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# Toxic Chemicals and 18-Wheelers: The Dangers of Deregulation

by Kitry Krause

The air on this damp September morning is thick with diesel exhaust as a long line of trucks rumble off I-95 and into a weigh station near Dumfries, Virginia. As on any other day when the weigh station is open, every truck must pull over the scales, but today there is a special twist to this routine. In a parking lot adjacent to the scale, a four-man team stops trucks for surprise inspections. The driver of an empty fuel tanker with Virginia plates is one of those waved over to the inspection site. He leans on his steering wheel while an inspector checks his license, driving hours log, and shipping papers. He climbs down and watches, tight-lipped, as the inspector shakes his gas tank, kicks his tires, and wriggles on the gravel-covered asphalt to get a close look at the suspension and brakes. The driver, who declined to give his name, is clearly embarrassed when the inspector finds the front axle brakes have been disconnected. The inspector sticks an "Out of Service" sign on the tanker's windshield and says the truck cannot be moved until all the brakes work.

If you had watched only this one inspection, part of a "nationwide" effort run by federal and state teams, you might feel safer the next time you're on the highway, jockeying for position with the 18-wheelers. Unfortunately, you would have had the wrong impression. Many states, including Virginia, had only two inspection sites. The officials at the Dumfries weigh station checked a total of eight trucks during a three-hour morning session. In addition to this driver's truck,

two others were also put out of service for brake problems. But while eight were checked, hundreds rolled through the weigh station uninspected and accelerated back on to I-95. If three out of eight trucks were taken out of service for brake problems, consider how many others—in Virginia alone—are operating with potentially dangerous defects. Even more frightening, consider that one out of every 10 trucks carries hazardous materials such as gasoline, sulfuric acid or anhydrous ammonia.

Most of the 250,000 daily shipments of hazardous materials—four billion tons per year—move in trucks. A recent study of accidents in the Washington area has focused attention on the potential danger of trucks and the hazardous materials they carry:

- On August 12 a tank truck on the Beltway leaked 500 gallons of corrosives onto the highway. Had the tank burst and released a chemical cloud, it could have been lethal, local fire officials said. There were no injuries, but 600 people were evacuated from the area.
- On September 6 a propane truck flipped over on the Beltway, causing two small tanks to explode into fires. The main tank never blew, but it took 13 hours for the blaze to burn out. 400 people were evacuated.
- On September 13 and 20 large trucks caused major accidents, again on the Beltway. One involved a tanker carrying oil, the other, a tractor-trailer whose brakes failed.

Across the nation, trucking is getting more dangerous. The Department of Transportation (DOT) reports the number of trucking accidents

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## Safety was not a major issue in the 1980 debate over deregulation.

Neil Goldschmidt, Jimmy Carter's Secretary of Transportation, declared, 'Let me categorically state that regulatory reform will not pose a safety problem.'

rose by 18 percent from 1983 to 1984, the largest jump since 1967. That's 37,200 accidents per year. One reason the roads are getting less safe is that federal deregulation of the trucking industry in 1980 so increased competition that less scrupulous trucking companies have tended to skip on maintenance and permit unsafe practices by their drivers. Contrary to what proponents of deregulation argued in the late seventies, market forces have not adequately provided incentives to keep trucks safe.

The airline industry is another case in which experts have debated the possible links between recent deregulation and inadequate safety standards. In the wake of several crashes and numerous near-misses this year, some airline employees have admitted that airplane maintenance has suffered recently. American Airlines was fined \$1.5 million in September—the largest such penalty ever—for numerous safety violations. Although statistics still show that flying is a relatively safe way to travel, the Department of Transportation has proposed increasing the number of air controllers and plane inspectors in hopes of improving safety. Likewise, in trucking, we should not be satisfied by the fact that so far we have avoided a "Bhopal on wheels," as one worried New York state transit official put it. The massive toxic gas release in India, which killed 2,000 people, as well as another major toxic leak from a Union Carbide plant in Institute, West Virginia, are recent reminders of the danger of hazardous materials. But you don't have to live next to a chemical plant or dumpsite; anyone who travels on or lives near a road used by truckers should recognize the danger that a major truck accident involving hazardous material poses.

## Heads in the Sand

Trucking has always been a dangerous business, but from 1935 through 1980, strict

economic regulation protected "for-hire" carriers in large part from the vagaries of the free market and thus took away some of the pressure to skimp on safety measures. Before 1980, the Interstate Commerce Commission tightly controlled what products carriers could haul, who they could haul for, and what roads they could use. (Unlike for-hire carriers, producers who ship their goods in their own trucks have always been exempt from economic regulation. For-hire trucking companies now make up around one-sixth of all carriers, but they haul nearly half the total tonnage.) While this meant trucks often ran empty or miles out of their way, profits were almost guaranteed. Trucking companies were immune from antitrust laws, and the government routinely approved their collectively set rate increases. While successful trucking companies prospered, people who wanted to get into the industry or to expand their territory had to endure months of federal paper-shuffling and pay for expensive Washington lawyers to argue before the ICC that the public needed new service, that the need could not be filled by existing carriers, and that if allowed in, those same carriers wouldn't be hurt by the competition. Estimates of what it cost the public each year to support the trucking cartel ranged up to \$5 billion.

Not all of the old rules and regulations were eliminated. Trucking companies must still file documents requesting entry into the industry, although the process is largely a formality. Some rates are still set collectively, and in those cases, carriers still enjoy immunity from antitrust laws. Many safety regulations are still in place, though, as we shall see, they are rarely enforced. But by and large, the federal government has removed all significant economic controls on trucking. As a result, the number of for-hire trucking companies has doubled since 1980, pushing the total of all carriers to 210,000.

Initiated by the Carter administration, economic deregulation received broad bipartisan support in Congress, where numerous legislators

preached that it was high time to tame the oligarchs of trucking. Amid all the rhetoric, however, few voices were heard on the issue of safety. Common sense would lead you to the conclusion that if you free up the market in an industry that has inherent hazards, you had also better increase enforcement of safety regulations so that the aggressive competitors don't cut corners on maintenance and other precautions. This is especially true of carriers of hazardous materials. With looser entry requirements and no increase in safety measures, new and inexperienced trucking companies will inevitably take on jobs they aren't prepared for.

Representatives of the industry certainly made these points during congressional hearings, but their arguments were dismissed because they were seen as efforts to prevent the established truckers' loss of profits. "Congress totally missed safety as a consideration in . . . deregulation," says Cliff Harvison, managing director of the National Tank Truck Carriers association. "Every time an industry spokesperson mentioned safety, [legislators] thought we were trying to protect our cartel."

The proponents of deregulation, meanwhile, laughed off what they took to be naive suggestions about the impact lifting economic restrictions would have on safety. The market would take care of that by allowing Adam Smith's invisible hand to guide the trucks safely home to their bays. Testifying before the Senate Commerce Committee, Neil Goldschmidt, Carter's Secretary of Transportation, said: "Let me categorically state that regulatory reform will not pose a safety problem." Alfred E. Kahn, then chairman of the Council on Wage and Price Stability, added, "It's just inconceivable to me that cutthroat competition could be a way of life in the trucking industry."

A patchwork safety bill that had been prepared to accompany the main deregulation legislation was completely overshadowed in the debate and never passed. The only action Congress took in this regard was to raise trucking companies' minimum insurance levels, a measure which has done little to increase safety (see "Insurance: No Solution," p. 43). "In the grand scheme of things, safety wasn't that big an issue," explains one Senate staff member who worked on the legislation. Without a lot of constituent mail or a string of massive disasters to galvanize public interest, politicians see little to gain from being the voice for safety in American trucking.

The laissez-faire theory that economic

deregulation would not diminish safety in trucking crumbled soon after truckers were cut free from the old restrictions. With many more companies and independent drivers competing for freight tonnage that has shrunk since 1978, rates began to drop immediately. Among those hurt in this price war were trucking companies which specialized in hauling hazardous materials. Harvison says that in 1979 companies earned an average of \$1.45 per mile per hundredweight for bulk chemicals. Today some rates are as low as 89 cents. The American Trucking Association reports that in a recent survey of trucking companies, 45 percent said they operated at a loss in the first quarter of 1985. In 1984, while thousands were entering the industry, 1,409 carriers went bankrupt, an all-time high.

So what will a trucker struggling to keep his head above the rising tide of red ink do? First, he might postpone or cancel repairs and maintenance. "There are people out there without the same standards as the good companies," says Jim Carr, transportation director for Chemical Waste Management, a shipper of hazardous waste. A driver from upstate New York confirms Carr's assessment: "The higher-ups have said cut costs in maintenance, so they only do breakdown instead of prevention." Another driver from New Jersey agrees: "Before they used to do it automatically. Now they won't fix anything unless you complain. We have a lot of trucks with bad brakes. . . . The company says they're not forcing anyone to drive them, but the [drivers] aren't complaining either."

In an attempt to cut losses, companies tacitly encourage drivers to speed or to drive more than the 70 hours every eight days they are allowed to by law. Instead of paying conventional wages, many more companies are now paying drivers only by the load or by the mile, giving the drivers their own incentives to hurry. These rates are low, and time spent loading, unloading, making repairs and resting isn't paid. Speeding is clearly dangerous, but driving with too little sleep is probably worse. It is generally estimated that 90 percent of all truck accidents are the result of driver error, and according to a study by the Transportation and Research Marketing group, most of those can be attributed to driver fatigue.

There is little doubt that skimping on safety has resulted in unsafe trucks on the road. A computer analysis of DOT accident and safety inspection reports conducted by the San Jose *Mercury News* found that nearly one out of three trucks randomly stopped on the highway in 1983 was put out of service for violations serious enough

to cause an accident. One out of four trucks had defective brakes and one out of five drivers had been on the road for more than the allowed hours of service. These statistics apply to all trucks; they become more ominous when applied to those carrying hazardous materials. Pat Touchard, supervisor of the Louisiana State Police hazardous materials unit, says that 40 percent of the tickets given to truckers of hazardous materials in the last three years in Louisiana have been for serious safety violations. "We take trucks out of service that are missing a brake and that are carrying liquified petroleum gas or anhydrous ammonia," Touchard says.

Sergeant Clark Mortensen, Touchard's opposite number in the Illinois State Police, says that "because of deregulation, a lot of people are hauling hazardous materials who have never hauled them before." Mortensen describes one owner-operator who rented a tank to deliver a load of anhydrous ammonia. When the driver got to his destination, a farm, he couldn't get the valves to work properly, so he wedged the automatic emergency valve open. When a hose ruptured, there was no way to stop 4,000 gallons of the chemical from pouring out and vaporizing. The accident killed 10 cattle and seriously injured five firemen.

In the face of powerful economic pressure to cut safety precautions, the free market offers no countervailing force. Many company owners and drivers are desperate just to meet their costs. Shippers are too often happy to take advantage of the drastically lower rates and are satisfied if their load arrives at its destination on time. The rest of us who drive on highways or live near them are only vaguely aware of the potential danger. We worry, perhaps, about a nearby toxic waste dump leaking into our ground water. But we may not stop to think that other hazardous materials move on our roads every day. It is difficult to compare the DOT's figures on accidental releases of hazardous materials before and after deregulation because reporting requirements were changed in 1981. In 1984, 4,307 reported accidental releases resulted in six deaths and 140 injuries. The DOT estimates that the number of accidents is underreported by at least 30 or 40 percent.

## Trucks: 10,000; inspector: 1

The problem with truck safety is not a shortage of regulations. The DOT writes rules for maintenance and performance of all trucks, limits the number of hours a driver can work, and

specifies what kinds of records he must keep. The agency also classifies hazardous materials and sets stringent tank and labeling specifications. But regulations drafted by people behind desks in Washington won't make a bit of difference if no one is out enforcing them.

In fact, state and federal inspectors check only a tiny fraction of the 1.3 million heavy trucks operating in the country. Consider, first, the Bureau of Motor Carrier Safety (BMCS): an obscure agency with a \$14 million annual budget, tucked away in the DOT's Federal Highway Administration. The BMCS is responsible for enforcing federal safety and hazardous material regulations for all interstate carriers. When it conducts one of its national inspections, the agency's field inspectors check for problems with brakes, steering, tires, and wheels, as well as for possible falsification of log books. For trucks carrying hazardous materials, they also check shipping papers, package labeling, placards, valves, and the type of container. "When the job is done, it's done well," says Cliff Harvison. That was apparent during the inspection at the Dumfries weigh stations. But as was the case in September, the BMCS does not have the manpower to conduct more than two or three inspections a year, one of them announced ahead of time. The most discouraging number of all is 130; that's how many inspectors the BMCS has nationwide, and each of them is theoretically responsible for 10,000 trucks.

Furthermore, those inspectors spend most of their time looking through file cabinets, not under hoods. They work in truck company offices, checking maintenance schedules, insurance coverage and accident reports, among other things. Again, the numbers overwhelm the feds: this year the agency hopes to audit 10,000 carriers—only four percent of the total. Even when violations are found, fines are rare, totaling only \$183,700 for all of 1983, the last year for which statistics are available. No criminal penalties were collected in 1983, and no criminal cases were prosecuted. As one insurance executive told the Senate Commerce Committee, "It is widely known and accepted. . . within the highway safety community that the Bureau of Motor Carrier Safety is a tiny, understaffed, underfunded, undermotivated creature [with a] responsibility totally out of proportion to its size."

Despite the new pressures created by economic deregulation and the agency's already desperate situation, the Reagan administration has refused to beef up the BMCS. Invoking the notion of "new federalism," the White House has declared

that truck safety is largely the responsibility of the states, even though most states clearly do not have the resources to shoulder the burden.

The states as a group do many more inspections of interstate trucks than the BMCS, but even their efforts are woefully inadequate. State agencies, which are also exclusively responsible for intrastate trucking, are usually strapped for funds. Moreover, many states have not adopted all of the federal safety regulations and their own laws are considerably less strict.

Texas, for example, has no restrictions on how many consecutive hours a trucker may drive. If an interstate trucker doesn't have the extraordinary bad luck to run into a federal inspection, he can drive all day and all night across Texas without fearing interference from the law. Texas State Representative Ed Emmett has fought unsuccessfully for legislation applying all federal trucking regulations to the state. Although the Texas trucking lobby supports Emmett, he says that lobbyists for a single powerful concrete company have blocked the bill. Emmett claims that few other safety regulations are enforced in Texas: "A truck can roll without brakes. . . without air in the tires. . . and not be illegal."

Many states have no special requirements for driving trucks carrying hazardous materials, so any 18-year-old with a license can get behind the wheel. Some drivers may never have handled a truck before; in Oklahoma, for instance, drivers may take their road test in "whatever [vehicle] they want," says Pat Collins, a state trooper. In addition, it is so easy to get licenses from different states that many drivers have several so they never have to get more than a couple of violations on each.

Penalties for safety violations also vary drastically from state to state. Most states assess penalties through common traffic citations, making it difficult to identify truck companies and drivers who have had consistent safety problems. Even states that do adopt federal rules often set their penalties so low that enforcement is almost meaningless. An interstate trucker carrying anhydrous ammonia who is stopped by a BMCS inspector and found to have bad brakes could face fines of up to \$25,000 and a five-year prison term (although such a penalty is highly unlikely.) In most states, the top penalties for the same violation are only a couple of hundred dollars. "I've never yet stopped a driver who didn't have sufficient funds to pay his penalty and keep going," says Scott Feldhauser, an officer with the Colorado State Patrol.

Few states have a large enough enforcement

## Insurance: No Solution

When Congress deregulated the trucking industry in 1980, it made only one major change in safety requirements: it mandated that all trucking companies would have to buy expensive insurance policies to ensure that they would be "financially responsible." Congress set the minimum levels, up to \$5 million depending on what a trucking company generally carried—the more dangerous the cargo, the higher the minimum insurance.

The theory was that market forces would make it very costly or even impossible for irresponsible carriers to secure adequate insurance. One House of Representatives committee report on the legislation noted, "Insurance companies are equipped to evaluate the performance of motor carriers. The premiums they assess are in direct relation to the risks they assume."

Unfortunately, this tidy model didn't work. The first major problem is that any carrier that wants insurance can get it from state "residual markets". Each state has a residual market that serves as an insurer of last resort for carriers unable to attain insurance on the open market. State laws generally require that all licensed carrier insurers underwrite a portion of the residual market. While the residual rates are 15 to 20 percent higher in most states, the insurers cannot cancel the policies, no matter how bad the risk involved. According to Philip Brown, assistant marketing director with The Travelers insurance company, the residual markets "provide a haven with absolutely no incentive to improve" safety.

Another problem is that Congress has not prevented trucking companies from "layering" their insurance—buying it piecemeal from several different companies. When trucking companies use this technique, no one insurance company knows whether the carrier has purchased the total required amount of coverage. The federal Bureau of Motor Carrier Safety found that in 1984, 25 percent of the carriers it audited failed to meet the required minimum insurance levels.

Truck safety advocates and the insurance industry have told Congress that the market will not improve safety through the new insurance requirements. But so far, few on the Hill seem to be listening.

—K.K.

staff to make fines, however costly, a deterrent against unsafe practices. In many states the highway troopers who enforce trucking regulations lack special training. As a result, they tend to focus on the easiest violations to spot—usually less important mistakes, such as an inconsistency in shipping papers—while they overlook more serious ones, such as container defects.

As on Capitol Hill, there is no vocal constituency for truck safety in most states. State legislators complain that they don't have the funds to build effective truck safety programs, let alone form special teams to focus on hazardous waste transportation.

Congress has made grants averaging \$50,000 available to states to develop their programs. Larger grants averaging \$400,000 are available to enforce those programs, so long as states adopt all the federal safety and hazardous materials regulations. But a number of states are reluctant to apply for the larger grants, fearing that if the federal funds are ever cut off, they would not be able to support the projects alone. The Reagan administration has done nothing to diminish this fear. It has frozen funding for the grant program at \$14 million dollars for fiscal year 1986, less than half the amount Congress authorized.

## Taking baby steps

Improving truck safety would require both state and federal authorities to devote more money and manpower to the task. At the state level, a few models exist, such as the successful Illinois program, that are more effective than those generally in place. The Illinois Legislature launched their program in 1977 after a series of spectacular accidents, including the explosion of propane cars after a train derailment which sent half of Crescent City up in flames. The state now has 75 officers working full time on hazardous materials enforcement and 350 on general safety enforcement. A 70-person staff provides free classes on safe maintenance and operation for carriers who haul hazardous materials regularly. "When we started enforcing the regulations in 1979, eight out of ten trucks were in violation," says Clark Mortensen. "Today we are experiencing 25 percent."

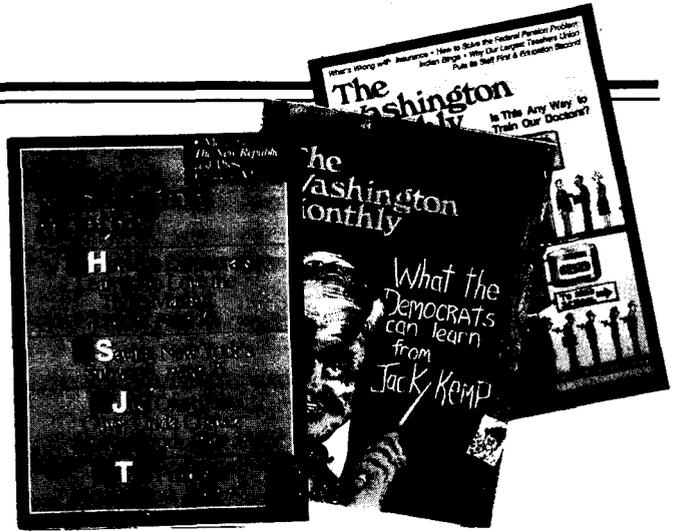
Unfortunately, Illinois remains a sharp contrast to surrounding states which don't have tough rules or enforcement. Those states may find, however, that they become the dumping ground for drivers and companies who can't operate under stricter laws. Mortensen describes one large

trucking company that had been fined by Illinois enforcers for using cargo tanks that didn't meet state specifications. Rather than replace the dangerous tanks, the company simply moved them to terminals in neighboring states and brought their newer tanks back to Illinois. Such maneuvering is common, says Mortensen. "Right now they're playing hopscotch with us."

In the last couple of years, Congress has taken a few steps toward increasing the safety of hazardous materials transportation and trucking in general. In 1984, Congress granted the BMCS greater authority to impose civil penalties and higher fines. And if, by 1989, all states have not adopted federal safety and hazardous material regulations, the DOT has the authority to preempt their laws and impose federal regulations. But Congress has shied away from tougher measures that could improve safety relatively quickly. For example, legislators could make federal highway funding contingent on states adopting federal regulations and a specified minimum level of enforcement and penalties. Another important improvement would be to enlarge the BMCS so it could do more than wave a finger at unsafe truckers. Secretary of Transportation Elizabeth Dole has recently announced plans to add 1,000 air controllers and 500 safety inspectors in light of the increasing volume of airline traffic and this year's accidents. This example should prompt similar action in support of the BMCS.

The comparison to the airline industry reveals, however, why movement on truck safety is unlikely on the Hill. Trucking accidents, even those which involve toxic materials, are not as spectacular as airline crashes. To date, a relatively small number of people have died each year as the result of truck accidents, and few public interest groups have put truck safety high on their agendas. At a September Senate hearing on deregulation, only one consumer advocacy group sent a spokesman, despite determined efforts by the subcommittee's staff to recruit more critics. Representative James Florio, a Democrat from New Jersey who chairs the House Subcommittee on Commerce, Transportation and Tourism, confirms the impression that without the public awareness a major calamity would create, Congress is not likely to move on the safety issue. One House staff member familiar with the issue comments: "It's a rotten way to legislate." Because few on the Hill have connected economic deregulation with the need for better enforcement of safety requirements, Congress is failing to take preventive steps before we get a Bhopal on wheels. ■

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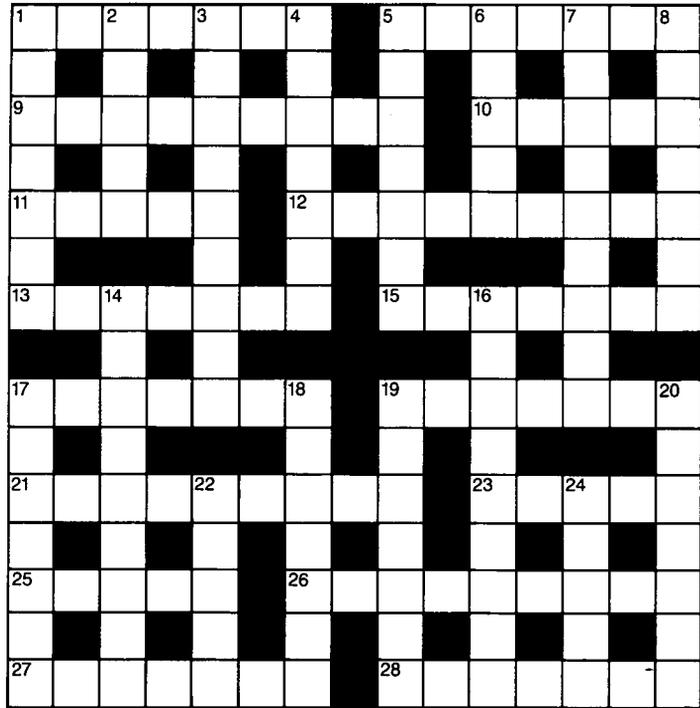
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# POLITICAL PUZZLE

by John Barclay

The numbers indicate the number of letters and words, e.g., (2, 3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word.



## ACROSS

1. Unwelcome at rally or in Cabinet! (7)
5. New home for 1 Across shakes up Daniel R. (7)
9. Air problem managed to pull in a circle. (9)
10. Some in Brazil's capital rely oddly on mineral. (5)
11. Relaxes article in points. (5)
12. Fancy aunt stands before political meeting without affectation. (9)
13. Tender phrased differently. (7)
15. Chow chow. (3, 4)
17. Fabric artfully braced around nothing. (7)
19. Rambles over stones. (7)
21. Doting hog waved farewell. (4, 5)
23. Argentinian native comes back, almost. (5)
25. Oiler sent up the river. (5)
26. Being sworn in made Titian die. (9)
27. Pray for processed cheese after beautiful beginning. (7)
28. Promotes enlistments through skywriting? (5, 2)

## DOWN

1. Unfortunate shapes formed around 50. (7)
2. Los Angeles companies briefly mixed drinks. (5)
3. Long state. (9)
4. Sat on top of woven reeding. (7)
5. Dieting craze set something off. (7)
6. Coal at the end of some months;... (5)
7. ... poll of air taken at start of another. (5, 4)
8. Held up and produce egg in middle of act. (7)
14. Comic ones tilled Washington field. (9)
16. Aging nerd discovered pastime. (9)
17. Bridge convention for TR? (3, 4)
18. Spin shingle curiously. (7)
19. Retiring senator with bad asthma around 1:00. (7)
20. Be counted or be missing. (5, 2)
22. Relative manufactured ice in New England. (5)
24. Traces found in patriot assemblies. (5)

Answers to last month's puzzle:

