

# BNSF Railway Company

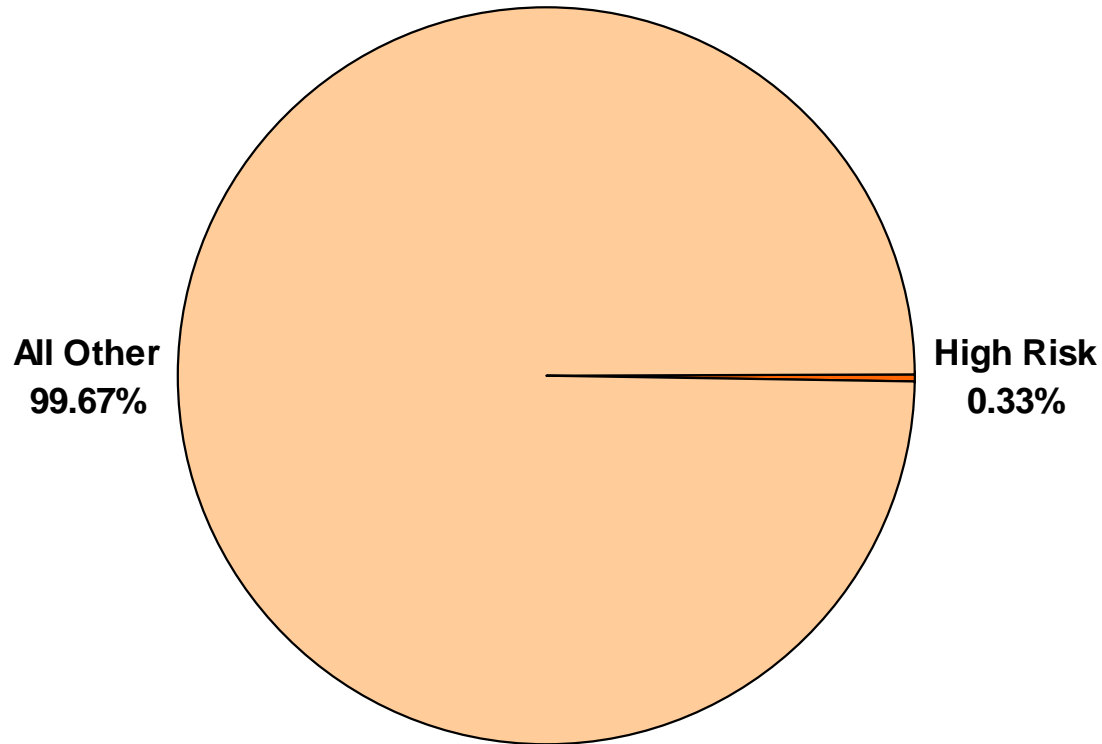
## Ex Parte No. 677(Sub-No.1) Common Carrier Obligation of Railroads- Transportation Of Hazardous Materials



July 22, 2008

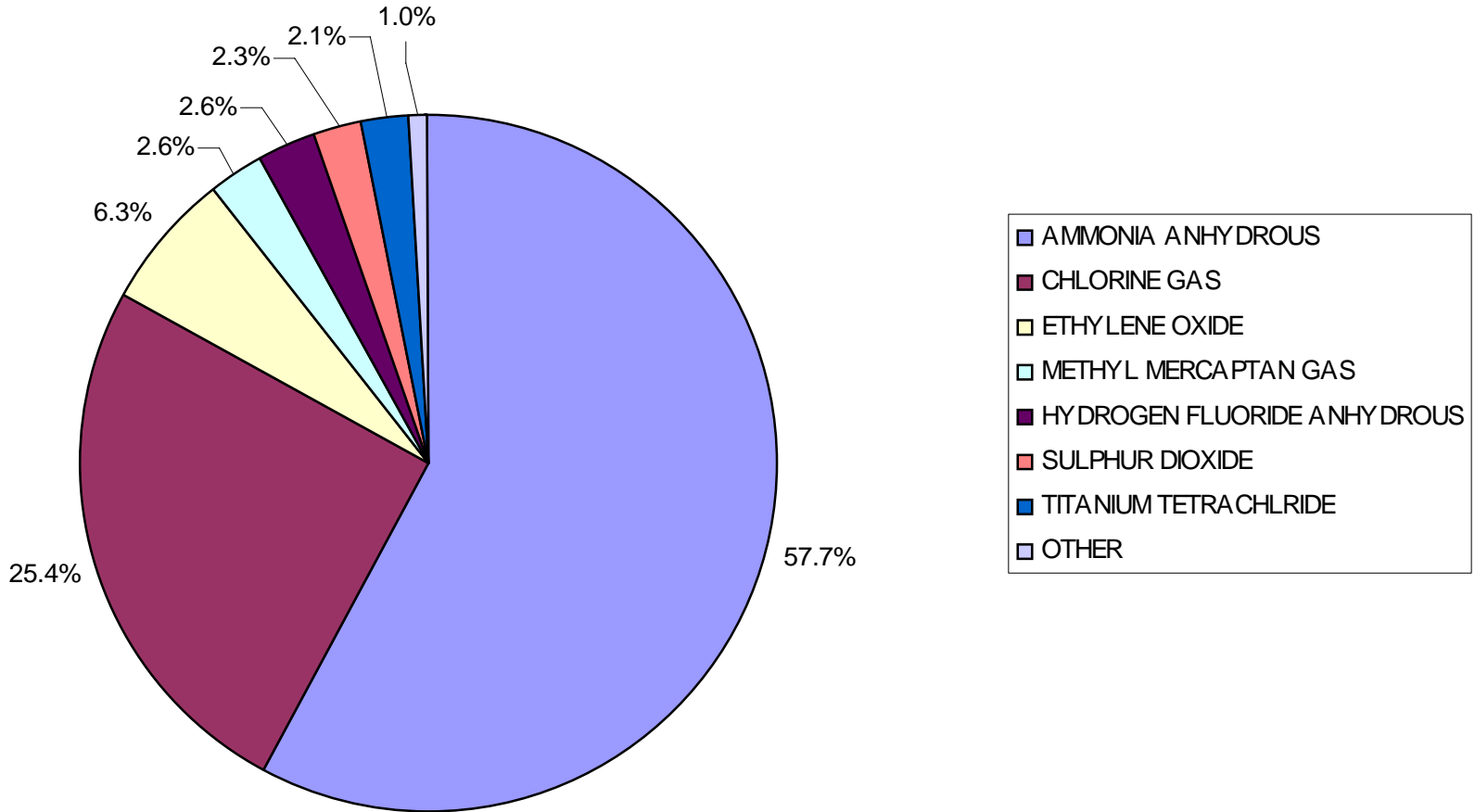


# BNSF High Risk Carload Units in 2007



**Note:** “High Risk” includes Poison Inhalation Hazard/Toxic Inhalation Hazard (PIH/TIH)/ Anhydrous Ammonia.

# BNSF High Risk Carload Units in 2007



# Additional Safety Measures

- **Railroads are subject to a number of special procedures relating to the handling and storage of hazardous materials contained in DOT/PHMSA and DHS/TSA rules, and current proposed regulations would significantly increase the number of operating safeguards railroads are required to take.**
- **BNSF has also implemented recommended operating practices for the handling of hazardous materials adopted by the industry through the AAR.**
- **BNSF has defined a list of high-risk commodities based on environmental, safety, and health hazard exposure potential as well as historical liabilities associated with such commodities.**
- **In an effort to mitigate the risk of exposure to such commodities, BNSF has developed and established multiple changes in operating procedures to minimize or eliminate the potential for incidents.**

# Operating Practices

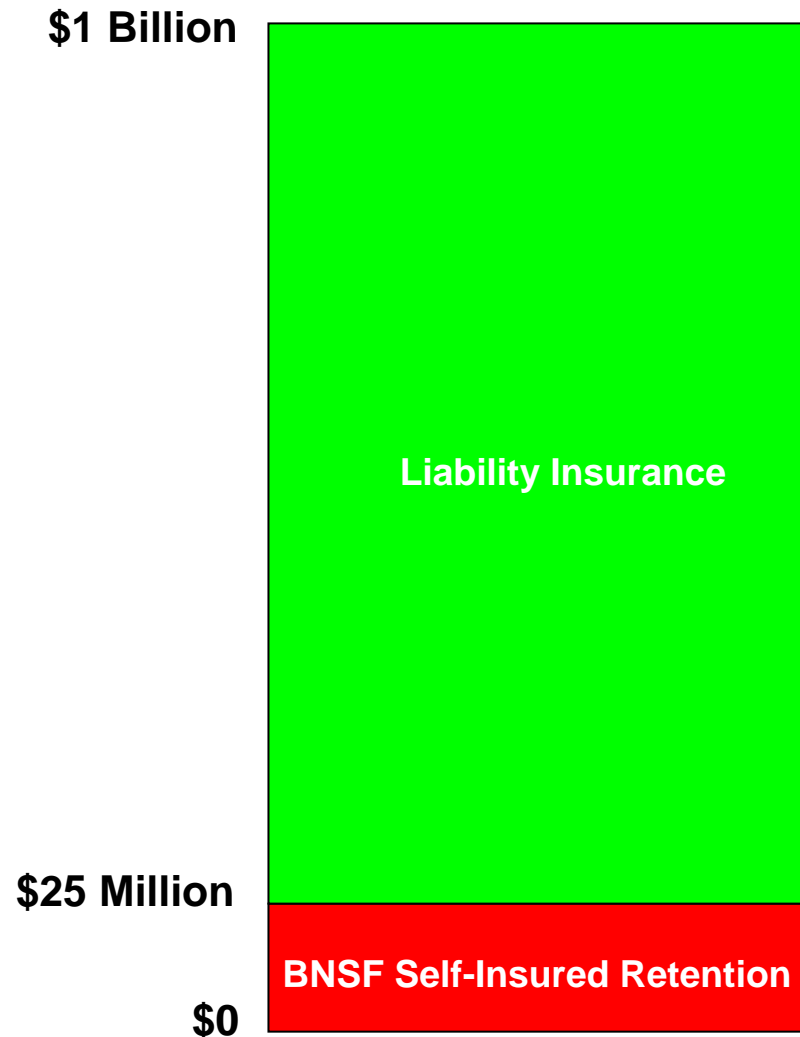
- **Handling Instructions**

- **In most dark territories, route must be inspected prior to train movement**
  - **Train with Inhalant Hazard shipment must be next movement**
- **Maximum speed of Inhalant Hazard trains in most dark territories is 35 mph**
- **Train with Inhalant Hazard shipment holds main during meets**
  - **Train on siding must stop before Inhalant Hazard train passes**
- **Maintenance-of-Way employees may not operate manual throw switches between route evaluation and passing of IH train**
- **Minimize number of trains carrying TIH/PIH commodities**

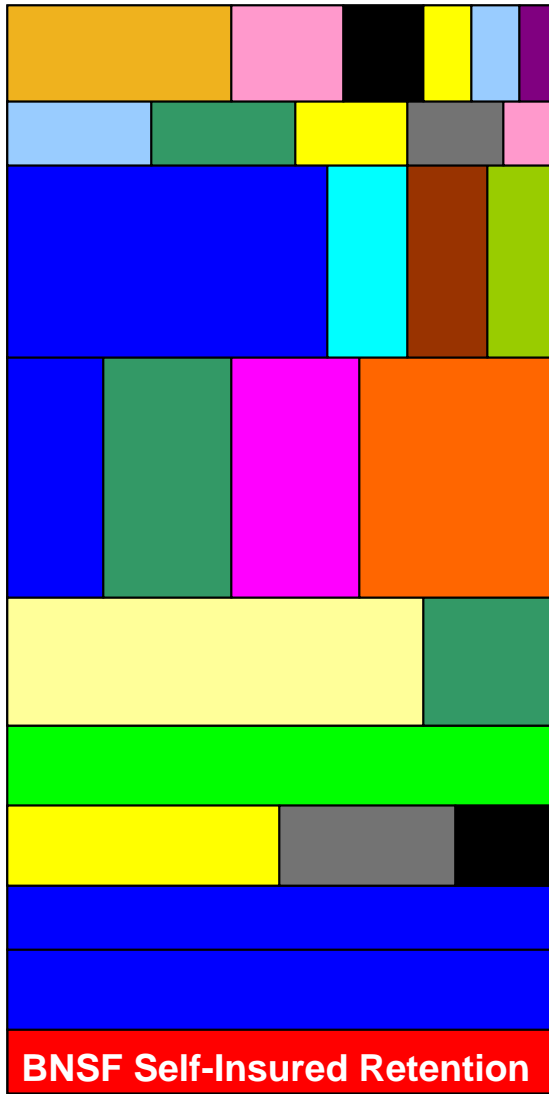
# Policy Issues Raised By Transport of These Commodities

- **The risks associated with these commodities we are required to assume as common carriers are unquantifiable and uncontrollable.**
- **The potential for an accident cannot be fully eliminated.**
- **Insurance is not commercially available to sufficiently protect us against catastrophic loss.**
- **There are limits on the availability of insurance, at ever-increasing cost. Our insurance costs increased substantially after 9/11.**

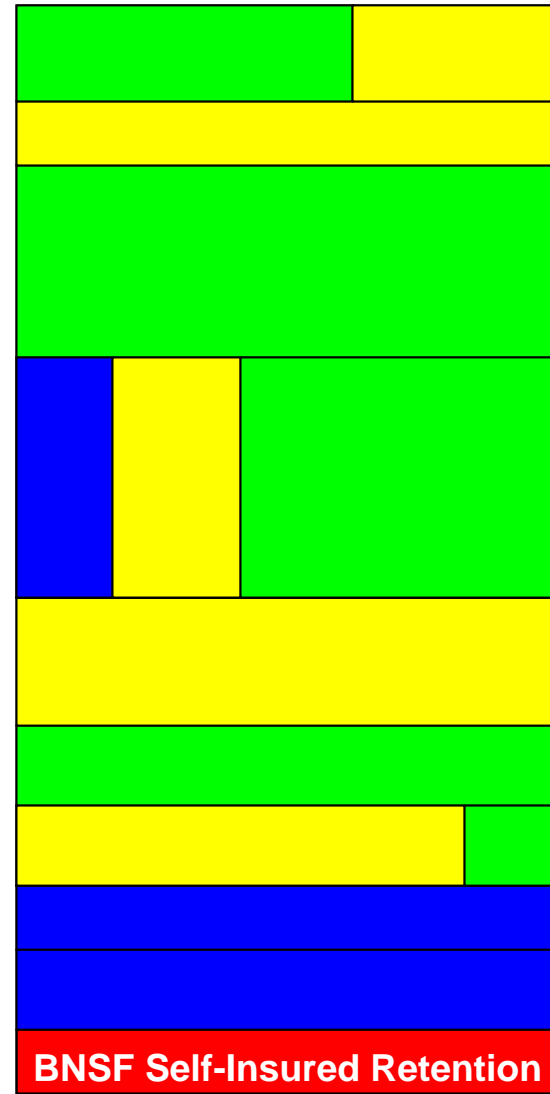
# BNSF Liability Insurance



# BNSF Liability Insurance



\$1 Billion  
 \$900 Million  
 \$825 Million  
 \$600 Million  
 \$325 Million  
 \$200 Million  
 \$150 Million  
 \$100 Million  
 \$75 Million  
 \$25 Million  
 \$0



**Global Key:**  
■ - U.S.  
■ - Europe  
■ - Bermuda



# Insurance Markets

- **The market for railroad liability insurance has contracted substantially over the past several years.**
- **Five years ago, rails were able to purchase in excess of \$1.5 Billion in coverage; today, available coverage is about \$1.0 Billion.**
- **Number of insurance companies willing to write freight railroad insurance has decreased, while the price charged for remaining coverage has increased dramatically.**
- **Required self retention levels have also increased.**

# Insurance Markets

- **Another large liability loss involving hazardous chemicals (especially PIH/TIH) will result in additional capacity contractions and price spikes.**
- **Insurers focus on the railroad's handling of hazardous materials because these commodities have been the proximate cause of most of the rail industry's largest historical losses.**
- **Had the Graniteville, SC loss occurred at a different time of day, or in a heavily populated area, it is likely the loss could have exceeded available insurance.**
- **Such a loss could also lead to the collapse of the insurance market available to the rail industry.**

# Policy Issues

- **Our unbounded exposure on the small amount of hazardous materials, especially PIH/TIH, we are required to handle jeopardizes our ability to meet our common carrier obligations for all other shippers and to invest in infrastructure.**
- **BNSF shareholders should not be the ultimate insurers of PIH/TIH movements required in the public interest.**
- **The Price Anderson model should be explored and supported if there is a public interest in requiring these commodities to move by rail.**

# Possible Concepts

- **The Board should take a supportive view of efforts to formulate private sector solutions to share these risks.**
- **BNSF is in discussions with TFI representatives reviewing their insurance program concepts to determine if possible to partially address elements of these risks for one commodity.**
- **BNSF is developing and exploring alternative approaches and terms to address these risks.**
- **We anticipate publishing such terms as part of our common carrier holding out to handle these commodities.**

# The Common Carrier Obligation In the Face of Unusual Risks

- **A railroad's common carrier obligations are defined under a reasonableness standard: railroads are only required to respond to "reasonable requests" for service.**
- **It is not inconsistent with our common carrier obligation to require the shipper of PIH/TIH materials to meet reasonable indemnity and insurance requirements.**
- **Railroads have enormous incentives to operate safely which are not reduced by the shipper sharing the risk its commodity creates for the railroad and its other shippers.**
- **Shippers of these commodities today do not have the same incentives or face the same risks associated with the transport of TIH/PIH shipments.**

# Summary

- **BNSF shareholders should not be the ultimate insurers of PIH/TH movements required in the public interest.**
- **The Price Anderson model should be explored and supported if there is a public interest in requiring these commodities to move by rail.**
- **STB should recognize and affirm that it not inconsistent with our common carrier obligation to require the shipper of PIH/TH materials to meet reasonable indemnity and insurance requirements.**
- **Particularly in the absence of public policy solutions through legislation, BNSF should have the flexibility to formulate reasonable private sector solutions addressing risk.**