

FACT SHEET – Recent Comments on Crude Oil Transport

Summary of Comments on Proposed Crude-by-Rail Operations, Railcar Design, and Response Rulemakings by the Pipeline & Hazardous Material Safety Administration (PHMSA)

Based upon two proposed rulemakings noticed in the Federal Register on August 1, 2014, Riverkeeper, along with Scenic Hudson and Waterkeeper Alliance submitted comments on both, and called for full NEPA review.



The Stated Purpose and Need of PHMSA's Rulemaking

According to the federal government, more than 400,000 carloads of crude oil in 2013, or roughly 280 million barrels (compared to 9,500 in 2008) were transported by rail. This increase has caused a corresponding increase in the number of mainline train accidents involving crude oil, leading PHMSA to recognize that the potential for future severe train accidents involving crude oil in unit trains “has increased substantially.” PHMSA calculated that *without* a system-wide overhaul of current crude-by-rail regulations, \$4 - \$14 billion in damages could result from crude-by-rail disasters over the next two decades. PHMSA notes that crude-by-rail is inherently dangerous, and proposed new regulations to address **railcar** issues (phase-out of use for the least-safe cars, new car designs), **operational** issues (classification, speed, notifications, braking), and **spill response planning**.

We concluded that the agency's proposed changes didn't go far enough, fast enough to address the risks we face, and ignored some of the key issues limiting effective agency oversight of the industry.

Proposed Railcar Regulations

DOT-111s Given that DOT-111s, according to the NTSB, “can almost always be expected to breach in the event of a train accident resulting in car-to-car impacts or pileups,” and that, according to PHMSA, they provide “insufficient puncture resistance, [and are] vulnerable to fire and roll-over accidents,” it is concerning that the agency plans on allowing their continued use in crude-by-rail unit trains until at least 2020, in mixed-commodity trains, and for tar sands service.

Riverkeeper commented that these cars must be immediately banned from hauling crude oil, ethanol, or any hazardous materials by rail.

New Designs PHMSA proposed three options for new railcar designs for hauling volatile, Class 3 Flammable crude oils and ethanol. No proposed option is for a pressurized tankcar (something definitely needed for these materials), no option requires retrofit cars to have the best top-fitting standards, and the agency seems more concerned about limiting railroad costs than protecting the public.

Riverkeeper commented that pressure cars must be used, or, at the least, the most protective of the three proposed designs (with more protections required for retrofit cars).

Proposed Operation Regulations

Applicability Almost all of PHMSA's proposed regulations would only apply to unit trains with more than 20 cars of Class 3 Flammable hazardous materials, i.e., volatile crude oils and ethanol. This means that mixed use trains with fewer than 20 crude oil cars, “normal” or heavy, tar sands crude oil trains, or any trains of 20+ cars of other hazardous materials, these proposals would not apply.

Riverkeeper commented that even one tank car can lead to a catastrophic oil spill (as PHMSA noted), and thus proposed safety improvements should be universally applicable.

Classification PHMSA proposed codifying an existing order requiring crude-by-rail offerors to more accurately classify their crude oil. This proposal does not add “characterization” elements like vapor pressure or corrosivity, and test records would not need to be kept by the oil companies.

Riverkeeper commented that characterization should be included, and test records kept.

- Speed* PHMSA proposed four options for speed limits for these trains; 50 mph everywhere (the *status quo*), or 40 mph (either everywhere, in cities with over 100,000 people, or in high-threat urban areas (HTUAs)). The (voluntary) industry's *status quo* is the latter – 40 mph in HTUAs.
- Riverkeeper commented that speed limits should protect all people and environments, be based on risk and track conditions, and not be a simple codification of the *status quo*.**
- Braking* PHMSA notes that better brakes “reduce kinetic energy and therefore help prevent and mitigate the effects of train accidents;” it proposes either advanced electronically controlled pneumatic “ECP” brakes, or the status quo of distributed power (“DP”) or end-of-train brakes.
- Riverkeeper commented that ECP brakes should be required for all crude-by-rail, especially as DP/EOT brakes, which are not safe enough, are the *status quo*.**
- Notifications* PHMSA proposed codifying a requirement that railroads inform state emergency response agencies about estimated weekly traffic of Bakken crude oil trains at a county-by-county level.
- Riverkeeper commented that these notifications must be real-time (not estimates), for all oil types (not just Bakken), made public, and be monitored by the federal government.**

Response Planning Requirements – Advanced Notice of Proposed Rulemaking

Currently, oil trains – no matter the size – only have **basic** spill response plans. Without **comprehensive** spill response plans, PHMSA warns that it “does not have assurance that railroads have taken steps to plan for response needs and identified and coordinated with the appropriate responders.” Moreover, **basic** plans are not required to conform to Area Contingency Plans, have no obligation to show, by contract, that the railroad has sufficient response capacity, have no training or drill requirements, and have no oversight by federal agencies.

Riverkeeper commented that any train with even one crude oil car must have a comprehensive spill plan.

Missed Opportunities for Meaningful Regulation Updates

- Financials* PHMSA failed to make crude-by-rail more financially responsible; given the agency's conclusions that “no amount of coverage is adequate to cover a higher consequence event” and that “Shippers, by virtue of not bearing liability, may lack an appropriate full incentive to ensure that the package is adequate to appropriately address the level of risk,” inaction is unacceptable.
- Prevention* PHMSA cites “Broken rails or welds, track geometry, and human factors such as improper use of switches” as the “leading causes of derailments;” and warns that with “limited resources, FRA can inspect only a small percentage of trains and vehicles for regulatory compliance,” yet unacceptably proposes no new infrastructure, human error prevention, or inspection programs.
- Train Length* Despite recognizing the dangers of large, long, heavy trains and acknowledging that the inherently dangerous nature of crude oil is “compounded because it is commonly shipped in large units,” PHMSA fails to propose limiting the length of crude-by-rail unit trains. PHMSA failed to act on an element of crude-by-rail that could potentially significantly reduce the risk of catastrophic derailments and oil spills – the unwieldy and dangerously large size of these trains.

Other Recent Comments Submitted by Riverkeeper on Crude Oil Transport

Riverkeeper also recently commented on two other federal actions directly affecting crude oil transport:

First, Riverkeeper commented on the U.S. Coast Guard (USCG) proposed NY/NJ Area Contingency Plan updates. This is the plan used to guide regional federal, state and local oil spill preparation and response. Riverkeeper asked the USCG to fully examine crude-by-rail and upriver impacts, preparation, and preparedness.

Second, Riverkeeper commented on a USCG rulemaking for proposed adjustments to oil spill liability limits. Riverkeeper suggested that there be no upper limit to an entity's liability if they spill oil into the water, but, at the very least, that the upper limit be inflation-adjusted from \$350 million dollars to \$623.7 million dollars.