National Transportation Safety Board

Washington, D.C. 20594

Office of the Vice Chairman

JAN 19 2005

Honorable Norman Y. Mineta
Secretary
Department of Transportation
Washington, D.C. 20590

Dear Secretary Mineta:

Thank you for the September 9, 2004, response signed by Mr. Samuel G. Bonasso, Deputy Administrator, Research and Special Programs Administration (RSPA), to the National Transportation Safety Board regarding Safety Recommendations I-02-1 and -2, stated below. These recommendations were issued to the U. S. Department of Transportation (U.S. DOT) as a result of the Safety Board's investigation of an accident involving the release of hazardous materials from a railroad tank car and subsequent fire at Riverview, Michigan, on July 14, 2001.

I-02-1

> Develop, with the assistance of the Environmental Protection Agency [EPA] and Occupational Safety and Health Administration [OSHA], safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.

I-02-2

> Implement, after the adoption of safety requirements developed in response to Safety Recommendation I-02-1, an oversight program to ensure compliance with these requirements.

The Safety Board notes the requirements that support the recommended action, cited in Mr. Bonasso's letter, for loading and unloading railroad tank cars, highway cargo tanks, and other bulk containers and for training persons who perform loading and unloading operations subject to requirements contained in the Hazardous Materials Regulations (HMR; 49 *Code of Federal Regulations* [CFR] Parts 171-180). We further note the inspection and maintenance requirements, enforcement programs, and regulatory authorities cited in the letter; the rulemaking completed by RSPA in HM-223; and Mr. Bonasso's assurances that RSPA works "closely with both OSHA and EPA on hazardous materials issues," and will continue to do so are responsive to the Board's concerns.

We would like to emphasize, however, that the Safety Board concluded in the Riverview, Michigan, report that *effective oversight* (emphasis added) of hazardous materials loading and unloading operations from tank cars and other bulk containers is not provided by the Federal Railroad Administration, the EPA, or OSHA. In support of this conclusion, the Board noted the following in that report:

- EPA and OSHA oversight of loading and unloading of bulk transportation containers is only a minor element of these agencies' chemical plant oversight programs.
- The number of EPA and OSHA inspectors to oversee these operations is limited.
- Both the EPA risk management program and the OSHA process safety management programs apply only to those plant operations involving certain specific high-risk materials that exceed quantity thresholds. Consequently, many, if not most, loading/unloading operations of tank cars would not be subject to either of these two programs because the operations do not involve the designated high-risk materials or because the quantity thresholds have not been met.
- The data in EPA risk-management plans and OSHA process safety management plans are not reviewed by either agency for content or accuracy.
- The requirements in the HMR pertaining to the loading and unloading of tank cars do not address maintenance of cargo transfer equipment, emergency shutdown procedures, or personal protection requirements that are specifically cited in Safety Recommendation I-02-1.

RSPA fails to address these oversight deficiencies in its response. For example, RSPA states that the HMR already has requirements for the loading and unloading of tank cars, cargo tanks, and other bulk containers, but does not describe what the specific requirements are, as discussed above. RSPA continues to cite HM-223 as clarifying the applicability of the HMR and takes the position that the loading and unloading operations are part of the manufacturing process and therefore are generally not transportation functions subject to the HMR. Thus, RSPA is, in effect, passing the DOT's oversight responsibilities to OSHA, and to a lesser degree, to the EPA. The Board's position, as stated in our October 29, 2001, letter to the docket on HM-223, is that this approach constitutes a retreat of the DOT from exercising its statutory oversight of loading and unloading operations.

Mr. Bonasso cites RSPA's extensive consultations with OSHA and the EPA, but the agency has never indicated when or how often these meetings or discussions have taken place nor the specific subjects discussed. When RSPA published HM-223 as a final rulemaking, about 3 months after the Riverview recommendations were issued, the preamble to the final rule indicated that extensive consultations with the EPA and OSHA had occurred, yet the details of those consultations were not provided. In responses to Safety Recommendations I-02-3 and -4, (companion recommendations to I-02-1 issued to OSHA and the EPA), OSHA and the EPA

indicate a willingness to work with the DOT to improve safety, but neither of these responses state what the three agencies are doing to address the recommendations.

In summary, it remains unclear what is being done by RSPA to improve Federal oversight of loading and unloading operations of bulk hazardous materials containers, including the specific areas of concern detailed in Safety Recommendation I-02-1. The Safety Board urges RSPA to explain specifically how it is working with OSHA and the EPA to develop safety requirements for the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements, as well as how it is working to implement an oversight program to ensure compliance with these requirements. Pending receipt of specific information regarding such action, Safety Recommendations I-02-1 and -2 remain classified "Open—Unacceptable Response."

Sincerely,

Mark V. Rosenker
Vice Chairman

cc: Mr. Samuel G. Bonasso, Deputy Administrator
Research and Special Programs Administration

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