

JAN 28 2014

Department of State  
Secretary of State



State of New York  
Executive Chamber

No. 125

EXECUTIVE ORDER

DIRECTING THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF TRANSPORTATION, THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES, THE DEPARTMENT OF HEALTH, AND THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY TO TAKE ACTION TO STRENGTHEN THE STATE'S OVERSIGHT OF SHIPMENTS OF PETROLEUM PRODUCTS

**WHEREAS**, on July 6, 2013, a train derailment in Lac-Mégantic, Québec involving tank cars carrying crude oil caused the devastation of an entire community, the deaths of 47 persons, and the evacuation of thousands; and

**WHEREAS**, on December 30, 2013, a train derailment in Casselton, North Dakota caused 18 tank cars carrying crude oil to be punctured, spilling more than 400,000 gallons of crude oil into the environment, and causing a fire which resulted in the evacuation of more than one thousand Casselton residents; and

**WHEREAS**, rail cars transporting crude oil traverse 1,000 miles of New York State's 3,500-mile freight rail network, from Western New York along the Mohawk River and its communities to the Port of Albany, and from Canada across the border at Rouse's Point along Lake Champlain and through communities to the Port of Albany, where it is then transported south by rail, ship, and barge on or along the Hudson River and along or through New York communities to refineries in mid-Atlantic states; and

**WHEREAS**, much of the increase in the volume of crude oil transported is due to increased production from the Bakken formation in North Dakota, Montana, and Canada, which, due to lack of pipeline capacity, must be transported by rail; and

**WHEREAS**, historically, rail transport of crude oil is safer and more environmentally protective than truck transport; and

**WHEREAS**, there has been a significant expansion in the use of the Port of Albany in the distribution and transportation of crude oil and other petroleum products by rail, ship, and barge for shipment on and along the Hudson River and along or through our communities to out-of-state refineries and storage facilities; and

**WHEREAS**, the increase in frequency and numbers of rail cars, ships, and barges carrying crude oil and other petroleum products through hundreds of New York communities increases the public's vulnerability to a serious accident; and

**WHEREAS**, New York's waterways, including the Hudson River, Mohawk River, and Lake Champlain, on or along which rail cars, ships, and barges travel, are unique ecological, cultural, economic, natural, and recreational resources upon which millions of New Yorkers rely, which makes these waterways especially vulnerable to spills of crude oil and other petroleum products; and

**WHEREAS**, Bakken crude oil has a lower flashpoint and is therefore more prone to ignite during a rail accident; and

**WHEREAS**, the U.S. Department of Transportation (USDOT) is in the process of designating new safety standards and requirements for rail tank cars and evaluating potential new rules for the transportation of flammable liquids; and

**WHEREAS**, recognizing the value of these efforts, New York nevertheless cannot await the final outcome of these federal assessments before taking action; and

**WHEREAS**, New York is preempted by federal law from regulating rail freight transportation and rail car safety standards, and the navigation of vessels operating on the State's navigable waterways; and

**WHEREAS**, the New York State Department of Environmental Conservation (DEC) has jurisdiction over air permitting, oil spill response, and storage of petroleum products in bulk tanks; and

**WHEREAS**, the New York State Department of Transportation (DOT) has jurisdiction to inspect freight rail track and equipment; and

**WHEREAS**, the New York State Division of Homeland Security and Emergency Services (DHSES) provides assistance and support to local entities relating to emergency planning, training, and response to incidents, including petroleum spills and fires; and

**WHEREAS**, the New York State Department of Health (DOH) assesses and monitors the human exposure and public health impact of petroleum spills and fires, advises on the safe handling of hazardous materials and the cleanup of such materials, and provides public information on health impacts and protective measures; and

**WHEREAS**, the New York State Energy Research and Development Authority (NYSERDA) acts as a central clearinghouse for energy resource information, monitors and regularly reports on liquid fuel supply and market trends, and maintains data on major liquid fuel storage terminals;

**NOW, THEREFORE, I, Andrew M. Cuomo**, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby direct that:

1. DEC, DHSES, DOT, and DOH shall promptly petition USDOT, the U.S. Department of Energy (USDOE), the U.S. Department of Homeland Security (USDHS), and the U.S. Coast Guard (USCG) to upgrade tanker car and rail line safety, assess federal agency needs and risks, and pre-deploy appropriate spill response equipment and resources to protect New York State's communities, residents, land, and waterways from accidents involving the transportation of crude oil and other petroleum products by rail, ship, and barge; and

2. DEC and DHSES, working with DOT, DOH, and NYSERDA, shall, in consultation with USDOT, USDOE, USCG, and USDHS, conduct an assessment of the State's spill prevention and response rules and inspection programs governing the transportation of crude oil and other petroleum products by rail, ship, and barge; and

3. On or about April 30, 2014, DEC and DHSES, with DOT, DOH, and NYSERDA, shall submit to me a consolidated report summarizing the State's existing capacity to prevent and respond to accidents involving the transportation of crude oil and other petroleum products by rail, ship, and barge; and

4. This consolidated report shall include but shall not be limited to: (i) a summary of the State's readiness to prevent and respond to rail and water accidents involving petroleum products; (ii) recommendations concerning statutory, regulatory, or administrative changes needed at the State level to better prevent and respond to accidents involving the transportation of crude oil and other petroleum products by rail, ship, and barge; (iii) recommendations concerning the role that local governments across the

State have in protecting their communities and their residents from spills of petroleum products shipped by rail and water; and (iv) recommendations concerning enhanced coordination between the State and federal agencies in order to improve the State's capacity to prevent and respond to accidents involving the transportation of crude oil and other petroleum products by rail, ship, and barge.



GIVEN under my hand and the Privy Seal of the  
State in the City of Albany this twenty-  
eighth day of January in the year two  
thousand fourteen.

A handwritten signature in black ink, appearing to read "A. Cuomo", is written over the text of the Governor's signature.

BY THE GOVERNOR

*James A. Schwab*  
Secretary to the Governor