

STAFF REPORT

DATE: September 2, 2014

TO: City Council

FROM: Mike Webb, Director of Community Development & Sustainability
Harriet Steiner, City Attorney

SUBJECT: Comment Letter to the City of Benicia on the Valero Draft EIR

Recommendation

Staff recommends that the City Council:

1. Direct staff to submit the attached comment letter to the City of Benicia on the Valero Draft EIR, and;
2. Direct staff to submit comments to the U.S. Department of Transportation on the Notice of Proposed Rule Making on Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. Submittal may be done by Davis individually or jointly with other agencies/organizations, such as SACOG.

Council Goals

- Actively participate in regional planning activities in the areas of transit, air quality, water and wastewater resources, land use and agricultural and open space conservation.
- Assure top quality fire, police, emergency and other services to promote the health, safety and well-being of all residents and neighborhoods.
- Maintain efficient and highly trained public safety staff.
- Create and maintain an environment that promotes safety and well-being.

Fiscal Impact

Monitoring and engagement in this effort, while not insubstantial, is being absorbed within existing budgeted staff time.

Background and Analysis

California refineries are in the process of securing permits to build rail terminals to import Canadian tar sands and Bakken crude oils from the Dakotas. Several pending projects, including the Benicia Valero project proposal, intend to use existing Union Pacific tracks through California. This route passes from the Roseville area through Davis along the Capitol Corridor route.

The Valero project proposes to introduce 100 rail cars of Bakken Crude per day traveling through Davis. Other projects, including the Phillips 66 Santa Maria refinery project, may also utilize the same rail corridor. The Santa Maria project could add an additional 80 rail cars per

day. Given the pending release of Draft Environmental Impact Reports for these projects the City of Davis began to engage in the issue to further explore potential concerns.

At the regular meeting of March 11, 2014 the City Council unanimously provided the following direction to staff on this topic:

1. Direct staff to continue to gather data, monitor the Benicia Valero project, and actively partner with other agencies, and State and Federal Representatives, on coordination of review and comments.
2. Direct staff to continue to engage with appropriate regulatory authorities regarding the safety of the existing railroad operations/speeds/curve in Davis.
3. Direct staff to prepare resolution whereby the City of Davis would oppose crude by rail transport through our community for the purpose of ensuring community safety until further consideration, including and understanding of risks and needed mitigation measures.
4. To the greatest extent feasible, synchronize efforts with other jurisdictions in the region.

At the regular meeting of April 22, 2014 the City Council formalized this direction by unanimously adopting a resolution directing staff to undertake these efforts and specifically directing staff to draft a comment letter for submission to the City of Benicia on the Valero Draft EIR.

Since March, staff, along with those from multiple other jurisdictions, has been working closely with SACOG on the issue of crude oil shipments through the region. Representatives of Union Pacific Railroad and Valero have also been present at some meetings to provide information about their facilities, safety measures, and the Valero project. Local member jurisdictions have met with SACOG on several occasions to discuss safety issues. Furthermore, in May, as part of the Metro Chamber Cap-to-Cap trip, SACOG and member jurisdiction staff discussed regional concerns with U.S. Department of Transportation, and congressional staff.

From these discussions, common themes of safety concerns amongst SACOG member organizations began to emerge. SACOG formed an EIR subcommittee to assist in crafting a comment letter for submittal by SACOG on behalf of its member jurisdictions on the Valero DEIR. On August 21st the SACOG Board was presented with a draft comment letter and took action to direct SACOG staff to submit the letter to the City of Benicia.

Staff has prepared the attached draft comment letter to the City of Benicia to be submitted by the City of Davis. The letter references the SACOG comment letter, as well as comment letters submitted by Yolo County and the Sacramento Air Quality Management District as being representative of our concerns. The comment letter also references a letter recently sent to the U.S. Department of Transportation on oil rail safety by Congress Members Garamendi, Matsui, Thompson and Miller. Our comment letter also focuses on issues that are more specific to Davis geography. The letter focuses on the areas of the DEIR analysis that we believe to be deficient and require additional analysis so that the full range of impacts can be properly disclosed and mitigation measures incorporated. While we believe the full range of impacts is not adequately addressed in the DEIR, our comment letter also suggests topic areas for potential mitigation. While general mitigation topic areas are raised in our letter, to have a meaningful dialogue about

mitigation measures, we believe the DEIR analysis must be significantly bolstered so that the true impacts can be adequately understood and the document recirculated.

If approved by the City Council, staff will forward the final letter to the City of Benicia prior to the September 15th comment deadline.

NPRM (Notice of Proposed Rule Making)

The U.S. Department of Transportation recently issued an emergency order and published draft rules in the Federal Register pertaining to the shipment of crude oil by rail (see attachment 3). The deadline to submit comments on the Notice of Proposed Rule Making (NPRM) is September 30th. The NPRM is seeking comments on the following provisions:

- Track and Rail Car Operation, Inspection, and Improvements
- Emergency Response & Clean-up which includes a comprehensive oil spill response planning requirements
- Oil Volatility
- Funding

The City Attorney and staff have been working with SACOG to draft a comment letter to submit to the U.S. DOT on the proposed rules (see attachment 4 for preliminary draft comment letter). The SACOG Board will be taking up consideration of a comment letter later in September. Ultimately, other signatories to the comment letter may also include other agencies and organizations, such as the League of California Cities, other individual jurisdictions, and other COG's.

Attachments

1. Draft City of Davis comment letter to City of Benicia on the Valero DEIR
2. Letters Referenced in Davis comment letter to the City of Benicia:
 - a. SACOG
 - b. Yolo County
 - c. Sacramento Air Quality Management District
 - d. Letter from Congress Members Garamendi, Matsui, Thompson and Miller
 - e. Map of Davis Rail Facilities
3. Notice of Proposed Rule Making (NPRM)
4. Preliminary Draft Comment Letter on NPRM

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Via Certified Mail and Email

DATE

City of Benicia
Attn: Amy Million, Principle Planner
Community Development Department
250 East L. Street
Benicia, California 94510

Re: Valero Benicia Crude by Rail Project Draft Environment Impact Report

Dear Ms. Million:

Thank you for the opportunity for the City of Davis (Davis) to review the Draft Environmental Impact Report (DEIR) for the Valero Benicia Crude by Rail Project (Valero Project).

The Project, as described in the DEIR, proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery. (DEIR at ES-3.) The crude oil tank cars would originate at unidentified sites in North America, would be shipped to the Union Pacific Railroad Roseville Yard, and would be assembled there into two daily 50-car trains to Benicia. (Id.) Valero states that it will use so-called “1232 Tank cars” to transport the crude oil. (Id.)

The California Environmental Quality Act (CEQA) requires lead agencies, such as Benicia, to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project may cause adverse environmental impacts, the lead agency must prepare an Environmental Impact Report (EIR). EIRs must contain in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. As famously stated, the EIR’s role “as an environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*County of Inyo v Yorty* (1973) 32 Cal.App.3d 795, 810.)

While Davis is not seeking to prevent the transportation of crude oil to Benicia, we are committed to ensuring that all measures are taken in order to protect the safety of our community. We firmly believe that through full compliance with CEQA and by building-in the highest levels of protection before disasters such as hazardous material releases and explosions occur we can avoid having such disasters in the first place.

Based upon our review of the DEIR, we have concluded that, for reasons detailed below, as well as those contained in the comment letters submitted on the Valero Project DEIR by the Sacramento Area Council of Governments (SACOG) and the County of Yolo (comments which are attached to this letter and which are incorporated by reference), the DEIR does not comply with the provisions of the California Environmental Quality Act (CEQA) and must be

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withdrawn. The DEIR must be revised to comply with CEQA before it can be recirculated. In order to facilitate the preparation of a revised DEIR Davis submits the following comments.

The DEIR's Project Description Is Incomplete and Misleading

The DEIR states that “[i]f the Project is approved, Valero will accept up to 100 tank cars of crude oil a day in two 50-car trains.” (DEIR at 3-1.) Indeed, the DEIR’s entire analysis is predicated on two 50-car trains traveling to Benicia each day, with a maximum of 730 train visits per year. But the DEIR fails to include in its Project Description any information as to how these 50-car trains will be designed or operated in order to comply with the Department of Transportation’s May 7, 2014 Emergency Order. The DEIR also fails to include in its Project Description any information as to how these 50-car trains will be designed or operated in order to comply with the August 1, 2014 Notice of Proposed Rulemaking issued by the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration, which proposes additional regulation for trains carrying 20 or more tank car loads of flammable liquids. Given these proposed rules, is it still accurate for the DEIR to state that the Project will operate 50-car trains? Are the Project Description and the DEIR’s analysis predicated on a scope of Project operation that is no longer assured? By failing to address the existing and reasonably foreseeable regulatory limits on the operation of 50-car trains, Davis is concerned that the DEIR misleads the public as to the scope of the Project and, equally fatally, fails to fully analyze the Project

Next, the DEIR states that the Project will use so-called 1232 Tank Cars, and states that by doing so it will “exceed legal requirements” regarding the safe transport of crude oil. (DEIR at 3-19 through 3-20.) But the National Safety Transportation Board’s Vice-Chairman Christopher A. Hart has expressed concern about the level of safety provided by 1232 Tank Cars. (See the March 6, 2014 testimony of Mr. Hart to Before the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Committee on Commerce, Science and Transportation United States Senate at its Hearing on Enhancing Our Rail Safety: Current Challenges for Passenger and Freight Rail.) Further, other than Valero’s voluntary statement that it will use 1232 Tank Cars, how will Benicia ensure that such cars and only such cars are used to transport oil to Benicia? Any safety benefits of the newer 1232 Tank Cars can only be realized if old and new tank cars are not commingled. At the very least, the use of 1232 Tank Cars (or of tank cars with more safety measures) for 100 percent of the tank cars carrying crude oil to the Valero Refinery should be mandated as a condition of Project approval.

Additionally, the DEIR assumes that a “just-in-time” supply chain can and will be used for the Project. As a consequence, the Project Description does not include a description of how often crude oil tank cars may be stored, for what length of time and where, before they can be processed at the Valero facility and does not discuss the possible locations for such storage. As Valero concedes that it ultimately cannot control the timing of the crude oil shipments, the DEIR must account for such events in the Project Description. By failing to discuss these storage needs, the DEIR fails to analyze the entire project. As set forth in the CEQA Guidelines, a “project” is “the whole of an action” that may result in either a direct physical

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environmental change or a reasonably foreseeable indirect change. (CEQA Guidelines, § 15378; *see also Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297; *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1220.)

In Davis, the shipments would travel on a Union Pacific rail line with significant sidings of approximately 6,500 feet in length that run parallel to Second Street and Interstate 80. These sidings are utilized for storage of rail cars on a regular basis, with rail cars often being stored on these sidings for days or weeks at a time. These sidings are immediately adjacent to multiple businesses and multi-family housing (see attached map). City Staff have personally witnessed tanker cars stored on these sidings, though it is impossible to determine whether the tank cars are full or empty. The DEIR fails to describe whether storage of crude oil cars on this siding is possible, under what circumstances and for what duration. Tank cars sitting on this siding, unattended, would pose a significant hazard to the community, residents, businesses, and interstate transportation (I-80, Amtrak) and commerce should they be the subject of any accident, tampering or other impact on the cars, resulting in a spill or explosion.

The DEIR Inadequately Describes the Project Setting

An EIR must describe the environmental setting for the project, which is made up of “the physical environmental conditions in the vicinity of the project” viewed from “a local and regional perspective.” (State CEQA Guidelines §15125(a), (c).) An EIR’s description of this environmental setting must be sufficiently comprehensive to allow the project’s significant impacts “to be considered in the full environmental context.” (State CEQA Guideline §15125(c).)

Here, the DEIR does not provide any information with regarding to the existing conditions on the rail lines the train cars carrying crude oil will take on their journey to Benicia. It states only that: “Each train, carrying up to 50 cars of crude oil, would pass through the cities of Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City, and Benicia. The Refinery would receive two trains per day, 7 days per week (730 train visits per year).” (DEIR at 4.7-16.) But what are the conditions along the rail line that these trains carrying crude oil will travel 730 times year, passing through Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City and Benicia? Are the tracks in good condition? Are they curved in any areas? Are there any cross-overs? Are they interrupted by rail or vehicle crossings in any areas? Are there any existing safety concerns on any portion or portion(s) of these tracks? Are there areas where the train operators will need to change speed to safely navigate the tracks? What land uses surround these tracks? The DEIR is entirely silent. Absent this information, the public is denied any ability to consider the Project in its full environmental context, a clear violation of CEQA.

The DEIR appears to substitute discussion of the Project’s setting outside of Benicia with a generalized assurance that Valero’s experts have estimated “the annual rate of crude oil release accidents on the route between Roseville and Benicia” and concludes that 100 or more gallons of crude oil will likely be spilled .009 times per year. (DEIR at 4.7-17; Appendix F at 10.) But

even Valero’s expert report contains no information regarding the track between Roseville and Benicia, stating vaguely only that the “annual crude oil train derailment and release rates from Roseville to Benicia” were calculated “using the particular characteristics of the route.”¹ (DEIR, Appendix F at 7.) However, the report does not consider the location of the track, the operational components of the track, the proximity of the track to highly populated areas, schools, hospitals, dangerous facilities, or sensitive lands or habitat.²

Davis can report that the rail tracks running through the City travel through a highly populated area of both business and residential land uses, including the core of the Davis Downtown. There are facilities that rail cars traveling the tracks through Davis must negotiate. They must: 1) negotiate a curve with a 30 mile-per-hour speed limit through the heart of the Downtown, 2) utilize a 10 mile-per-hour cross-over immediately east of this curve; 3) navigate over the Richards Subway vehicle undercrossing, as well as an at-grade vehicular crossing immediately east of the City limits at County Road 32A. Further, just to the east of the City of Davis trains navigate elevated tracks over the highly sensitive habitat area of the Yolo Causeway. None of this information is disclosed or considered in the DEIR.

The DEIR Improperly Truncates Its Description of the Project Setting

As discussed in the SACOG comment letter, the DEIR improperly limits its analysis to the route from Roseville to Benicia, claiming as “speculative” the originating site of the crude oil, though there are only three rail substations which could reasonably be expected to be used to bring crude oil to Roseville (the Roseville, Sacramento, and Valley subdivisions). Limiting the analysis to Roseville to Benicia is arbitrary and the DEIR must analyze the full environmental impacts of each potential route.

Further, as discussed above, once the entire area which will be affected by the Project is properly delineated, the revised DEIR must provide a full description of that area, including the existing conditions on the rail line the train cars carrying crude oil will take on their journey to Roseville.

The DEIR’s Analysis of the Potential for Significant Hazards Violates CEQA

As discussed in the Yolo County and SACOG DEIR comment letters, the DEIR’s conclusion that the transportation of crude oil by rail poses a less than significant hazard to upstream communities is unsupported by the evidence contained in the DEIR.

¹ It is true that the expert’s report discusses the various classes of rail between Roseville and Benicia. But this limited amount of information reveals that over 1.3 miles of rail between Roseville to Benicia is FRA Class 1 track—track which has a 15.5 times greater risk of derailment than FRA Class 5 track that the expert’s report focuses on. (DEIR Appendix F, at 6.)

² Although the DEIR lists schools within a quarter mile of the rail line (DEIR, at p. 4.7-23), it does not analyze the risks associated with such proximity other than the air quality impacts.

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Though the sample Initial Study checklist found in Appendix G to the State CEQA Guidelines is an obvious and commonly used source of thresholds of significance, agencies may not rely on it exclusively when a particular project, or particular circumstances, gives rise to environmental concerns not addressed in the checklist. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, the court held that an agency cannot rely on a reflexive determination to follow the significance thresholds in Appendix G without regard to whether those standards are broad enough to encompass the scope of the project at issue or even relevant. The court explained that, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (116 Cal. App. 4th at p. 1109.)

Here, in complete reliance on Appendix G, and without considering the very real and substantial risks of the transportation of crude by rail, the DEIR fails to address the risk of fire and explosion in its thresholds of significance. The DEIR’s only threshold of significance that addresses the hazards of transportation states:

Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the *release of hazardous materials into the environment*.

(DEIR at 4.7-13 [emphasis added].) As has been reported widely over the last several years, the character and quality of the North American and Canadian crude oil currently being transported by rail across the United States has dramatically shifted the public safety concern from a hazardous material release to fiery explosions. Accordingly, there is more than a fair argument that the DEIR has violated CEQA by failing to employ a threshold of significance broad enough to address the potential environmental impacts of this particular project.

Further, while, in general, lead agencies are given discretion in developing their thresholds of significance, as long as they are supported by substantial evidence, a fair argument can be made that the Project will result in a significant hazard. As discussed in the Yolo County comment letter, the threshold of significance applied to the Project to determine if it will pose a significant hazard is faulty as, even assuming the estimate is accurate (which as Yolo County observes, is questionable given the methodology employed) it focuses only on frequency and ignores magnitude. (DEIR at 4.7-18.) The DEIR assumes that the impact of each individual crude oil train release incident of 100 gallons or more is the same. The DEIR suggests that it is appropriate for the public to compare the chance that an individual driver will be involved in vehicle accident to the potential for a 50-car train carrying crude oil to explode in the middle of an urban area. There is no logic to this comparison.

The DEIR discloses that each 50-car train traveling to Benicia twice a day will carry 35,000 gallons of crude oil. Even assuming a crude oil train release is not due to a collision with another train carrying crude oil, the release (and potential explosion) could be of up to 35,000 gallons of crude oil. This release and potential explosion could occur while the train is passing through the heavily populated cities of Roseville, Sacramento, Davis, Dixon, Vacaville,

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Fairfield, Suisun City and Benicia. Declaring a potential release of such a vast amount of crude oil (and potential explosion) as less than significant is directly contrary to CEQA. By way of example, if a project located in a 100 year flood plain must treat the possibility of a flood one in every 100 years as a significant impact (see State CEQA Guidelines Appendix G section IX) how can the DEIR conclude that the risk of release of up to 35,000 gallons of crude oils once every 111 years is less than significant?

The Project's Significant Hazard Risk Requires Feasible Mitigation Measures

An EIR is inadequate unless it includes “a detailed statement setting forth . . . mitigation measures proposed to minimize [the project’s] significant effects on the environment.” (Pub. Res. Code, § 21100(b)(3); State CEQA Guidelines, §§ 15126 (e).) CEQA requires lead agencies to incorporate all feasible mitigation measures into a project to reduce the project’s potentially significant impacts to a level of insignificance. (Pub. Res. Code, § 21081(a)(1)-(3); State CEQA Guidelines, §§ 15002 (a)(3), 15021(a)(2), 15091(a)(1).) Here, as discussed above, the risk of release and potential explosion of up to 35,000 gallons of crude oil is a significant effect on the environment that requires mitigation. Such mitigation must address a variety of concerns.

For instance, the DEIR states:

The approximately 730 trains that would transport crude oil through the Marsh each year would introduce a risk of an oil spill if a train were to derail *and* breach the integrity of the tank car, spilling some of its contents. Though a spill could occur anywhere along the line, the aquatic character of Suisun Marsh and the number of special-status organisms it supports make it an especially vulnerable location for a large spill. Depending on the location and severity of an oil spill and its resulting effects on special-status species, this could be a significant impact.

(DEIR at 4.2-33 [emphasis original].)

However, because the DEIR goes on to state that the risk of such spills is very low it concludes that the “impact [to biological resources] would be less than significant.” (*Id.*) By dismissing the need to mitigate what it admits is potentially “significant impact” to the Suisun Marsh, the DEIR avoids recommending mitigation measures to either reduce the risk of an oil spill and/or to develop programs or protocols to address such a spill. In other words, the DEIR fails to meet its obligation to incorporate all feasible mitigation measures into a project to reduce the project’s potentially significant impacts to a level of insignificance.

The DEIR’s failure to incorporate feasible mitigation measures to either prevent or to address the impacts posed by a spill or explosion infects and invalidates the document. Any future efforts to revise the DEIR so that it complies with CEQA must include such mitigation. Davis recommends that the revised DEIR include the following measures:

- Advance notification to the county and city emergency operations offices of all crude oil shipments;
- Limitations on storage of shipments in urbanized areas, and appropriate security for all storage of shipments;
- Support, including full cost funding, for training and outfitting emergency response crews;
- Immediate utilization of best available freight cars, with electronically controlled pneumatic brakes and rollover protection;
- Priority funding for rail safety projects;
- Utilization of best available inspection equipment and protocols; and
- Implementation of positive train controls to prioritize areas with crude oil shipments before such shipments begin (see attached letter to U.S. DOT).
- Limit all shipments of crude by rail to the Benicia Valero Refinery to only those shipments that have stripped out the most volatile elements, including flammable natural gas liquids (NGLs) before it is loaded into rail cars for shipment.
- Reconfigure the 10 mile-per-hour cross-over in Davis to decrease the potential for train derailment in the event of operator error in navigating the cross-over too fast.
- Implementation of track side monitoring equipment to increase the probability of detecting faulty brakes and rails.
- Consideration of alternative routes that do not necessitate travel through populated areas, such as Davis.

The DEIR fails to analyze the cumulative impacts of the Project.

In its cumulative impacts analysis the DEIR dismisses the potential for any increase in risk due to multiple rail cars from multiple projects transporting crude oil by rail by opining the any explosion/leakage from a rail car would be separate and apart from any other any other such explosion/leakage and thus there could be no cumulative impact. However, this discussion ignores the possibility that such an explosion/leakage would be more likely to occur with more trains on the tracks. A key factor in the risk analysis relied on in the DEIR is the number of train-miles traveled. Therefore, as the cumulative number of train trips increase along a particular rail alignment, the risk of accidents increases. The DEIR should have, but failed to, considered whether the proposed Project's contribution to this cumulative risk is cumulatively considerable. Further, at least two of the projects identified in the DEIR are projected to result in new crude oil shipments along the same rail alignment: the WesPac Pittsburg Energy Infrastructure Project and the Phillips 66 Company Rail Spur Extension Project.

Where, as here, a DEIR's evaluation of cumulative impacts is based on a list of past, present, and probable future projects it must include in that list any project "producing related impacts, including, if necessary, projects outside the lead agency's control." (State CEQA Guidelines §15130(b)(1)(A).) Here, the DEIR has also failed to consider in its list of reasonably foreseeable future projects the potential for overall increase in rail cars traveling along the paths that will be taken by the Project's trains. Surely the addition of any rail cars on the tracks would produce related impacts, not just an increase in rail cars transporting crude oil.

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Revision to the DEIR to ensure it complies with CEQA must include a complete list of cumulative projects and a full assessment of any cumulatively considerable risk of release or explosion related to the Project.

We thank Benicia for this opportunity to comment on the DEIR and urge it to prepare and circulate a revised DEIR which includes a complete Project description and setting, properly identifies the Project's potentially significant Project-level and cumulative impacts, and incorporates all feasible mitigation measures into the Project that will reduce the significant impacts of the Project to a less than significant level or lessen those impacts that are determined to be significant and unavoidable even with the implementation of mitigation.

Sincerely,

Michael Webb
Director of Community Development & Sustainability

Attachment:

1. Map of Davis Rail Facilities
2. Letter to the U.S. DOT from Congress Members Garamendi, Matsui, Thompson and Miller



SACOG Board of Directors

August 18, 2014

Comment Letter on Valero Crude by Rail Project Environmental Impact Report

Issue: Should SACOG comment on the Valero Crude by Rail Project Environment Impact Report?

Recommendation: In June, the Board directed staff to prepare a comment letter on the Valero Crude by Rail Project Draft Environmental Impact Report (DEIR), subject to review and approval by the SACOG Board Chair and Vice Chair, and the Chairs of the Government Relations & Public Affairs Committee and Land Use & Natural Resources Committee. Since the comment period for the DEIR subsequently was extended to September 15, staff brought the draft comment letter to each Board Committee and recommended that the Board authorize the CEO to submit written comments on the DEIR. This issue is coming back to the Board without a committee recommendation.

Discussion: In March, several jurisdictions brought the issue of crude oil shipments through the Sacramento region to SACOG staff. In April, SACOG held its first meeting on this subject, and invited staff from all member jurisdictions along the Placer County to Yolo County rail corridor to participate, as well as representatives from Union Pacific. Union Pacific representatives provided information about their safety investments and how they intend to handle increased crude oil shipments.

Following the April meeting, local member jurisdictions have met on several occasions to discuss safety issues. In May, as part of the Metro Chamber Cap-to-Cap trip, SACOG and member jurisdiction staff discussed regional concerns with U.S. Department of Transportation and congressional staff, at which point no federal action had been taken. Since that time, the U.S. Department of Transportation has issued an emergency order and published draft rules in the Federal Register.

In June, staff brought the issue of commenting on the DEIR to the Government Relations & Public Affairs Committee, which unanimously recommended that staff draft comments, subject to approval of the SACOG Board Chair and Vice Chair, and the Chairs of the Government Relations & Public Affairs Committee and Land Use & Natural Resources Committee.

At the June SACOG Board meeting, SACOG staff presented an outline of the issues that would be covered in the comment letter. At that point, the comment period was scheduled to end August 1, 2014, so the Board affirmed the Government Relations & Public Affairs Committee recommendation to have staff submit a letter after receiving approval from the SACOG Board Chair and Vice Chair, and the Chairs of the Government Relations & Public Affairs Committee and Land Use & Natural Resources Committee, with the following two amendments: that staff share the draft comment letter with the entire Board, and that the comment letter evaluate the cumulative impacts of the proposed project.

Since the June Board meeting, the City of Benicia extended the DEIR comment period to September 15. At the direction of the Board Chair and Vice Chair, staff brought the draft comment letter to all three SACOG standing policy committees and the Rail Ad Hoc Committee before returning to the SACOG Board. Board members who spoke at the standing policy committee meetings were supportive of the draft comment letter and staff's work on this issue.

Representatives from Valero and Union Pacific attended the August 7 Transportation Committee and requested a meeting with SACOG staff and local agency staff to discuss the draft comment letter. In response, SACOG staff hosted a meeting on August 12 with Valero and Union Pacific representatives and 20 local agency staff.

The Rail Ad Hoc Committee met on August 13 and considered the draft comment letter. The Committee was split on whether SACOG should submit a comment letter on the Valero project or should solely direct its comments and concerns to the applicable federal regulatory bodies.

During the Rail Ad Hoc Committee meeting, representatives of the Valero Refinery and the Union Pacific made a presentation about their project, capacity for emergency response, safety record, and reiterated that binding agreements associated with vehicle safety and speed specifications may be infeasible or preempted by federal regulations and law.

Several members of the public provided comments generally supportive of SACOG's draft comment letter, expressing safety concerns regarding the Valero refinery project, the environmental impact of crude oil, and the increased shipments of crude oil-by-rail for their individual communities and other railway adjacent communities.

Board Chair Cohn highlighted the need to focus SACOG's comments on preserving public safety and managing risk in advance of severe explosion, including the seven issues highlighted in the original June staff item with the addition of requesting a prohibition on shipments of unstabilized crude oil that has not been stripped of the most volatile elements, including flammable natural gas liquids. Committee members were clear that they do not want to convey any position on whether the Valero project should be built, but rather on the safety in the region. Committee members also raised other issues, including:

- Is Valero willing to make a binding commitment to use the CPC-1232 tank cars that it has stated it intends to use?
- Has Valero met with fire chiefs along the corridor?
- Do all communities along the proposed route have the necessary response equipment?
- Do all communities along the proposed route have policies on this issue?
- How does SACOG decide which projects to analyze?
- Should comments be directed at federal regulatory bodies, rather than the City of Benicia?

To elaborate on this final issue, the committee also discussed the proposed federal regulations for tank car design and classification of fuels. Some Committee members suggested the need for a broader advocacy effort on federal regulations covering what is likely to be an increasing amount of crude oil being shipped by rail.

The draft comment letter is attached.

Also attached is a letter from Union Pacific Railroad.

Approved by:


Mike McKeever
Chief Executive Officer

MM:EJ:gg

Attachment 5

Key Staff: Kirk Trost, Chief Operating Officer/General Counsel, (916) 340-6210
Erik Johnson, Acting Manager of Policy and Administration, (916) 340-6247
Azadeh Doherty, Senior Planner, (916) 340-6221

DRAFT COMMENT LETTER

Amy Million, Principal Planner
Community Development Department
250 East L Street
Benicia, CA 94510

Re: Valero Benicia Crude by Rail Project Draft Environment Impact Report

Dear Ms. Million:

On behalf of its 22 city and 6 county member jurisdictions, the Sacramento Area Council of Governments (SACOG) submits the following comments on the Draft Environmental Impact Report (DEIR) for the Valero Benicia Crude by Rail Project.¹ The Project, as described in the DEIR, proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery. The crude oil tank cars would originate at unidentified sites in North America, would be shipped to the Union Pacific Railroad Roseville Yard, and would be assembled there into two daily 50-car trains to Benicia.

Over the last several months, we have been meeting with our members to discuss this Project, to become informed about the risks associated with crude oil transportation by rail, and to discuss measures to avoid or minimize the serious risks associated with operating crude oil trains through the communities in our region. We have discussed our concerns with representatives from Union Pacific Railroad and the Valero Benicia Refinery. As our Board of Directors has made clear, SACOG's interest is to ensure that all appropriate measures, based upon a full investigation of the risks, are taken to protect the safety of our residents and their communities, and businesses and property throughout the region. In that regard, our Board has indicated that, at a minimum, the measures to protect our region should include the following:

- Advance notification to county and city emergency operations offices of all crude oil shipments (to facilitate more rapid and appropriate public safety responses);
- Limitations on storage of crude oil tank cars in urbanized areas (of any size), and appropriate security for all shipments;
- Support, including full cost funding, for training and outfitting emergency response crews;
- Utilization of freight cars, with electronically controlled pneumatic brakes, rollover protection, and other features, that mitigate to extent feasible the risks associated with crude oil shipments;
- Funding for rail safety projects (e.g., replacement/upgrade of existing tracks, grade separations, Positive Train Control, etc.);

¹ SACOG submits this letter as a joint powers agency, exercising the common powers of its members pursuant to a joint powers agreement. However, this letter is not an exhaustive treatment of the DEIR's compliance with the California Environmental Quality Act or of the concerns of all of its members, many of whom may also provide separate comments.

- Utilization of best available inspection equipment and protocols;
- Implementation of positive train controls to prioritize areas with crude oil shipments; and
- Prohibition on shipments of unstabilized crude oil that has not been stripped of the most volatile elements, including flammable natural gas liquids.

Unfortunately, the DEIR never gets to a discussion of these measures—or any other measures that might ensure the safety of our region—because the DEIR concludes that crude oil shipments by rail pose no “significant hazard” whatsoever. We believe that conclusion is fundamentally flawed, disregards the recent events demonstrating the very serious risk to life and property that these shipments pose, and contradicts the conclusions of the federal government, which is mobilizing to respond to these risks.

On May 7, 2014, the United States Department of Transportation in fact concluded that crude oil shipments by rail pose not merely a significant hazard, but an “*imminent hazard*,” stating:

“Upon information derived from recent railroad accidents and subsequent DOT investigations, the Secretary of Transportation (Secretary) has found that an unsafe condition or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. Specifically, a pattern of releases and fires involving petroleum crude oil shipments originating from the Bakken and being transported by rail constitute an imminent hazard under 49 U.S.C. 5121(d).”

...

“An imminent hazard, as defined by 49 U.S.C. 5102(5), constitutes the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk that death, illness, injury or endangerment.”²

Under these circumstances, we urge the City of Benicia to revise the DEIR so that it will fully inform decision-makers and the public of the potential risks of the Project and address adequate mitigation measures to ensure the safety of our communities. With that objective in mind, in the following pages we address some of the very substantial deficiencies in the DEIR—deficiencies which apparently have caused the DEIR to fail to analyze and consider the significant adverse impacts of the Project and to evaluate all feasible mitigation to reduce those impacts to a less than significant level.

² Emergency Restriction/Prohibition Order DOT-OST-2014-0067 (May 7, 2014) (<http://www.dot.gov/briefing-room/emergency-order>).

Comments on the DEIR

The California Environmental Quality Act (CEQA) mandates that an EIR identify and analyze all potentially significant adverse effects of a project, including both direct and indirect impacts, and short-term and long-term impacts. (Pub. Resources Code, § 21100; Cal. Code Regs., tit. 14, §§ 15126, 15126.2.) The DEIR is deficient in numerous respects, as set forth below.

The DEIR fails to consider the risk of fire and explosion as a threshold of significance.

Although the sample Initial Study checklist found in Appendix G to the CEQA Guidelines is an obvious and commonly used source of thresholds of significance, agencies may not rely on it exclusively when a particular project, or particular circumstances, gives rise to environmental concerns not addressed in the checklist. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, the court held that an agency cannot rely on a reflexive determination to follow the significance thresholds in Appendix G without regard to whether those standards are broad enough to encompass the scope of the project at issue. The court explained that, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (116 Cal. App. 4th at p. 1109.)

In this instance, in complete reliance on Appendix G, and without considering the very real and substantial risks of the transportation of crude by rail, the DEIR does not address the risk of fire and explosion in its thresholds of significance. Specifically, in the only threshold of significance potentially applicable to the risk of transportation, the DEIR adopts the following for Hazards and Hazardous Materials:

“Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the *release of hazardous materials into the environment.*”³

As has been reported widely over the last several years, the character and quality of the domestic and Canadian crude oil currently being transported by rail across the United States has dramatically shifted the public safety concern from a hazardous material release to fiery explosions. A series of oil derailments in just the last two years has created a policy imperative in both Washington, D.C., and Sacramento. As United States Secretary of Transportation Anthony Foxx recently stated, “as a nation we are a little bit caught off guard by the growth of our energy production and we have to catch up very quickly.”⁴

Indeed, the following major accidents have heightened concern about the risks involved in shipping crude by rail.

³ DEIR, p. 4.7-13 (emphasis added).

⁴ Politico, Morning Transportation (April 24, 2014), <http://www.politico.com/morningtransportation/0414/morningtransportation13715.html>.

- **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. The operator and sole railroad employee aboard the train secured it and departed, leaving the train on shortline track with a descending grade of about 1.2%. 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, Alabama, derailed on a section of track through a wetland near Aliceville, Alabama. Thirty tank cars derailed and some dozen 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 traveling 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 traveling at low speed 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.⁵

Notwithstanding that the United States Department of Transportation, among others, has determined that Bakken Crude “has a higher gas content, higher vapor pressure, lower flash point and boiling point...which correlates to increased ignitability and flammability,”⁶ and that the recent events listed above have spurred a massive emergency effort at the federal level to address safety concerns,⁷ the DEIR dismisses them in a footnote, stating that “Not every tank car derailment results in a spill, fire, or explosion.”⁸ With that simple artifice, the DEIR justifies limiting its analysis to “derailments that result in a release of crude oil.”⁹ As discussed below, even the Release Rate Analysis used to conclude that there is a less than significant impact from Hazards and Hazardous Materials completely ignores the risk of fire and explosion.¹⁰

Having failed to establish a significance threshold that addresses the most critical health and safety risk from crude oil shipments by rail—fire and explosion—the DEIR fails to conduct the necessary analysis of such risks and fails to identify the mitigation measures necessary to protect the communities along the rail routes to the Project site.

⁵ Congressional Research Service, U.S. Rail Transportation of Crude Oil: Background and Issues for Congress (May 5, 2014). In March and April 2013, there were also two derailments of Canadian Pacific trains, one in western Minnesota and the other in Ontario, Canada; less than a tank car of oil leaked in each derailment and neither incident caused a fire. While operators may have implemented safety precautions to address the operational deficiencies exposed over the last few years, these incidents also demonstrate the unpredictability of what can happen by transporting such volatile materials by rail. Addressing safety concerns on such an ad hoc basis will not reduce the overall risks.

⁶ Report summarizing the analysis of Bakken crude oil data:
http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_8A422ABDC16B72E5F166FE34048CCCBFED3B0500/filename/07_23_14_Operation_Safe_Delivery_Report_final_clean.pdf.

⁷ DEIR at pp. 4.7-5 to 4.7-10.

⁸ DEIR, at p. 4.7-17, fn. 4.

⁹ DEIR, at p. 4.7-17, fn. 4.

¹⁰ See Railroad Crude Oil Release Rate Analysis for Route between Roseville and Benicia, DEIR, Appendix F.

The Project poses a “significant hazard” to the public and the environment through reasonably foreseeable upset and accident conditions.

By any measure or standard, the Project poses a “significant hazard” to the communities along the rail routes to the Project site. First, the Release Rate Analysis used to conclude that the transportation of crude oil by rail poses a less significant hazard to people and the environment is fundamentally flawed in numerous respects. Second, even if the Release Rate Analysis were accurate, its findings do not support the conclusion of less than significant impacts.

The Release Rate Analysis is flawed as a tool to assess the potential environmental impacts of the project.

As a threshold matter, it should be noted that the Release Rate Analysis is the sole basis in the DEIR for concluding that the hazards posed by the Project are less than significant. That Analysis is flawed.

First, the Analysis does not even address the most significant risks to persons, property, businesses, and the sensitive lands along the rail routes to the Project site. As noted above, the risk of fire and explosion are substantial, as evidenced by the series of events over the last two years which have attracted national and international attention and a call for immediate rail operations reforms. In fact, the Analysis does not even consider the recent events, limiting its analysis to derailments over the 5-year period from 2005-2009. This narrow focus misses most of the massive growth in crude oil shipments nationwide. Since 2007, crude oil by rail has seen a 6000% increase, driven largely by the extraordinary increases in energy development in the Bakken Formation in North Dakota and Montana.¹¹ The Analysis never, in fact, analyzes the impact of this tremendous growth in dangerous crude oil rail shipments.

Second, as discussed in more detail below, the Analysis does not accurately assess the potential environmental impacts of the Project because it disregards the full geographic scope of the Project. Specifically, the Analysis only considers potential derailments from Roseville to Benicia. This Analysis does not evaluate potential derailments along the entire rail routes from the oil fields to Roseville, the assemblage and other activities in the Roseville Rail Yard, and the utilization of siding or storage tracks during transportation.

Third, the Analysis minimizes the potential risk of derailment by assuming a “just-in-time” supply chain—that is, that Union Pacific 50-car unit trains will travel from Roseville to Benicia without incident and will be immediately available for processing at Valero, that the trains or tank cars would never be stored or moved to sidings, and that no incidents (including accidents or maintenance) would ever delay delivery to Valero. As the DEIR readily acknowledges, however, Valero does not control the movement of tank cars on the rail line—Union Pacific does. And freight shipments do not operate on regular

¹¹ <http://www.franken.senate.gov/files/letter/140404RailSafety.pdf>. Note that in Northern California alone, crude oil shipments by rail increased by 57% in 2013. (<http://www.planetizen.com/node/67904>.) Crude oil production in the Bakken region has nearly tripled from 2010 to 2013. (http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_8A422ABDC16B72E5F166FE34048CCCBFED3B0500/filename/07_23_14_Operation_Safe_Delivery_Report_final_clean.pdf.)

schedules. Valero can request Union Pacific to meet certain schedules, but has no ability to control the ultimate schedule of the rail operations. As such, it cannot guarantee the “just-in-time” service assumed in the Release Rate Analysis. The shipments also may come with greater frequency and fewer tank cars, which would increase traffic on the alignment and substantially increase the risk.

Fourth, by using national derailment rates the Analysis does not assess the Project specific conditions of these shipments. Of particular note, the Analysis reveals that over 1.3 miles of rail from Roseville to Benicia is FRA Class 1 track—track which has a 15.5 times greater risk of derailment than FRA Class 5 track.¹² However, the Analysis does not consider the location of the Class 1 track, the operational components of the track, the proximity of the track to highly populated areas, schools, hospitals, dangerous facilities, or sensitive lands or habitat.¹³

In light of these flaws, the Rate Release Analysis does not adequately assess the risks associated with the Project’s crude oil shipments.

Even were it not flawed, the Release Rate Analysis does not assess the potential environmental impacts of the Project or support the conclusion that crude oil by rail shipments do not pose a significant hazard.

While the DEIR adopts a “significant hazard” test as the threshold of significance, the DEIR never defines or describes the nature of that test. Rather, it merely determines that, under the optimum conditions described in the DEIR, a crude oil train release incident exceeding 100 gallons will only occur every 111 years and then concludes on that basis that the Project poses no significant hazard risk. The DEIR can only reach that conclusion by ignoring the nature of the crude oil being shipped, the specific risks posed by such shipments, and the circumstances of the shipments (including all operational possibilities, specific track and facilities in use, and operating conditions) in relation to the communities, populations, businesses, and land through which the shipments will travel.

At a common sense level, the conclusion that no “significant hazard” exists is absurd in light of the massive mobilization at the federal level to intervene to make crude oil transport by rail safer. As noted above, the United States Department of Transportation recently concluded that crude oil shipments by rail pose an “imminent hazard.”¹⁴ And while the DEIR cites the extensive and repeated federal regulatory

¹² Railroad Crude Oil Release Rate Analysis for Route between Roseville and Benicia, DEIR, Appendix F, at p. 6.

¹³ Although the DEIR lists schools within a quarter mile of the rail line (DEIR, at p. 4.7-23), it does not analyze the risks associated with the risks associated with such proximity other than the air quality impacts.

¹⁴ Emergency Restriction/Prohibition Order DOT-OST-2014-0067 (May 7, 2014) (<http://www.dot.gov/briefing-room/emergency-order>).

calls to improve the safety of crude oil shipments,¹⁵ the DEIR simply concludes that no significant hazard exists.

In a similar context, the National Inventory of Dams classification system defines as a significant hazard circumstances when “Failure or misoperation results in no probable loss of human life but can cause economic loss, environmental damage, disruption of lifeline facilities, or can impact other concerns.” As noted, the DEIR does not even attempt to define a significant hazard, and it never gets to the real crux of risk assessment because it never evaluates—either on a general basis or on a community-specific basis—the specific nature of the hazard, the potential risk of harm to people, property, or human activities, and the potential impacts and magnitude of the hazard.¹⁶ It merely concludes that a crude oil release every 111 years is not significant.

The critical component missing from the DEIR’s analysis is the magnitude of the risk, even from events that may only occur rarely, because small risks of serious illness or death are potentially significant. For example, Sacramento Metropolitan Air Quality Management District’s evaluation criterion for cancer risk is *276 in a million*.¹⁷ And in this regard the DEIR completely fails. Not only does it completely disregard the magnitude of the risk to the communities along the rail alignment, it appears to assume that they do not even exist.¹⁸ It fails to discuss the impact of a crude oil release in those communities and, as noted, it specifically excludes any discussion of fire or explosion. The DEIR also fails to discuss or analyze the specific nature of the crude oil likely to be shipped to Valero. Clearly, the flammability and volatility of the Bakken Formation crude oil, and the high viscosity and toxicity of the Canadian bitumen, were not previously anticipated by the shipping industry. Only now—after significant loss to life and property—is the federal government responding to this emergency. The facts are that qualities and characteristics of crude oil in the United States are not even known at this point. Sixteen United States Senators recently called for funding of Operation Classification, a study of the crude oil properties by the Pipeline and Hazardous Materials Safety Administration (PHMSA), that is viewed as an important step in informing future regulatory actions.¹⁹

A September 2013 report from the National Oceanic and Atmospheric Administration highlighted the risks of Canadian bitumen. In order to transport bitumen, natural gas condensate or synthetic crude oil

¹⁵ DEIR, at pp. 4.7-5 to 4.7-10.

¹⁶ See, e.g., FEMA Risk Assessment Process, at <http://www.ready.gov/risk-assessment>.

¹⁷ See, e.g., SMAQMD Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (March 2011), at <http://www.airquality.org/ceqa/SLUMajorRoadway/SLURecommendedProtoco2.4-Jan2011.pdf>.)

¹⁸ The DEIR makes passing reference to the cities between Roseville and Benicia, but even then it does not list the cities of Citrus Heights or West Sacramento, nor the unincorporated areas of Placer, Sacramento, and Yolo counties. DEIR, at p. 4.7-16.

¹⁹ <http://www.franken.senate.gov/files/letter/140404RailSafety.pdf>. The letter erroneously referred to the study as “Operation Backpressure.”

is typically added, which may contain elevated benzene levels and sulfur content that is heavier than air, and has a relatively low flash point and flammability. Bitumen is also heavier than water, unlike most crude oil, which poses other risks. These facts lead to the conclusion that there is the potential for both environmental and human hazards from exposure to bitumen, whether leaked or burned.²⁰

Canadian bitumen also has raised particular concerns in the aftermath of a 2010 pipeline spill into Talmadge Creek, which flows into the Kalamazoo River in Michigan. The observations from the spill strongly suggest that the bitumen may pose different hazards, and possibly different risks, than other forms of crude oil. Approximately 850,000 gallons of oil spilled into the Creek. After three years of cleanup activities, the EPA observed that the bitumen “will not appreciably biodegrade,” which has led to a decision to dredge the river. As of September 2013, the response costs were \$1.035 billion, substantially higher than would be anticipated to remediate conventional oil.²¹

The properties of Bakken shale oil, although highly variable even within the same oil field, are generally much more volatile than other types of crude. In January of this year, PHMSA issued a safety alert warning that recent derailments and resulting fires indicate that crude oil being transported from the Bakken region may be more flammable than traditional heavy crude oil.²²

But the federal response to these, whatever its final form, does not relieve the DEIR of fully analyzing the nature of the potential crude oil to be shipped, regardless of the source, and of mitigating the risks presented by the Project’s crude oil shipments.

The DEIR fails to analyze the potential environmental impacts of crude oil transport beyond the Roseville to Benicia alignment.

Although the DEIR concedes the necessity to analyze the environmental impacts beyond the immediate Project site to include the crude oil transportation route, the analysis falls far short of the requirements of CEQA. As a threshold matter, the DEIR improperly limits its analysis to the route from Roseville to Benicia, claiming as “speculative” the originating site of the crude oil. In fact, within the Sacramento region there are only five rail subdivisions which lead to the Roseville Yard: Fresno, Martinez, Roseville, Sacramento, or Valley.²³ Of these, only the Roseville, Sacramento, and Valley subdivisions connect to

²⁰ Transporting Alberta Oil Sands Products: Defining the Issues and Assessing the Risks (September 2013) NOAA Technical Memorandum NOS OR&R 44.

²¹ Congressional Research Service, U.S. Rail Transportation of Crude Oil: Background and Issues for Congress (May 5, 2014), at p. 13.

²² PHMSA, Safety Alert—January 2, 2014, Preliminary Guidance from OPERATION CLASSIFICATION.

²³ See State Office of Emergency Services Rail Risk Map (<http://california.maps.arcgis.com/apps/OnePane/basicviewer/index.html?appid=928033ed043148598f7e511a95072b89>).

the north or east where such shipments will originate. Limiting the analysis to Roseville to Benicia is arbitrary and the DEIR must analyze the full environmental impacts of each potential route.

In *Muzzy Ranch v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372, the California Supreme Court made clear that it is a lead agency's responsibility to consider even geographically distant environment impacts. CEQA broadly defines the relevant geographical environment as "the area which will be affected by a proposed project." (Pub. Resources Code, § 21060.5.) Consequently, "the project area does not define the relevant environment for purposes of CEQA when a project's environmental effects will be felt outside the project area." (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1582-1583.) Indeed, "the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369.) The DEIR cannot just assume that crude oil tank cars will magically appear in Roseville, but must account for the potential impacts of transporting those cars through other communities and property in the Sacramento region.

Additionally, as noted above, the DEIR completely disregards the train assembly activities in the Roseville Yard in close proximity to residential neighborhoods. It also assumes that a "just-in-time" supply chain can and will be used for the Project. As a consequence, the DEIR's evaluation of the Project's potential impacts does not consider the risks associated with crude oil tank cars being stored before they can be processed at the Valero facility and does not discuss the possible locations for such storage. As noted, since Valero concedes that it ultimately cannot control the timing of the crude oil shipments, it must account for such events. By failing to discuss these storage needs, the DEIR fails to analyze the entire project. As set forth in the CEQA Guidelines, a "project" is "the whole of an action" that may result in either a direct physical environmental change or a reasonably foreseeable indirect change. (CEQA Guidelines, § 15378; see also *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297; *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1220.) In *Whitman v Board of Supervisors* (1979) 88 Cal.App.3d 397, for example, an EIR for oil facilities was overturned in part because it failed to analyze the impact of pipelines that would need to be built to service the facilities. Similarly here, the Project analyzed must consider all of the reasonably foreseeable operational details.

The DEIR fails to analyze the cumulative impacts of the Project.

While the DEIR's purported cumulative analysis identifies some 17 crude oil by rail, refinery, and refinery related projects, it does not assess the increased risk of multiple crude oil rail shipments, from multiple trains, serving multiple projects in California.²⁴ The DEIR dismisses the potential for any increase in risk

²⁴ DEIR, at pp. 5-6 to 5-11, 5-16.

due to multiple crude oil rail projects by opining that any explosion/leakage from a rail car would be separate and apart from any other such explosion/leakage and thus there could be no cumulative impact. However, this omits the fact that a key factor in the risk analysis relied on in the DEIR is the number of train-miles traveled.²⁵ Therefore, as the cumulative number of train trips increase along a particular rail alignment, the risk of accidents increases. The DEIR should have considered whether the proposed Project's contribution to this risk is cumulatively considerable. And at least two of the projects identified in the DEIR are expected to result in new crude oil shipments along the same rail alignment: the WesPac Pittsburg Energy Infrastructure Project and the Phillips 66 Company Rail Spur Extension Project. The DEIR fails to analyze those cumulative impacts.

Additionally, when, as here, a DEIR's evaluation of cumulative impacts is based on a list of past, present, and probable future projects, it must include in that list any project "producing related impacts, including, if necessary, projects outside the lead agency's control." (CEQA Guidelines, § 15130(b)(1)(A).) Here, the DEIR has failed to consider in its list of reasonably foreseeable future projects the full potential for overall increase in rail cars traveling along the paths that will be taken by the Valero rail cars. Surely any addition of rail cars on the tracks would produce related impacts (e.g., collisions).

The DEIR improperly conflates its description of the Project with measures intended to reduce or avoid the clear impacts of the Project.

In at least two respects, although it is ambiguous at best on these points, the DEIR describes what purport to be elements of the Project intended to reduce, avoid, or mitigate the potential environmental impacts of the Project. The first is the general "commitment" to use CPC-1232 tank cars, rather than the legacy DOT-111 tank cars for transporting crude oil.²⁶ The second is the incorporation of the "General Railroad Safety" measures to be undertaken by Union Pacific.²⁷ Such a device was rejected by the court in *Lotus v. Dep't of Transportation* (2014) 223 Cal. App. 4th 645.

The *Lotus* court held that measures designed to avoid, minimize, rectify, reduce, or compensate for a significant impact are not "part of the project," but should be presented as mitigation measures in response to the identification of significant environmental effects. "By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA." This "short-cutting of CEQA requirements...precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences." CEQA requires a lead agency to consider a proposed project, evaluate its environmental impacts and, if significant impacts are identified, to describe feasible mitigation measures

²⁵ See Univ. of Illinois, Railroad Crude Oil Release Rate Analysis for Route between Roseville, CA and Benicia, CA (June 2014), p. 3, at http://www.ci.benicia.ca.us/vertical/Sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/Appendix_F_Railroad_Crude_Oil_Release_Rate_Analysis.pdf.

²⁶ DEIR, at p. 4.7-17.

²⁷ DEIR, at p. 4.7-15 to 4.7-16.

to reduce the impacts. The court explained that simply stating there will be no significant impacts because the project incorporates special attributes is not adequate or permissible. Among other things, the device avoids the requirement to adopt an enforceable mitigation monitoring program. (223 Cal. App. 4th at pp. 656-58.)

Similarly, conflating the mitigation measures with Project description shortcuts full disclosure of the potential environmental impacts and risks of the Project, avoids a full exploration of the feasible mitigation measures to address those impacts and risks, and circumvents a mitigation monitoring program, which is essential to make all of these elements enforceable.

Conclusion

We urge the City of Benicia to substantially revise the DEIR for this Project so that it will fully inform the public and the City Council of the full impacts of this Project and analyze all available mitigation to reduce those impacts to a less than significant level.

We appreciate your consideration and would be happy to answer any questions you may have about our comments.

Sincerely,
Sacramento Area Council of Governments

By: _____

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Re: Union Pacific – Valero Refinery Project

Dear Mr. McKeever:

Union Pacific Railroad Company (UP) appreciates this opportunity to comment on the draft Comment Letter on Valero Crude by Rail Project Environmental Impact Report, Item #14-8-4, which we understand will be considered by the Sacramento Area Council of Governments (SACOG) on August 21, 2014.

UP understands the concern about the risks associated with crude-by-rail and we take our responsibility to ship crude oil, as mandated by federal law, very seriously. UP follows the strictest safety practices and in many cases, exceed federal safety regulations. UP's goal is to have zero derailments and it works closely with the federal Department of Transportation (DOT), the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Association of American Railroads (AAR) and our customers to ensure it operates the safest railroad possible.

Safety is UP's top priority. The only effective way to ensure safety is through comprehensive federal regulation. A state-by-state, or town-by-town approach in which different rules apply to the beginning, middle, and end of a single rail journey, would not be effective. Congress agrees. Federal regulations completely preempt the application of the California Environmental Quality Act (CEQA) and the mitigation measures proposed in the comment letter drafted by SACOG staff. We encourage SACOG and its member agencies to participate in this rulemaking process.

I. Union Pacific is working closely with other stakeholders to ensure the safety of crude transportation.

Union Pacific is working diligently with federal, state and local authorities to prevent derailments or other accidents. UP spent more than \$21.6 billion in capital investments from 2007-2013 continuing to strengthen our infrastructure. By doing so, it is continuously improving safety for our employees, our communities and our customers.

UP has decreased derailments 23% over the last 10 years, due in large part to our robust derailment prevention and risk reduction process. This process includes, among others, the following measures:

- Union Pacific uses lasers and ultrasound to identify rail imperfections.
- UP forecasts potential failures before they happen by tracking the acoustic vibration on wheels.
- UP performs a real-time analysis of every rail car moving on our system each time it passes a trackside sensor, equaling 20 million car evaluations per day.
- UP employees participate in rigorous safety training programs on a regular basis and are trained to identify and prevent potential derailments.

Union Pacific also reaches out to fire departments as well as other emergency responders along our lines to offer comprehensive training to hazmat first-responders in communities where we operate. Union Pacific annually trains approximately 2,500 local, state and federal first-responders on ways to minimize the impact of a derailment in their communities. UP has trained nearly 38,000 public responders and almost 7,500 private responders (shippers & contractors) since 2003. This includes classroom and hands-on training.

These efforts have paid off. The overall safety record of rail transportation, as measured by the FRA has been trending in the right direction for decades. In fact, based on the three most common rail safety measures, recent years have been the safest in rail history: the train accident rate in 2013 was down 79 percent from 1980 and down 42 percent from 2000; the employee injury rate was down 84 percent from 1980 and down 47 percent from 2000; and the grade crossing collision rate was down 81 percent from 1980 and down 42 percent from 2000.

II. The Federal Government is imposing more stringent requirements for safe transportation of crude oil.

As federal rail authorities recently explained, DOT, through the FRA and PHMSA, “continue[s] to pursue a *comprehensive, all-of-the-above approach* in minimizing risk and ensuring the safe transport of crude oil by rail.” Department of Transportation, *Federal Railroad Administration’s Action Plan for Hazardous Materials Safety* at 1 (May 20, 2014), available at <http://www.fra.dot.gov/eLib/details/L04721>. These efforts include not only scores of regulations governing the safe transportation of hazardous materials, including oil products, found in 49 C.F.R. Parts 171 to 180, but also a host of equipment and operating rules promulgated by FRA, as well as voluntary agreements and Emergency Orders issued over the past year in response to oil spills.

Voluntary Agreement

On February 21, 2014, the nation's major freight railroads and the DOT agreed to a rail operations safety initiative that established new operating practices for moving crude oil by rail. Under the industry's voluntary efforts, railroads are:

- Increasing the frequency of track inspections using high-tech track geometry readers.
- Equipping crude trains with either distributed power or two-way telemetry end-of-train devices. These technologies allow train crews to apply emergency brakes from both ends of the train in order to stop the train faster.
- Using new rail traffic routing technology (the Rail Corridor Risk Management System (RCRMS)) to aid in the determination of the safest and most secure rail routes for trains with 20 or more cars of crude oil.
- Lowering speeds to no more than 40 miles-per-hour in the 46 federally-designated high-threat-urban areas and no more than 50 miles per hour in other areas.
- Working with communities to address location-specific concerns that communities may have.
- Increasing trackside safety technology by installing additional wayside wheel bearing detectors if they are not already in place every 40 miles along tracks with trains carrying 20 or more crude oil cars, as other safety factors allow.
- Increasing emergency response training and tuition assistance.
- Enhancing emergency response capability planning.

These voluntary actions are already being implemented.

Emergency Orders

In a February 25, 2014 Emergency Order, the DOT ordered certain changes in the way petroleum crude oil is classified and labeled during shipment, emphasizing that "with regard to emergency responders, sufficient knowledge about the hazards of the materials being transported [is needed] so that if an accident occurs, they can respond appropriately." February 25, 2014 Emergency Order at 13. And in its May 7, 2014 Emergency Order, the DOT ordered railroads transporting large quantities of crude oil to notify state authorities of the estimated number of trains traveling through each county of the State, provide certain emergency response information required by federal regulations (49 C.F.R. Part 172, subpart G) and identify the route over which the oil will be transported.

Proposed Regulations

On July 23, 2014, the PHMSA proposed enhanced tank car standards, a classification and testing program for crude oil and new operational requirements for trains transporting such crude that include braking controls and speed restrictions. PHMSA proposes the phase out of older DOT 111 tank cars for the shipment flammable liquids, including most Bakken crude oil, unless the tank cars are retrofitted to comply with new tank car design standards. We encourage SACOG to participate in this rulemaking process.

The federal proposal includes:

- Better classification and characterization of mined gases and liquids
- Rail routing risk assessment
- Notification to State Emergency Response Commissions
- Reduced operating speeds
- Enhanced braking
- Enhanced standards for both new and existing tank cars

As the federal government's existing regulations, recent emergency orders, the voluntary agreements and the new regulatory proposals make abundantly clear, regulation of crude transportation is extremely detailed and complex. Union Pacific is actively participating in the efforts to finalize the new regulations and encourages SACOG and its member agencies to do the same. By jointly working to enhance safety we can ensure that the most effective regulations are adopted.

III. A uniform federal regulatory program is essential to ensure the safe transportation of crude oil.

As the complex regulatory program described above illustrates, clear and uniform federal regulation is needed to ensure that crude oil continues to be transported safely. With respect to rail transportation, federal law preempts most state and local regulation of rail activities.

Uniform standards and rules for railroad operations allow the efficient movement of goods among the states. If each state or local community were allowed to impose its own regulations on railroad operations, rail transportation could grind to a halt, because train crews would need to apply different rules or perhaps use different equipment as they move from place to place.

As stated by the U.S. Congress:

Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would weaken the industry's efficiency and competitive viability.

The U.S. Congress went on to state that

federal regulation of railroads is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.

Congress has therefore established federal preemption under several statutes governing rail transportation. As the U.S. Solicitor General has explained, Congress recognized that the federal government has "diverse sources of statutory authority . . . with which to address rail safety issues," and therefore "preemption had to apply to regulations issued" under any of those sources, for "otherwise, the desired uniformity could not be attained." Brief for United States as Amicus Curiae at 6, *Public Util. Comm'n of Ohio v. CSX Transp., Inc.*, 498 U.S. 1066 (1991) (No. 90-95), available at <http://www.justice.gov/osg/briefs/1990/sg900560.txt>; see also H.R. Rep. No. 1194, 91st Cong., 2d Sess. 19 (1970) ("[S]uch a vital part of our interstate commerce as railroads should not be subject to [a] multiplicity of enforcement by various certifying States as well as the Federal Government.")

Preemption under ICCTA

In 1996, Congress passed the Interstate Commerce Commission Termination Act (ICCTA), which broadened the preemptive effect of federal law and created the federal Surface Transportation Board ("STB"). The driving purpose behind ICCTA was to keep "bureaucracy and regulatory costs at the lowest possible level, consistent with affording remedies only where they are necessary and appropriate." H.R.Rep. No. 104-331, at 93, reprinted in 1995 U.S.C.C.A.N. 793, 805 (emphasis added).

Congress vested the STB with broad authority over railroad operations. Indeed, STB has "exclusive" jurisdiction over "(1) transportation by rail carriers . . . and (2) the construction, acquisition, operation, abandonment, or discontinuance of . . . tracks, or facilities." 49 U.S.C. § 10501(b).

"Transportation" by rail carriers broadly includes:

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property. 49 U.S.C. § 10102(9)(emphasis added).

Further, ICCTA contains an express preemption clause: “the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal and State law.” 49 U.S.C. § 10501(b). “It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” (*CSX Transp., Inc. v. Georgia Public Serv. Com’n* (N.D.Ga. 1996) 944 F.Supp. 1573, 1581 (CSX).) This provision continues the historic extensive federal regulation of railroads. (*Fayard v. Northeast Vehicle Services, LLC* (1st Cir. 2008) 533 F.3d 42, 46; see *Chicago & N.W. Tr. Co. v. Kalo Brick & Tile* (1981) 450 U.S. 311, 318 [“The Interstate Commerce Act is among the most pervasive and comprehensive of federal regulatory schemes.”].)

Over the years, many courts have addressed challenges by state and local authorities seeking to regulate some aspect of rail operations. The courts have consistently upheld Congress’s intention that no such regulation can be allowed. As one court stated, “freeing the railroads from state and federal regulatory authority was the principal purpose of Congress” in adopting ICCTA. *Wisconsin Central Ltd. v. City of Marshfield*, 160 F.Supp.2d 1009, 1015 (W.D.Wis. 2000).

Preemption under the Federal Railroad Safety Act

Congress directed in the Federal Railroad Safety Act (“FRSA”) that “[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.” 49 U.S.C. § 20106(a)(1). To accomplish that objective, Congress provided that a State may no longer “adopt or continue in force a law, regulation, or order related to railroad safety” once the “Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement.” *Id.* § 20106(a)(2). State or local hazardous material railroad transportation requirements may be preempted under the FRSA without consideration of whether they might be consistent under the Federal hazmat law. *CSX Transportation, Inc. v. City of Tallahoma*, No. 4-87-47 (E.D. Tenn. 1988); *CSX Transportation, Inc. v. Public Utilities Comm’n of Ohio*, 701 F. Supp. 608 (D. Ohio 1988), affirmed, 901 F.2d 497 (6th Cir. 1990), cert. denied 111 S.Ct. 781 (1991).

Under Section 20106(a)(2), these DOT regulations and orders preempt state and local regulations relating to the same subject matter. The text of § 20106 is unambiguous. It plainly states that the terms of § 20106 govern the preemptive force of all DOT regulations and orders related to rail safety. DOT has recognized that “[t]hrough [the Federal Railroad Administration] and [the Pipeline and Hazardous Materials Safety Administration], DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail

These regulations leave no room for State . . . standards established by any means . . . dealing with the subject matter covered by the DOT regulations.” 74 Fed. Reg. 1790 (Jan. 13, 2009).

Preemption under the Pipeline Safety Improvement Act

The Pipeline Safety Improvement Act, which created the PHMSA, includes an express preemption provision prohibiting any state or local agency from regulating “the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.” 49 U.S.C. §5125. Thus, any mitigation measure restricting or specifying the type of equipment to be used in transporting crude by rail is expressly preempted.

DOT has stated that “[t]hrough [the Federal Railroad Administration] and [the Pipeline and Hazardous Materials Safety Administration], DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail These regulations leave no room for State . . . standards established by any means . . . dealing with the subject matter covered by the DOT regulations.” 74 Fed. Reg. 1790 (Jan. 13, 2009).

IV. Neither SACOG nor its member agencies has authority to impose the mitigation measures or conditions proposed in the draft Comment Letter on Valero Crude by Rail Project Environmental Impact Report.

The courts have found that ICCTA preempts state and local environmental, land use and planning regulations. For example, in *City of Auburn*, the Ninth Circuit affirmed STB’s ruling that local environmental review regulations could not be required for BNSF’s proposal to reacquire and reactivate a rail line. 154 F.3d 1025, 1031 (9th Cir. 1998). The court found that the State of Washington’s environmental review statute – a statute that is similar to CEQA – could not be applied to a rail project. Similarly, the Second Circuit found that ICCTA preempted a state requirement for a railroad to obtain a pre-construction environmental permit for a transloading facility because it would give the local governmental body the ability to deny or delay the right to build the facility. *Green Mountain Railroad Corporation v. State of Vermont*, 404 F.3d 638, 641-45 (2d Cir. 2005). In effect, the court found that if a permit allowed the state or local agency to exercise discretion over the rail project, that permit requirement would be preempted.

The California Court of Appeal laid out this same logic in its recent decision in *Town of Atherton v. California High Speed Rail Authority* (filed July 24, 2014), stating:

[S]tate actions are ‘categorically’ or ‘facially’ preempted where they ‘would directly conflict with exclusive federal regulation of railroads.’ [Citations.] Courts and the STB have recognized ‘two broad categories of state and local actions’ that are categorically preempted regardless of the context of the action: (1) ‘any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability

to conduct some part of its operations or to proceed with activities that the [STB] has authorized' and (2) 'state or local regulation of matters directly regulated by the [STB]—such as the construction, operation, and abandonment of rail lines; railroad mergers, line acquisitions, and other forms of consolidation; and railroad rates and service.' [Citations.] Because these categories of state regulation are 'per se unreasonable interference with interstate commerce,' 'the preemption analysis is addressed not to the reasonableness of the particular state or local action, but rather to the act of regulation itself.'

The California Attorney General endorsed this application of the law and specifically argued that "[c]ourts and the STB uniformly hold that the ICCTA preempts state environmental pre-clearance requirements such as those in the California Environmental Quality Act (CEQA)." Letter dated August 9, 2013 from Attorney General Kamala Harris to the Hon. Vance W. Raye, Presiding Justice, California Court of Appeal for the Third District at 3.

Additional cases and STB decisions that have struck down state and local environmental and land use regulations include: *Norfolk Southern Railway Company v. City of Austell*, 1997 WL 1113647, *6 (N.D.Ga. 1997) ("ICCTA expresses Congress's unambiguous and clear intent to preempt [city's] authority to regulate and govern the construction, development, and operation of the plaintiff's intermodal facility"); *Soo Line R.R. v. City of Minneapolis*, 38 F.Supp.2d 1096, 1101 (D. Minn. 1998) ("The Court concludes that the City's demolition permitting process upon which Defendants have relied to prevent [the railroad] from demolishing five buildings . . . that are related to the movement of property by rail is expressly preempted by [ICCTA]."); *Norfolk S. Ry. v. City of Austell*, 1997 WL 1113647 (N.D. Ga. 1997) (local zoning and land use regulations preempted); *Village of Ridgefield Park v. New York, Susquehanna & W. Ry.*, 750 A.2d 57 (N.J. 2000) (complaints about rail operations under local nuisance law preempted); *Burlington Northern and Santa Fe Ry. v. City of Houston*, S.W.3d, 2005 WL 1118121 (Tex. App. 2005) (interpretations of state condemnation law that would prevent condemnation of city land required for construction of rail line preempted).

The *Atherton* court noted that state and local agencies may exercise authority over the development of railroad property to the extent that such regulations:

can be approved (or rejected) without the exercise of discretion on subjective questions. Electrical, plumbing and fire codes, direct environmental regulations enacted for the protection of the public health and safety, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption.

The limited exception for routine, non-discretionary permits to meet building and electrical codes is not relevant here. Instead, the cases have clearly established that state and local agencies have no authority to impose permitting or land use requirements that "would give the local governmental body the ability to deny or delay the right to build the facility."

V. Conclusion

Like the transloading facility in the *Green Mountain* case and the intermodal facility in the *Norfolk Southern* case, the proposed loading rack and tracks at the Valero Refinery are essential components of rail transportation. As noted above, “transportation” includes a “yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership. . .” as well as “receipt, delivery, elevation, transfer in transit, . . . storage, [and] handling” of goods. Valero’s proposed project falls squarely within the scope of this definition and the Congress and the courts have made it abundantly clear that “no state or local governmental agency may delay or deny the right to build” such a facility.

As noted above, Union Pacific supports the federal regulatory efforts to ensure that crude transportation is carried out safely. We encourage SACOG and its member agencies to participate in the rulemaking process. Neither SACOG nor its member agencies can go it alone—federal law and common sense demand that a uniform national approach be adopted and applied to ensure safety.

Regards,

UNION PACIFIC RAILROAD COMPANY



Melissa B. Hagan

cc: Ms. Amy Million, City of Benicia Planning Commission



COUNTY OF YOLO

Board of Supervisors

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July 15, 2014

VIA CERTIFIED MAIL AND E-MAIL

Amy Million, Principal Planner
Community Development Department
250 East L Street
Benicia, CA 94510

RE: Valero Benicia Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

Yolo County has reviewed the City of Benicia's Draft Environmental Impact Report ("DEIR") related to the project at the Valero Oil Refinery that would result in the daily delivery of 70,000 barrels of oil by rail to the Refinery (the "Valero Project"). The Valero Project would move approximately 80% of Valero's crude deliveries from ocean tankers to railways that traverse through our local communities and sensitive environmental resources. Notwithstanding the change in where the oil is traveling, the DEIR pays little attention to the potential upstream effects of increased oil by rail shipments through Placer, Sacramento, Yolo, Solano, and Contra Costa counties.

As discussed below, the DEIR provides only a brief review of the environmental, safety, and noise effects on upstream communities. This DEIR justifies this cursory analysis because the effects are "indirect" and not in the Project's immediate vicinity.¹ Under the California Environmental Quality Act ("CEQA"), EIRs are required to discuss the area that will be directly and indirectly affected by the project.² This area must not be defined so narrowly that a significant portion of the affected environment is ignored in the analysis.³ For this reason, the relevant geographical area for CEQA purposes may be larger than the project area.

¹ See, e.g., DEIR, p. 4.0-3 ("Project impacts that are indirect and/or difficult to predict are discussed in less detail than direct impacts that can be predicted with reasonable certainty."); p. 4.10-5 ("The analysis of indirect noise impacts from trains herein considers impacts in the City of Benicia in detail. Indirect impacts outside the City are considered in general terms.").

² See CEQA Guidelines §§ 15126.2(a), 15360; *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011) ("CEQA review includes the impacts a project may have in areas outside the boundaries of the project itself.").

³ See *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184 (2004); *County Sanitation Dist. No. 2 v. Kern County*, 127 Cal. App. 4th 1544 (2005).

Here, the geographic effects from the Valero Project are not difficult to predict. If the Valero Project is approved, two 50-car trains loaded with 70,000 barrels of crude would travel along a pre-determined, immutable route from Roseville to Benicia every day. Every day, two empty 50-car trains will travel the same route back. Indeed, there is no more uncertainty about the effects on upstream communities as on the areas in Benicia surrounding the Valero Refinery. All areas along the route will have the same trains traveling through them. But the significance of these effects will be different depending on the individual circumstances of each community. Given the effects of approving the Valero Project, the DEIR should consider their significance and possible mitigation on all affected communities in its analysis, as required under CEQA.⁴

For these and other reasons mentioned below, the DEIR should be substantially revised and recirculated for further public review.

A. The DEIR Dismisses Safety Concerns Related to the Transportation of Oil By Rail

The DEIR's conclusion that transportation of oil by rail poses a less than significant hazard to upstream communities is unsupported by the evidence presented in the report. Specifically, the analysis in Appendix F, upon which this finding is based, is inaccurate and irrelevant, both in terms of conclusions and methodology.

First, the conclusion derived from the methodology undermines the frequency of oil spills that can result from a train derailment. The statistical analysis states:

The results show that the expected occurrence of a crude oil train release incident exceeding 100 gallons is approximately 0.009 per year, or an average of about once per 111 years. The portion of the route traversing the Suisun wetland area has an even lower annual risk of a release incident equaling 0.00381, which corresponds to an average interval between incidents of 262 years.

While a once in a 100 year event might seem infrequent, the report's calculations also show that there is a 10% chance that there will be of a crude oil train release incident on the Roseville-Benicia route in the next decade. The County finds that such probabilities pose a significant hazard, especially considering the majority of the route is through populated areas and environmentally sensitive natural resources such as the Suisun wetlands.

Furthermore, the DEIR concluded that the risk of a spill is insignificant based solely on the frequency of a possible event, without considering its possible magnitude. To provide meaningful information, a risk analysis must consider both factors. Here, the DEIR's risk analysis concluded that a spill would statistically occur every 111 years, but whether a hundred year event is significant or insignificant depends on the magnitude of that event. A catastrophic explosion and spill in a populated area is different from a 100 gallon spill in a shipyard that is quickly cleaned up. For this reason, agencies around the country take significant steps to protect against infrequent events, even if they are not expected to occur but once a century.⁵ Additionally, any such magnitude analysis must contemplate the chemical characteristics of the oil being transported. The flammability and volatility of Bakken crude oil and the high viscosity

⁴ See *Muzzy Ranch v. Solano County Airport Comm'n*, 41 Cal. 4th 372 (2007) ("That the effects will be felt outside of the project area is one of the factors that determines the amount of detail required in any discussion.").

⁵ See, e.g., Louisiana Coastal Protection and Restoration Authority, *Louisiana's Comprehensive Master Plan for a Sustainable Coast*, p. 141 (2012), available at <http://www.lacpra.org/assets/docs/2012%20Master%20Plan/Final%20Plan/2012%20Coastal%20Master%20Plan.pdf> (describing efforts to protect against 100 year flood events).

and toxicity of Canadian bitumen -- materials likely to be transported to the Valero Refinery -- both pose significant environmental hazards in the event of a derailment or other rail accident. Without considering the second half of the risk analysis, the DEIR cannot conclude that the risk of a spill is insignificant.

Additionally, the County contests the assumptions employed in the methodology and its failure to contemplate other factors which could increase the likelihood of a catastrophic accident:

- 1) The methodology assumes the exclusive use of the modern CPC-1232 tank cars. Current rail regulations mandate that the tank cars used to transport oil only adhere to the DOT-111 standards issued several decades ago. Those standards have proven to be insufficient, and are currently being revised. At numerous points, the DEIR describes Valero's "commitment" to use tank cars designed to the industry's CPC-1232 standards, rather than legacy DOT-111 tank cars.⁶ The DEIR does not describe how such a "commitment" would be binding on Valero and, consequently, it should not be considered in assessing the significance of related impacts. The DEIR does not consider the possibility that Valero might not have access to sufficient cars within the timeframe of the proposed project, a probable scenario in light of potential production capacity limitations and strong demand for modernized tank cars.⁷ Indeed, the DEIR acknowledges that as of April 2013, two thirds of all tank cars transporting crude oil in the United States are still the legacy DOT-111 tank cars.⁸ Without an explicit, binding guarantee from Valero that it will not ship oil in DOT-111 tank cars along the Roseville-Benicia route, any statistical analysis that ignores the risks associated with DOT-111 tank cars is insufficient and cannot be considered in evaluating potential environmental effects.
- 2) The DEIR ignores possible changes in safety regulations concerning oil tank cars. The DEIR also does not consider whether the industry CPC-1232 standards are sufficient to mitigate the risk of an oil spill. The Association of American Railroads ("AAR") recently indicated that federal regulations may impose new standards for crude oil tank cars that supersede the current specifications of the CPC-1232.⁹ The potential for regulatory uncertainty invalidates the DEIR's assumption of Valero's use of CPC-1232 cars in two ways. First, the federal government's implementation of more stringent guidelines suggests that the AAR-endorsed CPC-1232 standards may have not be adequate to safely transport crude oil. And second, regulatory uncertainty could delay Valero in acquiring a modern tank fleet and instead result in Valero using the only Federal Railroad

⁶ See DEIR, p. S-3 ("Valero has committed that, when the PHMSA regulations call for use of a DOT-111 car, Valero would use 1232 Tank cars rather than legacy DOT-111 cars."); *id.* p. 3-19 ("In one respect, however, Valero would exceed legal requirements. Valero has committed that, when the PHMSA regulations call for use of a DOT-111 car, Valero would use 1232 Tank cars rather than legacy DOT-111 cars."); *id.* p. 4.7-17 ("It was assumed that the refinery would use 1232 Tank Cars for all shipments, based on Valero's commitment to do so."); *id.* p. 4.7-19 ("If the Project were approved, Valero here would use only 1232 Tank Cars to transport oil from Roseville to Benicia.").

⁷ See Bloomberg BNA, Tank Car Design Debate Split Over Safety of Voluntary Industry Standard (March 18, 2014).

⁸ See DEIR, p. 4.7-6.

⁹ See http://www.nytimes.com/2014/06/25/business/new-rail-car-standards-anticipated-for-autumn.html?ref=energy-environment&_r=0

Administration approved tank car, the antiquated DOT-111.¹⁰ Without certainty that Valero will only use a certain tank car, the DEIR must analyze the safety risks for the kinds of cars that Valero will likely use. Absent this analysis, the DEIR is legally inadequate.

- 3) The methodology fails to consider accidents that occur in yard or on track sidings. By only considering derailments along FRA Class I track and not derailments in train yards or off of mainline track on sidings, the methodology understates the risk profile of crude by rail transportation. An accident in a rail yard could also pose additional risks, especially in event of a large oil release, given the proximity of other toxic and volatile material and cargo present in the yard.
- 4) The methodology assumes a “just-in-time” supply chain (receiving oil shipments only as they are needed in the production process) with supply equal to refinery capacity/demand. As such, the methodology fails to consider risks associated with increased sidings due to refinery shut down due to accident or maintenance. In such an event, would oil shipments be held at the fields? Would they be held at the Roseville yard or other rail yard between Benicia and point of origin? Would they be sided along the Roseville-Benicia route? Increased storage of hazardous materials at sidings along the Roseville-Benicia route could pose an additional risk, especially the siding locations in urban areas and near the Sacramento River and Yolo Bypass.
- 5) The methodology may underestimate the risk posed by the various track class segments. Although a small portion of the overall route, FRA Track Class 1 segment mentioned in the DEIR needs to be specifically identified given the Track Class 1 train derailment rate per million train-miles is 15.5 times higher than that of the FRA Track Class 5.¹¹ Is this segment a curve, switch, or at grade crossing? Is it in or near an urban area? Furthermore, the geography of the Roseville-Benicia route is largely urban with trains passing through numerous at grade crossings in densely populated urban areas. Such geography may in fact pose a higher derailment given the increase risk factors (at grade crossings, curves, etc.) associated with urban areas, as opposed to the national average, which is a mixture of both rural and urban. Rather than ignoring the actual conditions along the route in question, the report should fully consider conditions along anticipated rail routes in characterizing the risks associated with the Valero Project.

B. The DEIR Ignores Impacts on Traffic and Emergency Response in Communities Outside of Benicia

The DEIR devotes several pages to traffic and emergency response impacts in Benicia directly around the Valero facilities. This analysis included detailed crossing data, review of existing traffic flows, and consideration of mitigation measures. In comparison, for communities outside of Benicia, the analysis consists of using Google Earth to count the number of rail crossings along the route.¹²

¹⁰ See <http://www.railwayage.com/index.php/mechanical/freight-cars/tank-car-of-the-future-among-greenbrier-railcar-contracts.html>

¹¹ See DEIR, Appendix F p. 6.

¹² See DEIR, p. 4.11-10.

The Valero Project will result in four additional fifty-car trains traveling through the upstream communities along the route every day -- two loaded trains to Benicia, and two empty trains back. The DEIR recognizes that the trains will travel across 33 at-grade crossings, but presumes that the traffic volumes at all but the six crossings in urban areas “most likely are low.”¹³ For the crossings in urban areas, the DEIR simply states, “the duration of the crossings would be short because Project trains would be travelling at a speeds [sic] faster than the 5 mph at Park Road” *Id.*

The DEIR’s assumptions about the Valero Project’s effects on traffic in communities outside of Benicia are unsupported by any evidence. Rather than simply concluding, without any support, that traffic at rural crossings “would be low” and that delays in urban crossings “would be short,” the DEIR should consider the actual traffic conditions at the crossings affected by the project. The DEIR should consider data and other evidence before dismissing the impacts the project will have on Benicia’s sister communities, just as it did for crossings near the project site in Benicia.

Similarly, the DEIR also does not consider the cumulative impacts the additional trains will have on upstream communities. In contrast, the DEIR devotes several paragraphs to the cumulative impacts in Benicia.¹⁴ Many of these impacts are minimized by the timing of the trains, which are to be scheduled to travel through Benicia at times when there is less traffic. The DEIR does not specify whether the same conditions will be true in the other communities along the trains’ route and whether the trains’ cumulative impact will be significant. All of this information should be included in the DEIR; there is no legal or practical basis for treating upstream communities differently than those near the refinery.

Finally, the DEIR describes mitigation measures to be implemented to minimize the Valero Project’s effect on public safety response times, but limits the measures to crossings in Benicia.¹⁵ According to the DEIR, “[t]he probability of an emergency incident occurring at the same time as a Project train crossing [near the Valero Refinery] is low” because there are only two incidents a month in the industrial areas near the Valero Refinery. The DEIR provides certain mitigation measures in order to reduce the effects to less than significant, without considering whether similar measures are necessary to mitigate effects elsewhere. Indeed, certain areas along the route will have more emergency incidents than the industrial areas near the Valero Refinery, making additional mitigation measures necessary there as well. These issues require further discussion and analysis in the DEIR.

C. Noise Effects Outside of Benicia Area Should be Analyzed

The DEIR analyzes the indirect noise impacts from trains in the City of Benicia, but impacts outside Benicia are only considered in general terms.¹⁶ The geographic distinction is not explained nor does it make sense. Noise impacts in Benicia are insignificant in large part because the rail lines in Benicia travel through industrial areas, with the closest residence thousands of feet away.¹⁷ In comparison, many upstream residential communities and other noise-sensitive areas are immediately adjacent to the rail line and crossings.

¹³ See DEIR, p. 4.11-11.

¹⁴ See DEIR, pp. 4.11-10 and 5-20.

¹⁵ See DEIR, p. 4.11-20.

¹⁶ See DEIR, p. 4.10-5 (“The analysis of indirect noise impacts from trains herein considers impacts in the City of Benicia in detail. Indirect impacts outside the City are considered in general terms.”).

¹⁷ See DEIR, p. 4.10-11.

CEQA declares, “it is the policy of the state to . . . take all action necessary to provide the people of this state with . . . freedom from excessive noise.”¹⁸ Further, the DEIR must “consider qualitative factors as well as economic and technical factors.”¹⁹ The DEIR cannot eschew these requirements simply because the effects will occur beyond the political boundaries of the lead agency.²⁰

* * *

In conclusion, Yolo County finds that the current analysis of the impact of the transportation of oil by rail on upstream communities is insufficient. The County requests that the DEIR be revised and recirculated for additional public review for all of the reasons stated herein.

Sincerely,



Don Saylor
Chair, Yolo County Board of Supervisors

¹⁸ See Cal. Public Resources Code § 21001(b).

¹⁹ See Cal. Public Resources Code § 21001(g).

²⁰ See *Berkeley Keep Jets Over the Bay Committee v. Bd. Of Port Comm'ns of the City of Oakland*, 91 Cal. App. 4th 1344 (2001) (“Despite this outcry, the Port, in its draft EIR, does not even mention, much less analyze, Berkeley noise impacts because that city falls significantly outside the 65 CNEL corridor.”).

August 25, 2014

Amy Million, Principal Planner
Community Development Department
250 East L Street
Benicia, CA 94510
amillion@ci.benicia.ca.us

RE: Valero Crude by Rail Project (SAC201401503)

Ms. Million,

The Sacramento Metropolitan Air Quality Management District (The District) thanks the City of Benicia for the opportunity to comment on the proposed project to build and operate an off-loading crude-oil rail terminal at the Valero Refinery. The District is required by law to "represent the citizens of the Sacramento district in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality within the Sacramento district."¹ We offer our comments in that spirit.

Disclosure of Operational Emissions in the Sacramento Federal Nonattainment Area

The Draft Environmental Impact Report (DEIR) demonstrates that operating the project will result in significant Oxides of Nitrogen (NO_x) emissions within the District.² However, the analysis fails to take into account the full impact the proposed project will have on the District as well as the entire Sacramento Federal Nonattainment Area (SFNA).

- Transit Losses: The project will utilize 1232 Tank cars³, which are unpressurized and contain pressure release valves.⁴ As the tank cars pass through the SFNA, transit losses will occur when loaded with product and returning with vapor,

¹ California Health and Safety Code §40961

² Table 4.1-6 of the DEIR, Annual Operational Exhaust Emissions Within The Sacramento Valley Air Basin

³ Page 3-20 of the DEIR

⁴ Electronic Code of Federal Regulations, Title 49: Transportation, Part 179–Specifications for tank cars, §179.15 Pressure relief devices

creating Reactive Organic Gas (ROG) and toxic air contaminant⁵ emissions within the air basin. The EIR should quantify these transit losses and toxic health risks as well as analyzing the significance of the emissions. Since the project is already significant for NO_x, the EIR should also consider feasible mitigation measures to reduce ROG emissions (or an equivalent amount of NO_x)⁶ to a less than significant level.

While the DEIR identified that diesel exhaust as a potential source of objectionable odors⁷, the DEIR fails to identify transit losses from the crude oil cargo as a potential source. As the oil tank cars will pass through populated areas with sensitive receptors⁸, the EIR should conduct an odor analysis, determine significance, and if significant, identify potential mitigation measures.

- **Locomotive Emissions:** The DEIR estimates locomotive emissions west of the Roseville Railyards, but substantial locomotive emissions will also occur within, north, and east of Roseville and within the SFNA. While the precise route used by the trains may vary, all routes to the Roseville Railyards are located within the SFNA⁹, the range of potential routes is small and readily identifiable, and the associated emissions are reasonably foreseeable. The EIR should quantify these locomotive emissions, analyze their significance, and, if they are significant, identify potential mitigation measures.

Mitigation

The DEIR asserts that there is no available feasible mitigation for air quality impacts in the SFNA because the City of Benicia has no authority to impose emission controls on the tanker car locomotives.¹⁰ While regulating the tanker car locomotives may be federally preempted, mitigating the emissions of the project is not. The District has existing programs that provide off-site mitigation for CEQA purposes, and the City can require the project proponents to fund cost-effective mitigation to reduce the impact of the project to less than significant levels. The District routinely collects mitigation fees from projects and uses the fees to fund mitigation projects throughout the entire SFNA. These projects involve promoting clean technology for use in locomotive engines, on-road heavy-duty trucks, farm equipment and wood stoves. We also promote other cost-effective mitigation projects, and all of these efforts reduce ROG and NO_x

⁵ Valero's Material Safety Data Sheet for Crude Oil (version #05, issued 8 November 2011, revised 16 December 2013) identifies many volatile toxic compounds such as n-Hexane, Pentane, Benzene, Ethylbenzene, etc http://www.valero.com/V_MSDS/501%20-%20Crude%20Oil%20Rev%204.pdf

⁶ SMAQMD Recommended Guidance for Land Use Emission Reductions, v3.1, Protocol for Ozone Precursors, Page 4

⁷ Page 4.1-26 of the DEIR

⁸ Page 4.7-23 of the DEIR

⁹ Union Pacific in California - Fast Facts 2013. Accessed August 5, 2014.

http://www.up.com/cs/groups/public/documents/up_pdf_natedocx/pdf_california__usguide.pdf

¹⁰ Page 4.1-20 of the DEIR

emissions in the SFNA. District staff is available and would be happy to work with the City and Valero to develop appropriate mitigation for this project.

General Comments

To summarize, the District requests that the EIR analyze and, where appropriate, mitigate the transit losses anticipated from the tank cars and the locomotive emissions generated within the full SFNA.

The SMAQMD thanks the City of Benicia for the opportunity to comment on this project. If you have additional questions or require further assistance, please contact me or Paul Philley at pphilley@airquality.org or (916) 874-4882.

Sincerely,



Larry Greene
Executive Director/Air Pollution Control Officer
Sacramento Metropolitan Air Quality Management District
777 12th Street, 3rd Floor
Sacramento, CA 95814

Congress of the United States
Washington, DC 20515

July 1, 2014

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

Dear Secretary Foxx:

As members of the California Congressional Delegation, we are writing to voice our strong concerns over the increased shipment of crude oil by rail in our districts and the safety risks associated with this upsurge. Northern California is already seeing a significant increase in the movement of oil through our local communities, and the number of shipments is only expected to rise in the coming years. We commend the Department of Transportation (DOT) for its focus thus far on more information sharing, slower speeds, and reinforced railcars. As you know, the solutions for this important safety issue must be multi-pronged and implemented as quickly as possible, which requires a strong and coordinated effort by the federal government to achieve an effective solution.

We are especially concerned with the high risks involved with transporting lighter, more flammable crude in densely populated areas. Should spills or explosions occur, as we have seen over the last year, the consequences could be disastrous, costing lives, damaging property, and harming the environment. While we are pleased with the many actions that DOT has taken thus far and we believe that your agency is making steady progress, we must still emphasize the utmost importance of demonstrated compliance with federal regulations by the railroad and petroleum industries. We believe there must be accountability and comprehensive oversight, as well as adherence to the most stringent of standards.

We appreciate your agency's May 7th Emergency Order that requires carriers to provide State Emergency Response Commissions with advance notice because it is imperative that local emergency managers and first responders are given up-to-date information on what materials are being transported through their regions, when these transports are occurring, and where this crude oil will be stored. But, because improved coordination and communication between the oil companies, railroads, and emergency managers is so fundamental to the safe transport of highly flammable lighter crude, we request a full report on the level of compliance by the oil companies and railroads to date.

Additionally, we urge your agency to prioritize implementing solutions in an expeditious manner that we believe will better protect our communities. One such solution would remove a

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significant amount of the volatile elements, flammable natural gas liquids (NGLs), from the crude before it is loaded onto rail cars and we understand that regulators are already considering this course of action. In order for industry to comply, they would need to build small processing towers known as stabilizers that shave off NGLs from crude before it is ultimately loaded for transport. Stabilizers are common in other parts of the country and we understand that this could also be feasible through equipment leasing. Because your agency has explicitly stated that all options are on table, we believe that requiring the petroleum industry to make lighter crude shipments by rail less volatile must be a part of the solution. And, although building infrastructure will require time and investment, industry experts have also publicly stated that stripping NGLs from lighter crude is a part of the equation for addressing railcar safety.

Furthermore, we believe that positive train control (PTC) advanced technology should be fully implemented as it is designed to automatically stop or slow a train before accidents can occur. Derailments must be avoided at all costs and PTC should be prioritized due to its accurate prevention of train-to-train collisions and derailments caused by excessive speed and unauthorized movement of trains. We believe that an expedited final rulemaking requiring full implementation of PTC is needed for those railroads that will be transporting lighter crude by rail through our communities.

Yet another solution that has been considered and in some cases the oil industry has initiated, is switching out older rail cars for new, retrofitted ones. We urge your agency to issue a rulemaking to require phasing out and retrofitting older tank cars that do not have the latest safety technologies installed in order to further minimize the impact of an explosion, if a derailment with lighter crude were to occur.

As all of these federal emergency orders and standards are being considered and final regulations are set to come out next year, we request that your agency provide us ongoing information regarding industry compliance and develop ambitious standards that will both prevent derailments and ensure that industry workers and communities are protected in cases where derailments do occur. We cannot allow communities to be in danger when viable solutions are available.

To sum up our requests, we would like your agency to:

- Provide a report on the level of compliance by the railroad and petroleum industry to the May 7th Emergency Order.
- Issue rulemaking that requires stripping out the most volatile elements from Bakken crude before it is loaded onto rail cars.
- Expedite the issuance of a final rulemaking to require the full implementation of PTC technology for all railroads transporting lighter crude and provide a status report on the progress of PTC implementation to date.
- Expedite the issuance of a rulemaking that requires phasing out old rail cars for newer, retrofitted cars.

We believe that we must be vigilant and put in place strict safety regulations that can adapt and meet the rapidly changing transportation and energy needs of our country. Thank you for your continued elevation of these important safety issues, and we look forward to working with you on this matter.

Sincerely,



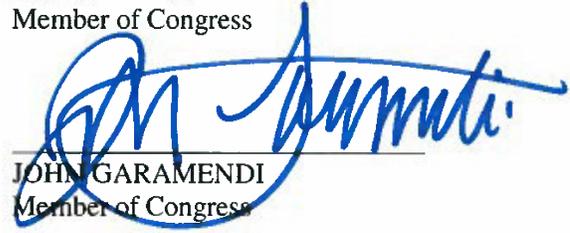
DORIS O. MATSUI
Member of Congress



GEORGE MILLER
Member of Congress



MIKE THOMPSON
Member of Congress

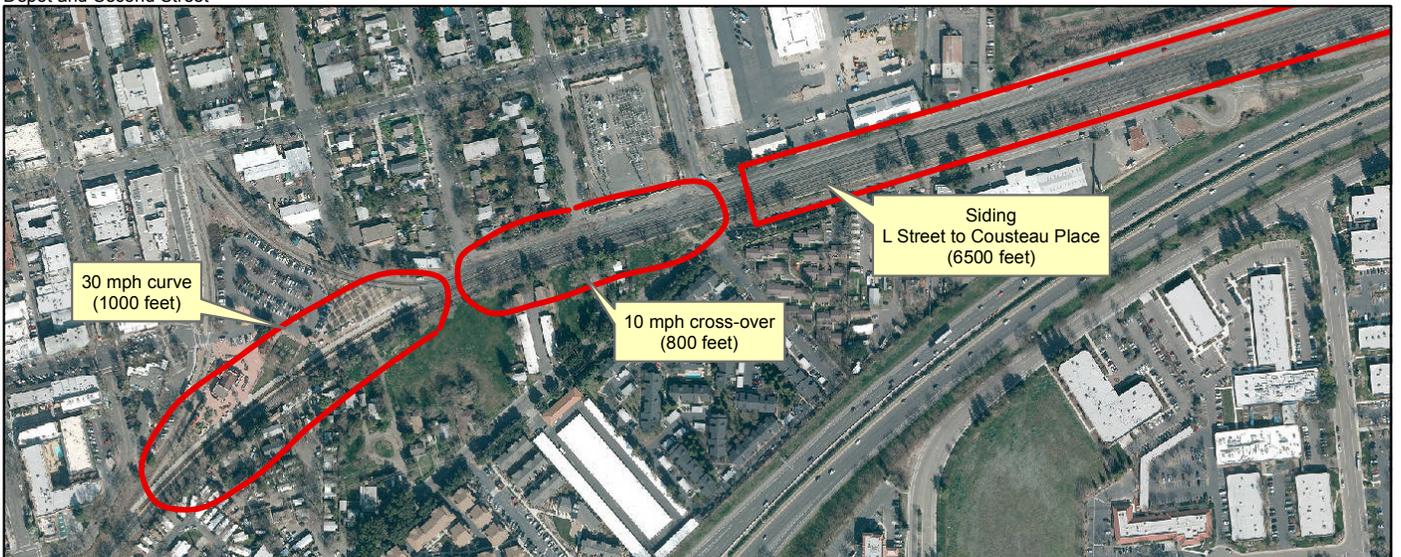


JOHN GARAMENDI
Member of Congress



Davis

Depot and Second Street



Union Pacific Railway
Davis, California

UP Railroad.mxd

§ 179.204 Individual specification requirements applicable to DOT-117 tank car tanks.

§ 179.204-1 Applicability.

Each tank built under these specifications must conform to either the requirements of §§ 179.204-1 through 179.204-10, or the performance standard requirements of § 179.204-11.

§ 179.204-3 Type.

(a) *General.* The tank car must either be designed to the DOT 117 specification or conform to the performance specification prescribed in § 179.204-11.

(b) *Approval.* The tank car design must be approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590, and must be constructed to the conditions of that approval in accordance with § 179.13.

(c) *Design.* The design must meet the individual specification requirements of § 179.204.

§ 179.204-4 Thickness of plates.

The wall thickness after forming of the tank shell and heads must be, at a minimum, 7/16 of an inch AAR TC-128 Grade B, in accordance with § 179.200-7(b).

§ 179.204-5 Tank head puncture resistance system.

The DOT 117 specification tank car must have a tank head puncture resistance system. The full height head shields must have a minimum thickness of 1/2 inch.

§ 179.204-6 Thermal protection systems.

The DOT 117 specification tank car must have a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

§ 179.204-7 Jackets.

The entire thermal protection system must be covered with a metal jacket of a thickness not less than 11 gauge

A1011 steel or equivalent; and flashed around all openings so as to be weather tight. The exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket must be given a protective coating.

§ 179.204-8 Bottom outlets.

If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

§ 179.204-9 Top fittings protection.

The tank car tank must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

§ 179.204-10 DOT 117 design.

The following is an overview of design requirements for a DOT Specification 117 tank car.

DOT specification	Insulation	Bursting pressure (psig)	Minimum plate thickness (inches)	Test pressure (psig)	Bottom outlet
117A100W ...	Optional	500	7/16	100	Optional.

§ 179.204-11 Performance standard requirements.

(a) *Approval.* Design, testing, and modeling results must be reviewed and approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration (FRA), 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) *Approval to operate at 286,000 gross rail load (GRL).* In addition to the requirements of paragraph (a) of this section, the tank car design must be approved, and the tank car must be constructed to the conditions of an approval issued by the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, in accordance with § 179.13.

(c) *Puncture resistance.*

(1) Minimum side impact speed: 9 mph when impacted at the longitudinal and vertical center of the shell by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(2) Minimum head impact speed: 17 mph when impacted at the center of the head by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(d) *Thermal protection systems.* The tank car must be equipped with a thermal protection system. The thermal

protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(e) *Bottom outlet.* If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

(f) *Top fittings protection.*

(1) *New construction.* The tank car tank must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

(2) *Existing tank cars.* Existing tank car tanks may continue to rely on the equipment installed at the time of manufacture.

Issued in Washington, DC, on July 23, 2014, under authority delegated in 49 CFR 1.97.

Anthony R. Foxx,
Secretary of Transportation.

[FR Doc. 2014-17764 Filed 7-31-14; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 130 and 174

[Docket No. PHMSA-2014-0105 (HM-251B)]

RIN 2137-AF08

Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: PHMSA is issuing this ANPRM in conjunction with a notice of proposed rulemaking (NPRM)—Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (2137-AE91), which PHMSA is also publishing today. In this ANPRM, PHMSA, in consultation with the Federal Railroad Administration (FRA), seeks comment on potential revisions to its regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard

flammable trains (HHFTs) based on thresholds of crude oil that apply to an entire train consist.

DATES: Comments must be received by September 30, 2014.

ADDRESSES: You may submit comments identified by the docket number PHMSA-2014-0105 (HM-251B) by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* To the Docket Management System; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office located at U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely filed comments will be fully

considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

FOR FURTHER INFORMATION CONTACT: Rob Benedict, (202) 366-8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590-0001; Karl Alexy, (202) 493-6245, Office of Safety Assurance and Compliance, Federal Railroad Administration; or Roberta Stewart, (202) 493-1345, Office of Chief Counsel, Federal Railroad Administration.

SUPPLEMENTARY INFORMATION:

Background

The Federal Water Pollution Control Act (FWPCA) as amended by the Oil Pollution Act of 1990 (OPA), directs the President, at section 311(j)(1)(C) (33 U.S.C. 1321(j)(1)(C)) and section 311(j)(5) (33 U.S.C. 1321(j)(5)), respectively, to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil¹ and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.” OPA directs the President to issue regulations requiring owners and operators of certain vessels and onshore and offshore oil facilities to develop, submit, update and in some cases obtain approval of OSRPs. 33 U.S.C. 1321(j)(5), Pub. L. 101-380 (1990). The authority to regulate transportation-related onshore facilities (i.e., motor carriers and railways) was later delegated to PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA).

On June 17, 1996, RSPA published a final rule issuing requirements that meet the intent of the FWPCA (61 FR 30533). This rule adopted requirements for packaging, communication, spill response planning, and response plan implementation intended to prevent and contain spills of oil during transportation. Regarding spill response planning, a basic OSRP is required for oil shipments in a packaging having a capacity of 3,500 gallons or more and a comprehensive OSRP is required for oil

shipments in a package containing more than 42,000 gallons (1,000 barrels).

RSPA clarified that the purpose of an OSRP is to ensure that personnel are trained and available and equipment is in place to respond to an oil spill, and that procedures are established before a spill occurs, so that required notifications and appropriate response actions will follow quickly when there is a spill. Neither the basic nor the comprehensive OSRP is required to address response on a vehicle- or location-specific basis. A nationwide, regional or other generic plan is acceptable, provided that it covers the range of spill scenarios that the owner or operator foreseeably could encounter. Thus, scenarios ranging from a minor discharge to a “worst-case discharge,” must be addressed, as well as the range of topographical and climatological conditions the owner or operator may face. The OSRP also must describe the response when the discharge results from, or is accompanied by, a complicating condition, such as explosion or fire. RSPA outlined that a comprehensive OSRP must, at a minimum, address the following:

- (1) Range of response scenarios that foreseeably could occur;
- (2) Qualified individual, the alternate qualified individual, and all other personnel with a role in spill response;
- (3) Training, including drills, required for each of these persons;
- (4) Equipment necessary for response to the maximum extent practicable in each of the identified scenarios;
- (5) Means by which the availability of personnel and equipment will be ensured to respond to a spill to the maximum extent practicable;
- (6) Governmental officials and others to be notified in the event of a spill, and the notification procedure to be followed;
- (7) Means for communicating among responsible personnel and between personnel and officials during a response; and
- (8) Procedures to be followed during a response.

The following table outlines the specific differences between a basic and comprehensive OSRP. The shaded rows of the table indicate requirements that are not part of the basic OSRP, but are included in the comprehensive OSRP.

¹ For purposes of 49 CFR Part 130, *oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse,

and oil mixed with the wastes other than dredged spoil. 49 CFR 130.5. This includes non-petroleum oil such as animal fat, vegetable oil, or other non-

petroleum oil. Ethanol is not included in this definition.

Category	Requirement	Type of OSRP	
		Basic	Comprehensive
Preparation	Sets forth the manner of response to a discharge.	Yes	Yes
Preparation	Accounts for the maximum potential discharge of the packaging.	Yes	Yes
Personnel / Equipment	Identifies private personnel and equipment available for response.	Yes	Yes
Personnel / Coordination	Identifies appropriate persons and agencies (including telephone numbers) to be contacted, including the NRC.	Yes	Yes
Documentation	Is kept on file at the principal place of business and at the dispatcher's office.	Yes	Yes
Coordination	Reflects the requirements of the National Contingency Plan (40 CFR Part 300) and Area Contingency Plans.	No	Yes
Personnel / Coordination	Identifies the qualified individual with full authority to implement removal actions, and requires immediate communications between the individual and the appropriate Federal official and the persons providing spill response personnel and equipment.	No	Yes
Personnel / Equipment / Coordination	Identifies and ensures by contract or other means the availability of, private personnel, and the equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including that resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge.	No	Yes
Training	Describes the training, equipment, testing, periodic unannounced drills, and response actions of personnel, to be carried out under the plan to ensure safety and to mitigate or prevent discharge or the substantial threat of such a discharge.	No	Yes
Documentation	Is submitted (and resubmitted in the event of a significant change), to the Administrator of FRA.	No	Yes

Request for Public Comment

As discussed above, we believe that most, if not all, of the rail community transporting oil, including crude oil transported as a hazardous material, is subject to the basic OSRP requirement of 49 CFR 130.31(a), based on the understanding that most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive OSRP for shipment of oil is only required when the oil is in a quantity greater than 42,000 gallons per package. Accordingly, the number of railroads

required to have a comprehensive OSRP is much lower, or possibly non-existent, because a very limited number of rail tank cars in use would be able to transport a volume of 42,000 gallons in a single package.²

In setting the current OSRP threshold quantities, RSPA relied on the FWPCA mandate for regulations requiring a comprehensive OSRP to be prepared by an owner or operator of an onshore

² The 2014 AAR's Universal Machine Language Equipment Register (UMLER) numbers showed 5 tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

facility that, "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone." 33 U.S.C. 1321(j)(5)(C)(iv). For a more detailed discussion of RSPA's codification of the OSRP requirements into the HMR and the corresponding mandates from the FWPCA which were the baseline for such regulations, see the background section of RSPA's June 17, 1996, final rule (61 FR 30532). In that final rule, RSPA discussed a 1,000,000-gallon threshold that would apply to

shipments rather than packages as an option. Specifically, RSPA stated,

Conversely, the 1,000,000-gallon threshold adopted by EPA [Environmental Protection Agency] is contingent on several factors, including restrictive provisions that the facility may not transfer oil over water to or from vessels and that the facility's proximity to a public drinking water intake must be sufficiently distant to assure that the intake would not be shut down in the event of a discharge. Further, the EPA threshold refers to the capacity not of a single fixed storage tank, but of the entire facility, including barrels and drums stored at the facility. In summary, this example also is not analogous to hazards routinely encountered during transportation by railway and highway.

During the June 28, 1993 public meeting, the "substantial harm" threshold was discussed at length, but participants did not agree on what volume of oil reasonably could cause substantial harm to the marine environment. Also, the 42,000-gallon threshold is supported by a number of comments to the docket citing its use by the EPA in related sections of the Code of Federal Regulations. Consequently, RSPA believes its determination to use a threshold value of 42,000 gallons in a single packaging is appropriate and reasonable.

In the past, and in the absence of agreement among participants in the rulemaking process on a volume of oil that could reasonably be expected to cause substantial harm to the environment, we stated that 42,000 gallons in a single packaging is a reasonable quantity of liquid for a finding of substantial harm. As discussed in the June 17, 1996, RSPA final rule, an incident involving the transportation of 1,000,000 gallons of crude oil could cause substantial harm, even if not in a single packaging. This finding is consistent with Facility Response Plans (FRPs) for "substantial harm" sites (see 40 CFR 112.20 and 112.21). FRP facilities require an approved plan for one million gallons or more of oil storage capacity, or transfers of oil over water in vessels that have oil storage capacities of 42,000 gallons or more. While a single tank car is not likely to hold 42,000 gallons of crude oil, the increasing reliance on HHFTs¹ poses a risk that was not considered when RSPA made its determination on that threshold.

The consequences, including environmental impacts, of a derailment of an HHFT have been demonstrated in recent train accidents in Lac Mégantic, Quebec, Canada; Aliceville, AL; and

Casselton, ND.² On January 23, 2014, in response to its investigation of the Lac Mégantic accident,³ the National Transportation Safety Board (NTSB) issued three recommendations to PHMSA. Of note here is Safety Recommendation (SR) R-14-5,⁴ which requested that PHMSA revise the spill response planning thresholds prescribed in 49 CFR Part 130 to require comprehensive OSRPs that effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products. In this recommendation, the NTSB raised a concern that, "Because there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden of remediating the environmental consequences of an accident on local communities along their routes." In light of these accidents and NTSB SR R-14-5, PHMSA is now re-examining whether it is more appropriate to consider the train in its entirety when setting the threshold for comprehensive OSRPs.

Considering the typical 30,000-gallon capacity rail tank car used for the transport of crude oil, a 1,000,000-gallon threshold for oil on a train would translate to requiring a comprehensive OSRP for trains composed of approximately thirty-five cars of crude oil; all of the aforementioned train accidents involved train consists⁵ with more than 70 tank cars of crude oil, and PHMSA expects the business practices for HHFTs would result in train consists that exceed 35 crude oil cars. Using a 42,000 gallon per train consist threshold, PHMSA expects that a train consist with two crude oil carloads would trigger the requirement for comprehensive OSRPs; PHMSA seeks comment below on what impact that would have on current business practices for shipping crude oil by rail.

In order to inform a potential future NPRM that would adjust threshold quantities to trigger comprehensive OSRP requirements for HHFTs, PHMSA seeks comments on the questions below. The most helpful comments reference a specific portion of the ANPRM, explain

² For more extensive discussion of recent accidents involving crude oil transportation by rail, please see the NPRM for 2137-AE91, published today.

³ <http://www.bst-tsb.gc.ca/eng/enquetes-investigations/rail/2013/R13D0054/R13D0054.asp>.

⁴ <http://www.nts.gov/doclib/recletters/2014/R-14-004-006.pdf>.

⁵ A train consist is considered the rolling stock, exclusive of the locomotive, making up a train.

the reason for any recommended change, include supporting data, and explain the source, methodology, and key assumptions of the supporting data.

1. When considering appropriate thresholds for comprehensive OSRPs, which of the following thresholds would be most appropriate and provide the greatest potential for increased safety? What thresholds would be most cost-effective?

a. 1,000,000 gallons or more of crude oil per train consist;

b. An HHFT of 20 or more carloads of crude oil per train consist;

c. 42,000 gallons of crude oil per train consist; or

d. Another threshold.

2. In exploring the applicability of comprehensive OSRP requirements to trains carrying large volumes of crude oil, are the requirements of comprehensive OSRPs clear enough for railroads and shippers to understand what would be required of them? If not, what greater specificity should be added?

3. In exploring the applicability of comprehensive OSRP requirements to trains carrying large volumes of crude oil, are there elements that should be added, removed, or modified from the comprehensive OSRP requirements? Please consider the regulations covering other modes of transporting crude oil (such as pipelines), and the relevant differences between modes of operation, in your response.

4. What costs might be incurred in developing comprehensive OSRPs and submitting them to FRA for approval? To the extent possible, please provide detailed estimates.

5. What costs might be incurred to procure or contract for resources to be present to remove discharges? In these estimates, what are your assumptions about the placement of equipment along the track, types of equipment, and maximum time to contain a worst-case discharge?

6. What costs might be incurred to conduct training, drills, and equipment testing? To the extent possible, please provide detailed estimates.

7. It is assumed that most railroads and shippers currently have basic OSRPs in place. What, if any, aspects beyond the basic plan requirements do these plans voluntarily address? To what extent do current plans meet the comprehensive OSRP requirements, including procurement or contracting for resources to be present to respond to discharges?

8. To what extent should recent commitments to the Secretary of Transportation's "Call to Action," and other voluntary industry actions, inform the exploration of additional planning requirements for trains carrying large volumes of crude oil? For example, how should voluntary emergency response equipment inventories and hazardous material training efforts be factored into the exploration of additional planning requirements? Should PHMSA require that resources be procured to respond on a per route basis, or at the state/county/city/etc. level? What is the rationale for your response?

¹ In today's NPRM 2137-AE91, the proposed definition for an HHFT in section 171.8 is: 20 or more carloads in a single train of a Class 3 flammable liquid. This definition does not include combustible liquids.

9. Should PHMSA require that the basic and/or the comprehensive OSRPs be provided to State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Fusion Centers, or other entities designated by each state, and/or made available to the public?

Should other federal agencies with responsibilities for emergency response under the National Contingency Plan (e.g. U.S. Coast Guard, EPA) also review and comment on the comprehensive OSRP with PHMSA?

Issued in Washington, DC, on July 23, 2014, under authority delegated in 49 CFR 1.97.

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2014-17762 Filed 7-31-14; 8:45 am]

BILLING CODE 4910-60-P

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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)

We the undersigned appreciate 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 at significant risk. The signatories to this letter are public agencies with public safety and emergency response responsibilities, employ first responders, or are associations of such public agencies. In fulfilling these obligations, we have come to appreciate that prevention is far superior to emergency response and clean up and is far less costly, in monetary and personal safety terms, to both individuals and communities.

The Sacramento Area Council of Governments is an association of local governments in the six-county Sacramento Region. Its members include the counties of El Dorado, Placer, Sacramento, Sutter, Yolo and Yuba as well as 22 cities. SACOG provides transportation planning and funding for the region, and serves as a forum for the study and resolution of regional issues. The California State Association of Counties represents 58 county governments before the California Legislature, administrative agencies and the federal government. The League of California Cities is an association of 476 California 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. The City of Davis is the largest city in Yolo County, with a population 72,000, not including the on-campus population of the University of California, Davis.

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

As 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 County 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 [redacted] 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 [redacted] or not commercially used until recent years.

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Given the volumes of Bakken 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. In the larger Sacramento region, more than [REDACTED] people live and work within [REDACTED] feet/miles of the [REDACTED] (UPRR; BNSF RR) lines between [REDACTED] and [REDACTED]. 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 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

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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 UPRR 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 adopted over the last [REDACTED] years 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 type 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.

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

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Specific Proposals

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. We believe that this process, which could require the construction of small processing towers known as stabilizers, is a known technology and is common in other parts of the country that produce crude oil with volatile elements. The use of stabilizers would be cost-effective and would greatly reduce risk of fire and explosion. This would benefit not only urban and rural communities, but farm land, habitat, and wilderness areas through which these crude oil shipments travel.

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.

We also have the following recommendations:

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 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 so-called Sacramento Area high threat urban area covers only half of the City of Davis, stopping just short of the downtown area. 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 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. **[Insert discussion of populations and attach maps.]** 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.

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.

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Study the risks of multi-car Trains: We call for more study to ascertain the relative risks from a 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 strongly 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.

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: We provide first responder emergency response in our communities and we are required to respond to greater and more varied types of risks. Consequently, we 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

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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.

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 for no longer than [REDACTED] hours. 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

Summary and list of suggested actions

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