

TO: JAMES L. APP, CITY MANAGER
FROM: WARREN FRACE, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: EXPANSION OF CRUDE OIL RAIL TRANSPORT
DATE: APRIL 7, 2015

Needs: To consider information regarding the potential implications of expanding crude oil transport via the Union Pacific Railroad (UPRR), and options to address local concerns.

Facts:

1. A Draft Environmental Impact Report (DEIR) has been prepared for an expansion to the Phillips 66 refinery near Nipomo (aka Santa Maria Refinery – “SMR”), to allow a new rail line spur to accommodate increased transport of crude oil capacity.
2. San Luis Obispo County is reviewing comments on the DEIR, which was recirculated last November. The formal public comment period for the DEIR is closed. However, comments on the DEIR may be made at the County Planning Commission hearing, which has not been scheduled yet.
3. Councilman Strong reported on information regarding the rail spur expansion project and oil transportation by rail issues, at the March 3, 2015 City Council meeting. Council directed staff prepare a response on behalf of the City, to the US Department of Transportation (DOT), and Federal Office of Management and Budget (OMB), regarding potential implications from oil transport by rail, specifically related to train length, oil car standards, noise and speed. Council also requested investigating additional emergency service training opportunities to expand the City’s preparedness and capabilities in the event of a train derailment.
4. The League of California Cities has been following this issue for the last few years, and has evaluated the implications of expanded rail transport of crude oil and other hazardous materials across the state and potential safety concerns that may impact local cities. The League has adopted several policy goals for safety improvements of rail transport of crude oil and hazardous materials.
5. The League has also evaluated interstate commerce laws and regulations, associated federal and state safety regulations, and pending legislation regarding expansion of rail transport facilities, and expansion of crude oil transport by rail.
6. The League has been active in communicating with the U.S. Department of Transportation (DOT) regarding crude oil and other hazardous materials rail transport, and has issued a rail safety action request to the DOT. The League has also provided a sample letter to assist local cities that may want to support rail safety improvements for transport of these materials. A copy of the Leagues “Rail Safety – Expedited Action Request”, and a sample letter for cities to use as a template to the DOT, are provided in Attachments A and B.

Analysis and Conclusion:

The SMR is currently operating below the maximum permitted refining capacity. In an effort to prepare for changes in the domestic oil market, oil processing, and

distribution demands, the SMR is seeking an expansion of the rail line spur that services the refinery. The rail spur expansion would not increase throughput capacity of the refinery, however it would maintain continued throughput to the maximum level approved by SLO County, and the SLO County Air District. (A throughput capacity increase was evaluated in a prior EIR.)

The existing rail operations at the SMR consist of the export of petroleum coke for commercial use throughout the U.S. and abroad. The refinery currently receives one train per week (with up to 20 empty cars), that picks up 100 tons of coke per car for delivery. (Petroleum coke is a carbonaceous solid, similar to coal.) The rail spur expansion would allow for unloading of up to five unit trains per week with crude oil, with a 250 annual maximum number of trains. Each train would consist of a maximum of three locomotives, two buffer cars, and 80 railcars (each 90 feet long). The rail spur expansion includes adding new coke tracks, as well as tracks for crude oil delivery and processing. Without the expansion of the rail spur, the SMR would not have the capacity to accommodate the extended train length for distribution of crude oil (and other hazardous materials). The outcome of the SMR DEIR on expansion of the rail spur will be determined by San Luis Obispo County. If the City has specific comments on the DEIR, they may be made when the County considers adoption of the DEIR.

As noted in item #3 above, in response to the pending expansion of rail transport for these materials, Councilman Strong raised concerns regarding: (1) the length of trains; (2) train noise and speeds; and (3) emergency response training.

Train Length

The length of the UPRR through the City is approximately 5.4 miles. The oil transporting unit trains could be up to approximately 1.5 miles in length. For comparison, the distance between the Niblick Road Bridge to 13th Street is almost a mile, and the distance between Niblick Road Bridge to 24th Street is just over 1.5 miles in length. According to staff at the San Luis Obispo Council of Governments, federal regulation on interstate commerce precludes states or local agencies from regulating train length.

Train Speed

According to the Southern Pacific Coast Route Infrastructure Assessment Report, (May 1996), the speed limit for trains within post markers 118 and 120 (the Paso Robles segment), is 40 miles per hour. However, trains typically travel much slower within the City limits due to at-grade crossings, which includes five at-grade public street crossings at 10th, 12th, 13th, 16th and 21st Streets.

Train Noise

The Noise Element of the City's General Plan considers noise that results from UPRR trains through town. The Noise Element indicates that exterior sound exposure levels (SEL), accounting for travel speed, warning horns, locomotive noise and other noise factors, from trains at distance of 100 feet is almost 100 decibels (dB). The Element provides noise standards for acceptable interior and exterior noise levels. These noise standards indicate thresholds for development, including noise

from trains. Development can typically mitigate significant noise impacts from trains and other stimulus such as highway noise through implementation of construction mitigation methods, site plan design, and barriers (e.g. locations of building openings, glazing, building orientation, sound walls). Irregularly occurring noise, such as noise from trains, is typically considered a disruptive, but necessary “nuisance” noise. The General Plan EIR evaluated existing and future (increased) noise conditions that may result from rail passenger and freight transport, and concluded that although noise from trains would be significant, with goals, policies and actions items included to encourage noise attenuation and minimization, noise would be lessened to an acceptable level.

Although trains are very noisy, they travel through town a few times daily for brief periods. As a result the average (Ldn) noise level from trains drops to 61 dB. The General Plan assumes eight (8) freight and four (4) passenger trains by 2025. The SMR rail expansion (10 trains per week) would fall within these assumptions. In this situation, more, longer trains would likely result in an increased occurrence of interspersed warning horns due to grade crossings in Paso Robles, and an increase in sounds from train vibration. Since train noise would continue to be irregular, it would continue to be consistent with the General Plan EIR.

Safety Response Training

There are concerns regarding the City’s readiness to manage and respond to potential impacts that may result from a derailment due to the increase occurrence of transporting crude oil and other hazardous materials in the area. The City’s Chief of Emergency Services (ES) reports that while the ES department trains for this type of emergency, the department and County as a whole, could use more, specialized training for this type of incident. There are training resources and opportunities available through the UPRR, including through a mobile classroom program specifically focused on this issue. The City, in conjunction with other regional emergency response agencies, should be provided this training. The Chief notes that it is important that this type of training be conducted countywide to make effective use of the training resources available.

Additionally, the Chief recommended local agencies need to be provided an adequate supply of firefighting foam, and be assured its quick delivery to any accidents within the City or the region as a whole. This would aid in the City’s ability to respond to fire and explosions that may result from train derailments.

California League of Cities

The League, representing the State’s 482 cities, submitted comments to the U.S. DOT’s Pipeline and Hazardous Materials Safety Administration’s “Notice of Proposed Rulemaking on Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains”. The comments detail suggestions to address hazards, which are summarized below, and provided in full, in Attachment C:

- Provide more information to first responders.
- Provide training and notification to emergency response providers.

- Use all available data to assess the risk and consequences of crude rail car accidents.
- Mandate speed limits in all areas.
- Study the risks of multi-car trains.
- Quickly phase-out unsafe tank cars.
- Require enhanced tank car features.
- Regulate the transport and storage of crude on railroad sidings.

In an effort to be effective, and focus on the main issues related to potential threats from increased rail transport of crude oil, the League urges each member jurisdiction to send a letter to the Secretary of Transportation, emphasizing that the DOT consider 10 specific policy recommendations adopted by the League to improve rail safety. As noted in the “Facts” section of this report, a sample letter (which outlines these 10 policies), is provided as an outline for cities that are interested in addressing this issue (see Attachment C).

Policy

Reference: Paso Robles General Plan Noise Element, Phillips SMR Rail Project Draft EIR, League of California Cities, Union Pacific Railroad Emergency Responder Training, Southern Pacific Coast Route Infrastructure Assessment Report

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Impact: None.

Options:

- After consideration of any public testimony the City Council may consider the following options:
- a. Direct staff to prepare a letter addressing the issues identified by the League of California Cities for the Mayor’s signature, and to contact UPRR regarding emergency services training and supplies.
 - b. Amend, modify or reject the foregoing options.

Attachments

- A. League of California Cities - “Rail Safety – Expedited Action Request”
- B. Letter from the League of California Cities to the Department of Transportation
- C. Sample letter for cities to the Department of Transportation
- D. Report from Councilman Strong, March 3, 2015



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March 6, 2015

The Honorable Anthony R. Foxx
Secretary of Transportation
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D. C. 20590

RE: Rail Safety – Expedited Action Requested

Dear Secretary Foxx:

The League of California Cities has been monitoring transport of crude oil and other hazardous materials by rail for several months, and has recently adopted as its policy several goals for safety improvements based on input from our key state agencies. We believe that implementation of these rail safety improvements should be expedited at the federal level to accomplish improved rail safety as soon as possible.

The continued increase in the transport of crude oil by rail, combined with recent rail accidents involving oil spills and resulting fires, has served to heighten concerns about rail safety among many of our member cities. Specifically, two derailments accompanied by fires involving unit trains (100 or more tank cars) carrying crude oil in West Virginia and in Ontario, Canada last month have greatly increased public anxiety about what steps the relevant federal regulatory agencies are taking to improve rail safety, and on what timetable.

The Board of Directors of the League of California Cities at its February 20, 2015 meeting adopted ten specific recommendations as official policy on this issue, which we now respectfully submit to you as priority items for improving rail safety, and by extension the public safety of the 482 California communities we represent. We have three points to emphasize in submitting these recommendations. First, irrespective of whether these improvements are required of railroads, petrochemical companies, hazardous materials shippers, or the owners or lessees of rail tank cars, we urge that they take the form of mandates, rather than the more traditional recommendations. Second, the mandates should be accompanied by the imposition of a hard deadline for their implementation. Third, we strongly recommend that the Department of Transportation include these recommendations for improved rail safety in the final rule for the Safe Transportation of Crude Oil and Flammable Materials.

League of Cities Policy Recommendations – Oil by Rail

The League of Cities urges the federal agencies with appropriate jurisdiction (primarily the National Transportation Safety Board, the Federal Railroad Administration, and the Pipeline and

Hazardous Materials Safety Administration) to take the following actions to improve rail safety with respect to the transport of Bakken crude oil and other hazardous materials by rail:

- 1) **Mandate Electronically Controlled Braking Systems:** Require installation of electronically controlled, pneumatic braking systems (ECP) on trains carrying Bakken crude and ethanol by a date certain. This technology allows for faster and more efficient braking to a full stop.
- 2) **Expedite retrofit or phase-out of tank cars failing to meet current safety standards:** Require phase-out or retrofitting of older, DOT-111 tank cars manufactured prior to October 2011, to be completed by a date certain. The Association of American Railroads adopted higher manufacturing standards requiring greater structural integrity for these tank cars which took effect at that time to facilitate safer transport of flammable liquids, including ethanol and all crude oil.
- 3) **Mandate Provision of Real-Time Information to first responders in event of accidents:** Require via federal regulations that railroads and producers of petroleum and other hazardous materials shipped by rail make available to first responders, via a secure access portal on their websites, the cargo manifest information, or “consist,” on trains containing these substances. This information ideally should also be accessible via mobile applications, allowing rapid access by first responders to cargo manifest information in real time, particularly in accidents where the manifest is not available on the train.
- 4) **Federal funding for first responders:** Increase federal funding for training and equipment purchases for first responders, to improve their ability to respond to hazardous materials accidents.
- 5) **Mandatory Speed Limits:** Impose mandatory maximum speed limits in all areas.
- 6) **Mandate Stricter Reporting Requirements:** Lower the threshold for the number of tank cars that trigger a reporting requirement to the California Energy Commission and the State Emergency Response Commission, from 33 to 20. Currently petroleum producers and railroads only have to submit reports of trains carrying Bakken crude oil if the train includes 33 or more tank cars. Each tank car holds 34, 500 gallons. This will lower the trigger for the reporting requirement from shipments of 1.1 million gallons or more, to shipment of 690,000 gallons or more.
- 7) **Identify priority routes for positive train control (PTC):** PTC is an advanced technology incorporating GPS tracking to automatically stop or slow trains before an accident can occur. It is specifically designed to prevent train-on-train collisions, derailments due to excessive speed, and unauthorized movement of trains. Require PTC to be employed on all rail lines used for the transport of hazardous materials, with a date certain by which the technology will be online.
- 8) **Mandate railroad industry compliance with Individual Voluntary Agreement negotiated with the U.S. Department of Transportation by codifying the following actions as requirements:** (Note: The requirements below have been voluntarily agreed to by railroads, but there is currently no legal or regulatory requirement for their compliance. Such requirements should be codified, given their significant impact on rail safety)

- Reduced speed for crude oil trains with older tank cars going through urban areas
- Analyses to determine the safest routes for crude oil trains
- Increased track inspections
- Enhanced braking systems (electronically controlled pneumatic brakes) ECP
- Installation of wayside defective bearing detectors along tracks
- Better emergency response plans
- Improved emergency response training
- Working with communities through which oil trains must move to address community concerns

9) **Clear methodology for funding:** Devise a clear methodology on how funds are to be distributed, to ensure that sufficient funds pass through that state and county agencies to the local agencies involved in first response.

10) **Regulate the parking and storage of tank cars:** Mandate improved safety regulations addressing the storage or parking of tank cars in populated areas.

The League of California Cities understands that this area of regulation is largely pre-empted by federal law; that is why we are urging specific and timely action by the federal agencies charged with regulatory oversight in this area. We do not expect that derailments and accidents will cease altogether, but we anticipate that stricter safety standards will reduce their numbers over time.

Thank you for your attention to this matter. Please contact me or the League's Washington advocate, Leslie Pollner, at (202) 469-5149 with any questions. We look forward to continuing to work with you on California's important local priority issues.

Sincerely,



Christopher McKenzie
Executive Director

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Members of the California Congressional delegation
Federal Railroad Administration
National Transportation Safety Board



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League of California Cities Comments Regarding the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's Notice of Proposed Rulemaking on *Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains* (Docket No. PHMSA-2012-0082, HM-2510)

The League of California Cities appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM), which includes new operational requirements for certain trains transporting a large volume of Class 3 flammable liquids and improvements to tank car standards, both designed to lessen the frequency and consequences of train accidents and incidents involving the transport of large volumes of flammable liquids. With the significant increase in the volumes of crude oil being shipped, and proposed to be shipped, throughout the country, the safety of the millions of people that live and work in close proximity to the railroad lines is at significant risk.

The League of California Cities is an association representing California's 482 cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Our members are public agencies with public safety and emergency response responsibilities and employ first responders.

California and the Nation Are At Risk from the Transportation of Crude Oil by Rail

As an association representing government agencies responsible for local public safety, we believe that the rail transport system for crude oil and other Class 3 volatile substances needs to be improved to provide day-to-day safety on and near that rail system and to reduce the risk of catastrophic harm.

The data gathered by Pipeline and Hazardous Materials Safety Administration and Federal Railroad Administration from August 2013 to May 2014 confirms that the Bakken Crude currently being shipped across the country is significantly more volatile than more traditional crude oil. The average Bakken shipment travels over 1,000 miles to refineries in California and other locations. In the last 2 years, the volume of Bakken crude shipped has increased from 9500 rail car loads to 415,000 rail car loads, and continued high growth is expected. Much, if not all, of this crude is extracted through methods not known or not commercially used until recent years.

Given the volumes of Bakken crude oil and other Class 3 flammable liquids being shipped by rail, the large distances that these shipments travel, and the many towns and cities that the rail lines transect, it is vitally important to have a rail delivery system that safeguards the public from the significant risks of an accident or derailment.

In California, the rail system flows through all major metropolitan areas, bisects cities and communities, and crosses many habitat areas. Currently, in addition to existing oil shipments,

there are proposals to ship well over 200 rail car loads of crude on the Union Pacific main line that runs from the City of Roseville, through the Sacramento region, and into the San Francisco Bay Area. Some of this crude will head to refineries on the San Francisco Bay, and some will traverse the Bay Area going through Berkeley, Oakland, and other metropolitan areas along the central coast of California. Similar shipments are occurring in the Central Valley and Southern California, and more are expected there as well. This increasing transport of Bakken crude oil by rail should not be permitted to place the residents and businesses of California at an increased risk of catastrophic human and environmental harm.

As is well known, there have been a number of crude oil train incidents that have occurred within the last 18 months.

- Lac Mégantic, Quebec—On July 5, 2013, a train with 72 loaded tank cars of crude oil from North Dakota moving from Montreal, Quebec, to St. John, New Brunswick, stopped at Nantes, Quebec, at 11:00 pm. At about 1:00 AM, it appears the train began rolling down the descending grade toward the town of Lac-Mégantic, about 30 miles from the U.S. border. Near the center of town, 63 tank cars derailed, resulting in multiple explosions and subsequent fires. There were 47 fatalities and extensive damage to the town. 2,000 people were evacuated. The initial determination was that the braking force applied to the train was insufficient to hold it on the 1.2% grade and that the crude oil released was more volatile than expected.
- Gainford, Alberta—On October 19, 2013, nine tank cars of propane and four tank cars of crude oil from Canada derailed as a Canadian National train was entering a siding at 22 miles per hour. About 100 residents were evacuated. Three of the propane cars burned, but the tank cars carrying oil were pushed away and did not burn. No one was injured or killed. The cause of the derailment is under investigation.
- Aliceville, Alabama—On November 8, 2013, a train hauling 90 cars of crude oil from North Dakota to a refinery near Mobile, AL, derailed on a section of track through a wetland near Aliceville, AL. Thirty tank cars derailed and some dozen of these burned. No one was injured or killed. The derailment occurred on a shortline railroad's track that had been inspected a few days earlier. The train was travelling under the speed limit for this track. The cause of the derailment is under investigation.
- Casselton, North Dakota—On December 30, 2013, an eastbound BNSF Railway train hauling 106 tank cars of crude oil struck a westbound train carrying grain that shortly before had derailed onto the eastbound track. Some 34 cars from both trains derailed, including 20 cars carrying crude, which exploded and burned for over 24 hours. About 1,400 residents of Casselton were evacuated but no injuries were reported. The cause of the derailments and subsequent fire is under investigation.
- Plaster Rock, New Brunswick—On January 7, 2014, 17 cars of a mixed train hauling crude oil, propane, and other goods derailed likely due to a sudden wheel or axle failure. Five tank cars carrying crude oil caught fire and exploded. The train reportedly was

delivering crude from Manitoba and Alberta to the Irving Oil refinery in Saint John, New Brunswick. About 45 homes were evacuated but no injuries were reported.

- Philadelphia, Pennsylvania—On January 20, 2014, 7 cars of a 101-car CSX train, including 6 carrying crude oil, derailed on a bridge over the Schuylkill River. No injuries and no leakage were reported, but press photographs showed two cars, one a tanker, leaning over the river.
- Vandergrift, Pennsylvania—On February 13, 2014, 21 tank cars of a 120-car train derailed outside Pittsburgh. Nineteen of the derailed cars were carrying crude oil from western Canada, and four of them released product. There was no fire or injuries.
- Lynchburg, Virginia—On April 30, 2014, 15 cars in a crude oil train derailed in the downtown area of this city. Three cars caught fire, and some cars derailed into a river along the tracks. The immediate area surrounding the derailment was evacuated. No injuries were reported.

These recent incidents only reinforce the lesson that local governments have learned over the last 100 years: prevention is key to reducing the costs of disasters. Today, we routinely require safety standards in building construction to address new hazards and to incorporate improved building materials and techniques that were unknown just a generation ago. We also safeguard air quality, water quality, and habitat to help conserve our natural and build environments for today and for the future. Of particular relevance, in light the recent Napa/American Canyon Earthquake¹ (which was directly in the area of railroad operations) are the earthquake safety requirements incorporated into new building standards; these standards have significantly reduced injuries and property damage in earthquake prone areas. The fire prevention standards that have been adopted for large buildings and for residential homes are yet another example of the benefits of prevention. These safety standards have significantly reduced fires overall, and have reduced the impact of fires that do occur. Both earthquake and fire safety standards have significantly reduced the loss of life and the financial and environmental impacts of such catastrophic events.

With the enormous increase in rail shipments of crude oil, we believe the same types of enhanced safety requirements are necessary to fulfill the duty to safeguard the public's safety. Prevention is less expensive than the cost of responding to emergency events and the damage to people and places.

Recommendations

We urge the Department of Transportation to adopt the most safety-oriented alternatives in the NPRM and also to consider adding requirements or incentives for companies that would require removal of a significant amount of the volatile elements, such as flammable natural gas liquids from crude oil before it is loaded into rail cars for transport.

¹ Another potential severe earthquake in the Napa area could have a direct negative impact on this alignment including tracks, signals, and bridges.

We join in the suggestions made to Secretary Foxx on July 1, 2014, by Congress Members Doris Matsui, George Miller, Mike Thompson, and John Garamendi, a copy of which is attached. A requirement to remove volatiles through stabilization or other processes prior to shipment, in conjunction with improved rail car requirements, improved rail lines, and the other safety measures proposed would greatly enhance public safety and reduce the risks of catastrophic incidents.

Specifically, we have the following recommendations:

Provide more information to first responders: The NPRM proposes a robust and verified program for classification and characterization, with oversight to assure that materials are appropriately handled. We support such a program as a reasonable and proper safety precaution. A pre-shipment program implemented in this manner would increase the safety of the supply chain and provide great public benefit with little overall cost. The program would help ensure that flammable and volatile liquids are shipped in Class 3 tank cars that have the appropriate safety features, and would assist first responders with a better understanding of the properties of the liquids being shipped – information that is critical in the event of a derailment or a spill. We further propose that the classification and characterization of these liquids be included in the information that is made available to first responders during emergencies and on a real-time basis.

Provide training and notification to emergency response providers: California cities provide first responder emergency response in their communities and are required to respond to greater and more varied types of risks. Consequently, cities need adequate training and equipment, advance information in order to plan and prepare for emergencies, and real-time information when an emergency occurs. Under the current system, local emergency workers often must respond without the key information that they need. In addition, local governments are often without any ability to increase funding to provide for adequate response capabilities, including the full costs of training and equipment, and the costs of emergency response, cleanup, and recovery. Accordingly, we urge the adoption of regulations that provide funding for training and equipment, integration of manifest and shipment information in to the emergency response system, and real-time information during emergencies.

California, like many other states, integrates its emergency operations with the federal National Incident Management System. At the state level, the Office of Emergency Services works with regional and then county and city emergency response agencies so that local and regional entities can coordinate and plan for emergencies, and so that the local agencies have the real-time information they need to respond. As an example, Pacific Gas & Electric (PG&E) now provides a direct log in to its emergency systems, including the locations and sizes of its gas lines, to facilitate emergency response. This system has provided firefighters working to contain wildfires with critical real-time PG&E gas system information. A similar system for rail transport would greatly enhance emergency response to derailments and other train accidents.

Accordingly, we urge the adoption of regulations to fund, train, equip, and fully-inform emergency responders including:

- Fully-funded regular training programs that cover the cost of training, including backfill employee costs, to ensure that first responders are trained, and remain trained, on up-to-date procedures to address the unique risks posed by these shipments.
- Routine information on Class 3 train shipments upon request to provide information for planning and training.
- Coordinated emergency response plans and programs that include and involve state, regional, and local emergency responders. The regulations should include requirements for two-way coordination with industry emergency response at the state and regional level. Most importantly, these plans should provide for the obligation to pay for recovery, including all required clean-up.
- Real-time information available to local fire and emergency personnel so that first responders can have the necessary information of the contents of rail shipments and their classifications and characterizations at the time it is necessary to make first response decisions.
- Require comprehensive Oil Spill Response Plans (OSRPs) for every type of train and every rail line that will transport more than 3,500 gallons of Class 3 liquids per train per month, and require that rail operators coordinate their oil spill response plan with state plans. For instance, in California, there are regional OSRPs that are coordinated through the state. Railroads' OSRPs should also be coordinated and consistent with state and regional plans.

Use all available data to assess the risk and consequences of crude rail car accidents: The proposed rule estimates the risk of high consequence accidents, such as the devastating and fatal Lac Megantic, Quebec accident, using accident data across all commodities transported by rail. It omits from its analysis the numerous crude rail accidents that have occurred in 2014 as well as all crude rail accidents that have occurred in Canada. The proposed rule also fails to address the potential high cost damages of tar sands spills into waterways, and that high consequence events have resulted in tax payers footing the bill for clean-up. As a result of these omissions, DOT may underestimate the risks of and damages from high consequence events, thereby downplaying the benefits of the most stringent safety standards.

Mandate speed limits in all areas: Speed clearly increases the risk of an accident and of a derailment. Accordingly, we urge the adoption of a maximum speed limit of 40 miles per hour in all areas for all transport of Class 3 flammable liquids.²

A brief review of a map of the nation's high threat urban areas quickly highlights that the NPRM's option to limit the 40 mile per hour speed limit to just those high threat urban areas should be rejected in favor of a nation-wide limit. For example, the "Sacramento Area" high threat urban area covers only half of the City of Davis, stopping just short of the downtown area.

² It is our understanding that there would be no significant impact to passenger rail and other intermodal rail services by reason of a nation-wide speed limit for rail transport of Class 3 flammable liquids.

Rail cars directly run through downtown Davis, traversing a rail line curve that has been a safety concern for many years. The Sacramento Area high threat urban area also excludes the University of California at Davis, a research and learning institute with an average daily population of approximately 30,000 students located immediately adjacent to the rail line.

All areas of the nation deserve protection ~~from~~ afforded by the same safety standards granted now to only certain areas. The NPRM's option to limit the 40 mile per hour speed limit to areas with a population of 100,000 or more arbitrarily excludes communities entitled to a common level of protection. Throughout the rail routes in California, there are numerous at grade crossings or other points where the risk of accidents are high. These areas do not solely exist in urban areas with a population of over 100,000. Appropriate nation-wide speed limits for the transport of Class 3 flammable liquids will greatly enhance safety at a reasonable cost.

Study the risks of multi-car trains: We call for more study to ascertain the relative risks from trains transporting 20 or more Class 3 tank cars of crude oil or more compared to trains carrying fewer cars. We would recommend that any safety measures indicated by such studies then be adopted into regulation.

Quickly phase-out unsafe tank cars: Require that retrofitted Class 3 tank cars meet the same safety standard as new cars and/or require that tank cars not meeting new safety standards be phased out as expeditiously as possible. To the extent that tank cars that do not meet the new safety standards continue to operate at all, however briefly, we urge that they only be used on low risk routes outside of populated and habitat-sensitive areas.

Require enhanced tank car features: In the interests of public safety, we support the adoption of NPRM Option 1 which would require that Class 3 tank cars have 9/16 inch steel, electronically controlled pneumatic brakes, and rollover protection. The marginal cost of these features would be recouped through the additional safety benefits, reduction in accidents, and reduction in derailments. This tank car type would experience fewer punctures, fires and explosions, and fewer releases of hazardous and flammable liquids. Moreover, the Option 1 measures are simply necessary to make the crude oil shipments safe; to the extent they increase the cost of shipping such crude oil, they only ensure that the costs of shipment reflect the real cost to make such shipments safe.

Regulate the transport and storage of crude on railroad sidings: We urge the adoption of regulations that prohibit the storage of Class 3 tank cars on railroad sidings in urban areas, except in unusual circumstances, and even then there should be specific time limits. Siding storage in such areas poses a high risk to the neighboring residents and businesses. Unattended trains carrying flammable materials left to sit for days or weeks on sidings pose an unacceptable risk to harm to the public. Tankers with Class 3 materials should be held in yards with acceptable security measures. To the extent that even limited, unusual circumstance, storage of Class 3 tank cars is allowed it should be required to include enhanced safety including monitoring and notice to the local agency public safety and emergency services.

Conclusion

The League of California Cities appreciates the opportunity to comment on the Notice of Proposed Rulemaking. California cities are committed to maintaining a safe environment in which our citizens work and live. With the submission of these comments, we request that the Administration continue its long-standing commitment to safety.

Tim Cromartie
Legislative Representative
League of California Cities

SAMPLE LETTER
OIL BY RAIL SAFETY RECOMMENDATIONS

DATE XXXX

The Honorable Anthony R. Foxx
Secretary of Transportation
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D. C. 20590

RE: Rail Safety – Expedited Action Requested

Dear Secretary Foxx:

Due to a steady flow of concerns about the transport of crude oil by rail voiced by our citizens for several months, the City of _____ has been in contact with the League of California Cities, which has been monitoring transport of crude oil and other hazardous materials by rail, as well as hosting educational forums on the topic. We note that the League has recently adopted as its policy several goals for safety improvements based on input from our key state agencies. The City of _____ agrees with the League's position that implementation of these rail safety improvements should be expedited at the federal level to accomplish improved rail safety as soon as possible.

The continued increase in the transport of crude oil by rail, combined with recent rail accidents involving oil spills and resulting fires, has served to heighten concerns about rail safety among many of our citizens. Specifically, two derailments accompanied by fires involving unit trains (100 or more tank cars) carrying crude oil in West Virginia and in Ontario, Canada last month have greatly increased public anxiety about what steps the relevant federal regulatory agencies are taking to improve rail safety, and on what timetable.

The Board of Directors of the League of California Cities at its February 20, 2015 meeting adopted ten specific recommendations as official policy on this issue. The City of _____ respectfully submits these recommendations to you as priority items for improving rail safety. We have three points to emphasize in submitting these recommendations. First, irrespective of whether these improvements are required of railroads, petrochemical companies, hazardous materials shippers, or the owners or lessees of rail tank cars, we urge that they take the form of mandates, rather than the more traditional recommendations. Second, the mandates should be accompanied by the imposition of a hard deadline for their implementation. Third, we strongly

recommend that the Department of Transportation include these recommendations for improved rail safety in the final rule for the Safe Transportation of Crude Oil and Flammable Materials.

League of Cities Policy Recommendations – Oil by Rail

The City of _____ urges the federal agencies with appropriate jurisdiction (primarily the National Transportation Safety Board, the Federal Railroad Administration, and the Pipeline and Hazardous Materials Safety Administration) to take the following actions to improve rail safety with respect to the transport of Bakken crude oil and other hazardous materials by rail:

- 1) **Mandate Electronically Controlled Braking Systems:** Require installation of electronically controlled, pneumatic braking systems (ECP) on trains carrying Bakken crude and ethanol by a date certain. This technology allows for faster and more efficient braking to a full stop.
- 2) **Expedite retrofit or phase-out of tank cars failing to meet current safety standards:** Require phase-out or retrofitting of older, DOT-111 tank cars manufactured prior to October 2011, to be completed by a date certain. The Association of American Railroads adopted higher manufacturing standards requiring greater structural integrity for these tank cars which took effect at that time to facilitate safer transport of flammable liquids, including ethanol and all crude oil.
- 3) **Mandate Provision of Real-Time Information to first responders in event of accidents:** Require via federal regulations that railroads and producers of petroleum and other hazardous materials shipped by rail make available to first responders, via a secure access portal on their websites, the cargo manifest information, or “consist,” on trains containing these substances. This information ideally should also be accessible via mobile applications, allowing rapid access by first responders to cargo manifest information in real time, particularly in accidents where the manifest is not available on the train.
- 4) **Federal funding for first responders:** Increase federal funding for training and equipment purchases for first responders, to improve their ability to respond to hazardous materials accidents.
- 5) **Mandatory Speed Limits:** Impose mandatory maximum speed limits in all areas.
- 6) **Mandate Stricter Reporting Requirements:** Lower the threshold for the number of tank cars that trigger a reporting requirement to the California Energy Commission and the State Emergency Response Commission, from 33 to 20. Currently petroleum producers and railroads only have to submit reports of trains carrying Bakken crude oil if the train includes 33 or more tank cars. Each tank car holds 34, 500 gallons. This will

lower the trigger for the reporting requirement from shipments of 1.1 million gallons or more, to shipment of 690,000 gallons or more.

- 7) **Identity priority routes for positive train control (PTC):** PTC is an advanced technology incorporating GPS tracking to automatically stop or slow trains before an accident can occur. It is specifically designed to prevent train-on-train collisions, derailments due to excessive speed, and unauthorized movement of trains. Require PTC to be employed on all rail lines used for the transport of hazardous materials, with a date certain by which the technology will be online.

- 8) **Mandate railroad industry compliance with Individual Voluntary Agreement negotiated with the U.S. Department of Transportation by codifying the following actions as requirements:** (Note: The requirements below have been voluntarily agreed to by railroads, but there is currently no legal or regulatory requirement for their compliance. Such requirements should be codified, given their significant impact on rail safety)
 - Reduced speed for crude oil trains with older tank cars going through urban areas
 - Analyses to determine the safest routes for crude oil trains
 - Increased track inspections
 - Enhanced braking systems (electronically controlled pneumatic brakes) ECP
 - Installation of wayside defective bearing detectors along tracks
 - Better emergency response plans
 - Improved emergency response training
 - Working with communities through which oil trains must move to address community concerns

- 9) **Clear methodology for funding:** Devise a clear methodology on how funds are to be distributed, to ensure that sufficient funds pass through that state and county agencies to the local agencies involved in first response.

- 10) **Regulate the parking and storage of tank cars:** Mandate improved safety regulations addressing the storage or parking of tank cars in populated areas.

The City of _____ understands that this area of regulation is largely pre-empted by federal law; that is why we are urging specific and timely action by the federal agencies charged with regulatory oversight in this area. We do not expect that derailments and accidents will cease altogether, but we anticipate that stricter safety standards will reduce their numbers over time.

Thank you for your attention to this matter. Please contact me or my city manager, _____ at () ____-____ with any questions..

Sincerely,

Mayor

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Members of the California Congressional delegation
Federal Railroad Administration
National Transportation Safety Board

**Report by Mayor Pro Tem Fred Strong,
City of El Paso de Robles,
On the Santa Maria Refinery Rail Project and considerations for
The City of El Paso de Robles
3-3-15**

Background:

We have been asked to consider the impacts of a proposed commercial enterprise upon the people and property within our jurisdiction and to take any action that is appropriate to protect everyone's rights, including the health and safety of all.

The project is being proposed by Phillips 66, a publicly traded stock corporation listed on the NY Stock Exchange as PSX. Phillips 66 is a company that has grown out of various mergers and buy outs that include CONOCO, Du Pont, Chevron Chemical, Duke Energy and Tosco Corp. It is the sixth largest publicly traded oil company in the world and the third largest in the United States.

The official name of the Environmental Impact Report (EIR) for this project is "Phillips 66 Company Rail Spur Extension and Crude Unloading Project Revised Public Draft Environmental Impact Report and Vertical Coastal Access Project Assessment." It is dated October 2014.

The leading opponent of the project's EIR is The Mesa Refinery Watch Group. The above mentioned EIR is over 800 pages long in great detail. The Mesa Refinery Watch Group's Response is 70 pages long and is very critical of many of the statements made in the EIR.

Data for local consideration:

A report by CAL Fire/ San Luis Obispo County Fire Department correctly states that "Regulations on crude traveling by rail is preempted by the Federal Government. Local government may not institute local regulations on railroads."

On page 2 of that report #4 states, "SLO County is identified as a "high risk" of derailment in the OES document." That is a statewide document. Further, #5 states, "Voluntary compliance measures for the railroad are not required in our county - SLO is not a 'high threat urban area'."

Past requests by CAL Fire for advance notification of hazardous material transportations through our area have been ignored by both shippers and common carriers.

These regulations, both mandatory and voluntary, make it very difficult for us to protect the health and safety of our citizens and property, both public and private.

We may be reduced to having to notify, in writing, the State of California D.O.T., division of Rail, and the Federal Rail Administration (the FRA division of the United States Department of Transportation) of our concerns and making a strongly worded request that they protect our people and property.

I am in process of communicating with the State and Federal DOTs regarding these concerns and what we are allowed to legally do to meet our obligations to our constituents.

It appears that the private entities concerned with this project have no compelling motivation, mandatory or voluntary, to protect our people or property.

Phillips 66's 2012 Summary Annual Report mentions a deep commitment to personal safety, process safety, environmental excellence, reliability and cost management." However, the projects mentioned are only those in Louisiana, Illinois and Texas. No projects in California are given the light of day.

The other most involved entity in this scenario is Union Pacific Railroad. It's December 31, 2014 report to the United States Securities and Exchange Commission has a number of pertinent statements regarding this issue.

On page three it mentioned recent history with an expenditure of "... \$2.3 billion in replacement capital to harden our infrastructure, and to improve the safety and resiliency of our network." It goes on to say, "We also continued to make progress toward completing the federally mandated Positive Train Control project." (p.3)

Page 6 states, "Transporting chemicals generated 16% of our freight revenue in 2014." Those included "crude oil". On page 7 the report notes that barges and trucks are significant competition that require U.P. To "... build or acquire and maintain our rail system..."

On page 9 it states the necessity of cooperating with, "...the American Chemistry Council" and "the American Petroleum Institute." It goes on to say, "In cooperation with the Federal Railroad Administration (FRA) and other interested groups, we are also working to develop additional improvements to tank car design that will further limit the risk of releases of hazardous materials."

Despite these efforts the report notes on page 10 that U.S. Law requires them to transport hazardous materials, "... regardless of risk or potential exposure to loss."

On page 11 the report states that the railroad is, "... subject to various claims and lawsuits " that expose it to "... accidents involving any or all of property damage, personal injury, and environmental liability that exceed our insurance coverage."

To protect itself, "The Company has consolidated, wholly-owned captive insurance subsidiary (the captive)," that, "... entered into annual insurance treaty agreements that insure general liability."

These arrangements tend to isolate the companies from liability.

The April 12, 2011, comments of U.P. before the Surface Transportation Board speak to lost earnings that cited 2008 as its peak year for investment in capital infrastructure, at \$3.1 billion but it stated that they planned to expend \$3.2 billion in 2011. The statement made is that capital expenditures are governed by liquidity and preservation of profits.

Page 1 states, "If the Board were to adopt broad forced access and forced interchange measures of the sort some shippers want, though, Union Pacific would reduce investment and would have much less incentive to invest in the future." That statement is followed by a statement that "Expanded Regulation" reduces revenues and leave U.P. with less to invest in rail infrastructure. However, on February 5th Union Pacific announced that it will invest \$4.3 billion on equipment and infrastructure in 2015. That includes \$450 million for positive train control as compared to \$385 million in 2014 for those improvements.

Both Jim Young, past CEO, and Lance Fritz, current CEO, have emphasized that one of the foundation principles of U.P. is safety. Both personal injury and number of incidents were reduced dramatically from 1999 through 2010 (the last year for which I have data).

The entire section of the report on planned Capital Investment and Improvement shows no projects anywhere in San Luis Obispo County. All major investment has occurred and is proposed for four basic corridors: the I-5, Central (West to East coasts from Seattle, Oakland and Los Angeles to Chicago), North-South (Chicago to Texas), and Sunset (Southern California to New Orleans). The Coast route is considered to be a secondary/relief alternative rather than a primary route for freight. Therefore, we can expect nothing more than the necessary minimum maintenance investment in the tracks through Paso Robles.

In September 2014 U.P. sent out a notice to customers on proposed rules for flammable liquid transportation issued by Transportation Secretary Anthony Foxx. These include a definition of what liquids are covered, braking system changes and reduced speed requirements.

The speed requirement of 40 m.p.h. or less apply to any train with over 20 cars carrying flammable liquids.

While Union Pacific complained earlier that increased regulation would reduce income and reduce spending, the announcement for capital expenditures in 2015 contradicts that earlier statement.

What are our realistic options?

I have contacted the leadership of the FRA regarding our options. First I've found out that the rules regarding crude oil shipments have not been finalized. We are a "stakeholder" and have the right to comment and have an impact upon what the final regulations will be. Those comments, to be effective, must recognize that our role is that of a supplicant not someone in control.

This area of responsibility falls to the Federal Government under its Interstate Commerce jurisdiction.

Indications at this point are that the rules that might affect us the most involve speed limits for trains containing more than 20 units of flammable liquids. That is suggested to be a 40 mile per hour speed limit to reduce the possibility of derailment. Special braking systems are also being strongly considered.

Our task could be to ask for a maximum limit on the number of cars with flammable liquids that can be transported in a single train. Also, we could ask to be redefined as a high threat urban area due to our high risk of derailment according to the California Office of Emergency Services.

We could also consider writing letters of constructive notice that a failure to implement appropriate safety measures and enforcement procedures will create a high risk to the health and safety of our citizens and an increased potential for severe property damage within our jurisdiction.

If we decide to authorize letters of that nature, I believe they should include specific requests for action by the State in its next Statewide Rail Plan as well as appropriate recognition and requirements in the FRA's rule making.

Union Pacific's "Crude-by-Rail Voluntary Safety Operating Practices" has a number of significant commitments that they are applying to "... the 46 designated high-threat-urban areas (HTUA) established by DHS regulations." We should request that we be added to that list voluntarily by Union Pacific and should also request our addition to that list by the Department of Homeland Security (DHS).

Additionally, U.P. states in that paper, "The railroad reaches out to fire departments as well as other responders along our line to offer comprehensive training to hazmat first-responders in communities where we operate." We should request that training for our personnel and also ask that Union Pacific add a voluntary commitment to notify us when a shipment is scheduled through our community so that we can be on alert.

Other jurisdictions have chosen to pass resolutions or regulations forbidding shipments of this type to come through their jurisdictions. That is a useless public relations ploy that gets a lot of publicity but achieves nothing as we do not have the right to regulate Interstate Commerce.

