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**VOTE FOR EMERGENCY RE-ROUTING OF HAZARDOUS MATERIALS BILL  
TUESDAY, FEBRUARY 1ST**

Dear Councilmember,

We want to express our appreciation to Councilmembers Patterson, Mendelson, Cropp, Ambrose, Evans, Graham, Fenty, Barry and Brown for co-sponsoring the "Terrorism Prevention in Hazardous Materials Transportation Act of 2005." Mayor Williams has also pledged to sign an emergency bill scheduled to be offered at the Tuesday, February 1<sup>st</sup> Council meeting. The next step is to enact the bill into law no later than the Tuesday Council meeting.

The emergency legislation that Councilmember Kathleen Patterson will offer at the Tuesday, Council meeting is based on B15-0525 which was originally introduced on October 21, 2003 by Council Members Patterson, Schwartz and Catania. Although the new bill is more narrowly drafted it will prohibit the transport of large quantities of the most hazardous substances through D.C. unless there is no alternative route or there is an emergency that requires passage through D.C.

With regard to federal preemption, the law firm of Wilmer, Cutler, Pickering, Hale and Dorr conducted a legal analysis of Councilmember Patterson's most recent bill and concluded that "the Bill is not preempted under the Supremacy Clause of Article VI of the U.S. Constitution by either federal hazardous materials transportation law or federal rail safety law." Furthermore, the CSX railroad would be hard pressed to convince a court to reverse a law that requires them to do what they secretly claim they are already doing.

At the D.C. City Council's November 22, 2004 Public Works Committee hearing the U.S. Department of Homeland Security (DHS) and CSX railroad repeatedly refused to confirm whether or not voluntary re-routing of the most hazardous cargo around the District was in fact occurring. In addition to refusing to provide essential details (substances, quantities, etc), the DHS refused to explain why they have not issued a re-routing order or regulation requiring re-routing as Council members have asked.

The vulnerability of shipments of extremely hazardous chemicals through Washington, D.C. represents one of the most serious risks the U.S. faces from domestic terrorist attacks. The latest Homeland Security Council (July) estimate for killed and injured from an attack on a chlorine storage facility is equal to two baseball stadium's or 127,500 people! This estimate included 17,500 deaths.

The DHS insisted at the November 22, 2004 Council hearing that all security measures, including any voluntary re-routing around the District, would remain secret. They implied that one reason for this is to discourage other cities from requesting or seeking equal protection. While this is an unacceptable reason because each city is entitled to make their own case for re-routing, shrouding re-routing in secrecy has also undermined the credibility of government and turned freight trains going through D.C into high risk decoys.

Keeping any re-routing a secret defeats the purpose of doing it and undermines security. Everyone, including terrorists, should be informed of any true re-routing because it is the elimination of a serious vulnerability. It is not sensitive security information such as measures taken to guard the Capitol or White House. Announcing the elimination of a similar threat in D.C. was done three years ago when the Blue Plains sewage treatment plant converted from chlorine to safer chemicals eight weeks of the 9/11 attacks. Now Blue Plains is no longer a potential target.

Furthermore, sources have indicated that any voluntary re-routing may end soon after the inauguration or when other security measures are installed at an estimated cost of \$6 million. Unfortunately, no measure short of re-routing will eliminate the risks posed by determined terrorists who can easily turn a rail car of chlorine or similar substance into a weapon of mass destruction (WMD). Only by adopting enforceable re-routing legislation can we ensure against a catastrophic attack on freight trains in the D.C. rail corridor. Re-routing also happens to be the least expensive option for the District.

The economic impact of re-routing on CSX railroad should also be negligible. The number of most dangerous materials that should be re-routed is a very small subset of the 8,500 rail cars of hazardous materials that CSX ships through D.C. each year. For example, only 10 toxic-by-inhalation (TIH) substances are among the 150 most shipped by rail hazardous substances according to a December 2000 report by Argonne National Laboratory. Argonne's rail traffic volumes indicate that re-routing would likely effect less than 10, possibly as few as three rail cars a day going through the District.

However, the magnitude of the risk is unforgivable. The chemical industry's own disaster scenario for a 90-ton rail car of chlorine assumes a zone of risk extending fourteen miles from the point of release. Census data shows that 2.4 million D.C. area residents live in this risk zone.

The U.S. Naval Research Laboratory also testified before the D.C. Council and estimated that 100,000 people could be killed or injured in the first 30 minutes following an attack with as many as 100 people dying per second. And passenger trains are also at risk. CSX tracks are shared with Amtrak, VRE and MARC trains and often run parallel to Metro rail. As Carol Schwartz commented at the November 22nd Council hearing, D.C. residents "are sitting ducks."

Begging the Bush administration to regulate CSX on a matter of such overriding public safety is a fool's errand. The Bush administration has publicly opposed re-routing

months prior to the completion of the DHS work group's recommendations. The Federal Railroad Administration's (FRA) opposed re-routing at the January 23, 2004 City Council hearing. And on May 12, 2004 TSA Deputy Administrator McHale opposed re-routing in testimony before the House Select Committee on Homeland Security. By mid-July the report promised by the TSA was completed but never released. In addition, the New York Times has reported that the FRA is extremely lax in enforcing its own regulations. It levies fines for only about 2 percent of the safety violations they discover by railroad companies.

In less than seven months there have been two fatal accidents involving the rail transport of chlorine gas. On June 28th, outside of San Antonio, Texas, three people were killed when a 90 ton rail car of chlorine collided with another train at 25 mph. On January 6<sup>th</sup> in Graniteville, S.C. another train collision made national news when nine people were killed by the release of chlorine gas from relatively new tank cars. No one doubts the catastrophic potential of a terrorist attack on similar rail cars in highly populated areas such as Washington, D.C.

Yet, the federal government's credibility on homeland security has gone from bad to worse. Until now years of federal inaction have only contributed to delays including the enforceable promises to D.C. Councilmembers.

The District of Columbia has a historic opportunity and obligation to restore credibility to government and public safety to the people of Washington. Councilmembers may not face a more important vote in their tenure on the Council.

We look forward to hearing from you on how you intend to vote on this critical public safety issue.

Thank you.

Sincerely,

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