Railroads (AAR)/Railway Supply Institute (RSI) non-accident release database regarding this issue.

The FRA indicated that it has a non-accident release program and that National Response Center (NRC) reports of hazardous materials releases for railroads are reviewed daily by the FRA's headquarters hazardous materials staff. The NRC reports of non-accident releases are then forwarded to the various FRA regional offices, which have the option of following up on any releases occurring within their respective regions by contacting the shipper to determine the cause of the release. The regional office may then pursue one of several options: talking to and advising the shipper of possible measures to prevent such releases, initiating enforcement action, issuing an emergency order, or developing a formal action plan with the shipper to improve its operations. The FRA also indicated that it is targeting shippers that have the greatest number of non-accident releases per total shipments.

According to the manager of the AAR/RSI database, railroads file a non-accident release report for the database, which is analyzed for trends and for identifying shippers with more than four non-accident releases per quarter. According to the database manager, about 770 non-accident releases were reported in 2003 compared to more than 1,200 reported 6 or 7 years ago. The database manager also indicated that many railroads voluntarily send copies of the DOT hazardous materials incident report to the shipper.

In view of this information, Safety Recommendation R-89-52 is classified "Closed—No Longer Applicable."

Safety Recommendation I-01-1 was issued to RSPA as a result of the Safety Board's investigation of a railroad tank car rupture near Clymers, Indiana, on February 18, 1999.

I-01-1

Develop and implement policies and procedures to ensure that comprehensive reports concerning all significant failures of U.S. Department of Transportation specification tank cars, highway cargo tanks, and intermodal hulk containers containing hazardous materials are provided to the Research and Special Programs Administration.

The Safety Board notes that in the HM-229 final rule, RSPA revised Section 171.16 to require more detailed information on packaging failures, including failures of bulk packaging such as that provided by rail tank cars, highway cargo tanks, and intermodal bulk containers. RSPA indicates that the revised form will enable it to collect more specific packaging information for each reported incident. For example, the new form requires the submitter to identify the specific packaging that failed and indicate the component of that packaging, how it failed, and what caused the failure. In addition, the report form includes information on the manufacturer, material of construction, manufacture date, most recent test date, and, where applicable, design and service pressure. The Board believes that the revisions to the written report form constitute an acceptable alternate approach to the intent of the Board's recommendation. Consequently, Safety Recommendation I-01-1 is classified "Closed—Acceptable Alternate Action."

We appreciate RSPA's efforts to improve the safe transportation of hazardous materials.

Sincerely,

Mark V. Rosenker
Vice Chairman

cc: Ms. Linda Lawson, Director
Office of Safety, Energy, and Environment
Office of Transportation Policy