



STATE OF NEW YORK

April 29, 2014

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, D.C. 20590

Dear Secretary Foxx:

We are writing to request that the U.S. Department of Transportation (DOT) continue to partner with the State of New York (NYS) to protect public safety, public health and the environment from the potential risks posed by the transport of crude oil throughout New York. This will provide an opportunity to further expand our longstanding and productive partnerships with the Federal Railroad Administration (FRA), the Pipelines and Hazardous Materials Safety Administration (PHMSA) and other federal agencies in this area of growing concern. As you know, NYS is largely preempted from engaging in regulatory activity with respect to rail transportation.

In the wake of the devastating Lac-Mégantic derailment in Quebec last July, and given the dramatic growth in crude oil transport by U.S. Class I railroads over the last five years from just 9,500 to 400,000 tank carloads, Governor Cuomo issued Executive Order 125 (EO125) on January 28, 2014. EO125 requires that the State review efforts at all levels of government to prevent and respond to incidents which result in the release of crude oil, including spill response planning.

As a result of this review process, we recommend the following for your consideration which will further strengthen our joint rail safety enforcement capabilities going forward:

- (1) We appreciate the collective efforts of the U.S. Department of Transportation (USDOT), including FRA and PHMSA, along with the American Association of Railroads (AAR) in establishing voluntary operating practices aimed at improving the safe transport of crude oil by rail. This "Crude by Rail" safety initiative, announced jointly by AAR and DOT on February 21, 2014, represents an initial step in addressing the identified safety concerns. FRA should aggressively move to codify these voluntary actions in regulation as soon as practicable in order that appropriate enforcement actions can be undertaken. Additionally, we also recommend that applicable regulations be amended to require proper securement of unattended trains, including specific criteria for determining the appropriate number of hand brakes to be set based upon the total number of cars in the consist, the aggregate weight of the cars and the applicable track gradient.
- (2) In accordance with the provisions of the Rail Safety Improvement Act of 2008, implementation of Positive Train Control (PTC) technology was to be completed by December 15, 2015. We are aware that consideration is being given to granting an extension of this 2015 deadline. Given that PTC systems address the human factors which are often found causal to rail accidents/incidents, we recommend DOT should make every effort to maintain the current implementation schedule for those routes which frequently carry hazardous materials per 49 CFR Part 172.
- (3) In conducting our rail safety inspection activities through our state participation agreement with FRA and PHMSA, we have enforcement jurisdiction over the "general railroad system of transportation." Much of the



network comprising that system is interconnected so that a rail vehicle can travel across the nation without leaving the system. However, industrial railroads which may be connected to the network only by a switch for receipt of shipments are not part of the system. There are currently no requirements for industrial plants to perform periodic track inspections or to keep track inspection records as required for railroads operating within the "general railroad system of transportation." Therefore, FRA should move expeditiously to amend its regulations to require owners of industrial plant rail systems to perform and document periodic track inspections subject to review/audit by federal/state rail inspection staff.

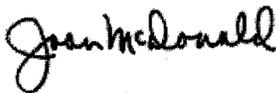
- (4) State participation agreements with FRA provide for all requisite classroom training, including ongoing inspector training, at no cost to the participating states, throughout the life of the agreement. Rail Safety Program managers from the participating states are members of the Association of State Rail Safety Managers (ASRM) which has provided a valued and relevant network for sharing ideas, effective practices, emerging trends etc. Given the significant operational and regulatory impacts attributed to the dramatic increase in rail transport of crude oil nationwide, we recommend that FRA re-establish the annual meeting of the ASRM in order to provide an active and timely learning forum and to allow the states a voice in national rail safety issues.
- (5) Unfortunately, rail accidents and the resulting investigative activities are a challenging, but necessary part of our shared rail safety enforcement efforts. As we have experienced during the past year, there have been a number of notable incidents related to the rail transport of crude oil. After the initial field response and clean-up activities associated with an incident have concluded, many members of the ASRM report that there are extensive delays in FRA providing valuable feedback as to their investigative findings. It would be tremendously beneficial for our NYSDOT rail safety inspectors to have access to relevant and timely information in order to better understand how/why these major incidents occur. Additionally, it would allow us to better focus our inspection priorities as well as to potentially identify opportunities to strengthen local preparedness based upon specific knowledge of accidents with similar causality. Accordingly, we recommend that FRA commit to providing within 45 days following an accident, investigation updates to the secure website portal provided to the states in order to more effectively share incident-related information and interim findings.
- (6) Immediate action by PHMSA is needed to (1) finalize revised design standards for the DOT-111 tank cars and (2) update regulations for appropriate classification and labeling of petroleum products and other hazardous materials. With regard to revised tank car standards, we support the recommendations offered by the American Association of Railroads (AAR) in their November 2013 response to the PHMSA notice of proposed rulemaking outlined below:
 - a. Increase federal tank car design standards for new tank cars or retrofit existing cars to include:
 - i. An outer steel jacket around the tank car and thermal protection
 - ii. Full-height head shields
 - iii. High-flow capacity pressure relief valves
 - b. Require additional safety upgrades to those tank cars built since 2011 including:
 - i. Installation of high flow capacity pressure relief valves, and
 - ii. Design modifications to prevent bottom outlets from opening in case of an accident
 - c. Aggressively phase out older-model tank cars used to move flammable liquids that cannot be retrofitted to meet new federal requirements.
 - d. Eliminate the option for rail shippers to classify a flammable liquid with a flash point between 100 and 140 degrees Fahrenheit as a combustible liquid.
- (7) In terms of updating regulations for appropriate classification and labeling as outlined in PHMSA's Safety Alert dated January 2, 2014, test samples of crude oil originating from the Bakken formations in western U.S. and Canada have exhibited more volatile properties than conventional crude oil, including a lower flash point similar to unleaded gasoline. Therefore, PHMSA should establish a unique identification number and work with shippers to assign the proper packing group so that first responders are able to more readily anticipate the characteristics and behavior of this specific form of crude oil.
- (8) FRA regulations should be amended to bring the railroads into the same type of regulatory oversight that is currently in place under Oil Pollution Act of 1990 for vessels and facilities. The 42,000 gallon threshold

should either be eliminated or apply to the entire train. The NTSB recommended that railroads be required to develop emergency response plans for derailments and other incidents likely to result in crude oil spills or fires, file those plans with designated State and Federal agencies, have contractual relationships with Oil Spill Response Organizations and other organizations necessary to meet their roles and responsibilities identified in those response plans, and conduct or participate in response drills and exercises with local, County, State and Federal agencies. The railroad response plans should identify their response capabilities, any gaps in those response capabilities, and how those capabilities will be integrated into the overall response to a crude oil incident.

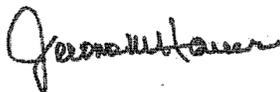
- (9) The New York State Division of Homeland Security and Emergency Services (DHSES), which includes the Office of Emergency Management (OEM) and the Office of Fire Prevention and Control (OFPC), has been fortunate to have been the recipient of funding provided by the Hazardous Materials Emergency Preparedness (HMEP) Grant Program administered by your agency. This funding has been instrumental in supporting OFPC's hazardous materials training programs and OEM's support of Local Emergency Planning Committee (LEPC) efforts. We request that HMEP funding available to New York State be increased in direct response to the tremendous increase in the amount of crude oil, and specifically crude oil from the Bakken oil fields, being transported across New York State by rail and water routes to refineries located on the East Coast of the United States and Canada. We have identified that the funding and resources necessary and available for local and State agencies to adequately plan, prepare and respond to this increased risk must also be increased. Repurposing the HMEP funding the State currently receives would result in significant negative impacts upon the missions it already supports, therefore additional funding is being sought to better position New York State to provide the increased support for local planning and preparedness efforts, including increased training and exercises, necessary to address the expanding crude oil risk. These objectives are consistent with the stated purpose of the HMEP Grant Program: "to increase State, Territorial, Tribal, and local effectiveness in safely and efficiently handling hazardous materials accidents and incidents, enhance implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), and encourage a comprehensive approach to emergency training and planning by incorporating the unique challenges of responses to transportation situations."

We greatly appreciate your consideration of the enclosed recommendations as well as your continuing efforts to work with NYS and our other federal partners to address concerns arising from the exponential growth in the rail transport of crude oil in NYS.

Sincerely,



Joan M. McDonald, Commissioner
New York State Department of Transportation



Jerome M. Hauer, Ph.D, MHS, Commissioner
New York State Division of Homeland Security and Emergency Services