UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CSX TRANSPORTATION, INC. Plaintiff, v. ANTHONY A. WILLIAMS, et al. Defendants	Civ. Action No. 05-338 (EGS)

SUPPLEMENTAL ORDER

In its April 18, 2005 Memorandum Opinion & Order, this Court quoted the January 26, 2005 sworn congressional testimony of Richard A. Falkenrath, the former Deputy Homeland Security Advisor and Deputy Assistant to the President, that "'since 9/11 we have essentially done nothing' to reduce the inherent vulnerability of our chemical sector." *See CSX Transp. v. Williams*, 2005 WL 902130, at *3-*4, *29 (D.D.C. Apr. 18, 2005). The Court hereby supplements its April 18th Opinion by taking judicial notice of the article appearing in The Washington Post on April 22, 2005. *See* Spencer S. Hsu, *Ex-Official Faults Hazmat Rail Safety,* The Washington Post, April 22, 2005, at A8 (quoting Stephen J. McHale, the former deputy administrator of the Transportation Security Administration, that "[t]here is no comprehensive, national plan" in place to secure the rail system in the United States and expressing McHale's "'disappointment at the pace and the amount of resources' directed by the United

States to secure hundreds of containers of chemicals, explosives and other dangerous materials crisscrossing the country daily"). The article is appended to this Supplemental Order. *See* Fed. R. Evid. 201(c); *e.g.*, *The Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir. 1991) (taking judicial notice of newspaper articles); *accord Government of Rwanda v. Rwanda Working Group*, 227 F. Supp. 2d 45, 60 n.6 (D.D.C. 2002).

Signed: Emmet G. Sullivan
United States District Judge
April 22, 2005

washingtonpost.com

Ex-Official Faults Hazmat Rail Safety

Federal Agencies Oppose D.C. Law

By Spencer S. Hsu
Washington Post Staff Writer
Friday, April 22, 2005; Page A08

The former deputy administrator of the U.S. Transportation Security Administration said yesterday that the government lacked adequate plans to secure rail shipments of hazardous cargo in Washington and across the country during his tenure.

Stephen J. McHale, the agency's second-ranking official from 2002 to August 2004, offered his assessment during a panel discussion at the Center for American Progress in Washington. He expressed "disappointment at the pace and the amount of resources" directed by the United States to secure hundreds of containers of chemicals, explosives and other dangerous materials crisscrossing the country daily.

McHale, now a lawyer with Patton Boggs LLP, spoke while the U.S. District Court of Appeals in the District is considering a challenge brought by rail giant CSX Transportation Inc. of Jacksonville, Fla., against the D.C. government, which recently banned hazardous rail shipments. Yesterday, the U.S. departments of Justice, Transportation and Homeland Security filed briefs in support of CSX.

On Monday, a lower court upheld the District ban of rail shipments of toxic materials such as chlorine within two miles of the U.S. Capitol, citing in part the federal government's failure to show that it had taken comprehensive steps to address the risk of a terrorist attack. On Tuesday, the appeals court stopped the law from taking effect while it weighs the case.

McHale said U.S. security officials lacked sufficient money, inspectors and arrangements with privately owned railroads to appropriately protect the public. He said the problem stemmed from a lack of attention from Congress and the White House and a "diffusion of responsibility" among federal agencies. The Bush administration, he said, views railroad security as largely the responsibility of the private sector.

"Basically, there is not enough money. There is no comprehensive, national plan. . . . We can do better, but it is going to be difficult, given the scope and organization of the system," McHale said. Referring to the 42-mile Washington rail corridor, McHale said he opposed the District ban, but he added, "You can do things to secure the system, but enough has not been done to date."

In response to McHale's comments, TSA spokesman Mark Hatfield Jr. released a written statement. "We're the first to acknowledge there is room for security improvements in rail," he said. "Much has been accomplished and the partnership TSA has forged with industry and local governments paves the way for significant continued gains."

McHale's comments followed inspector general reports criticizing TSA management during his tenure

for lavish spending on amenities at headquarters, contracting problems that have ballooned in cost by hundreds of millions of dollars and lapses in the screening of air passengers.

Several independent commissions and former officials also have warned the public about the lack of progress in securing ground transportation systems and chemical stockpiles. For instance, the United States is spending $4.6 billion for aviation security this year but $32 million for surface transportation security. TSA employs 45,000 people for its air screening program but received funding only recently to increase the number of rail security inspectors from three to 100.

After the March 2004 commuter train bombings in Madrid, CSX voluntarily rerouted all but 87 cars containing hazardous materials from one line that passes through downtown and shipped about 1,645 cars on a second line that passes mostly through Northeast Washington, in consultation with U.S. security officials, according to court documents filed early this year.

TSA has acknowledged the problem. It conducted the country's first urban rail corridor study here last year and is implementing a $7 million plan to add fencing, patrols and other safeguards.

McHale said additional precautions are needed, such as limited rerouting, securing information about hazardous shipments, minimizing waiting times, using decoy cars and increasing track inspections.

McHale said the D.C. case has provoked "the best debate we've had with rail security since 9/11, or at least since Madrid. This will help force the federal government to respond and to recognize it has to have a more visible security strategy with the rail industry."