



January 24, 2014

The Honorable Anthony Foxx  
United States Secretary of Transportation  
U. S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**VIA E-MAIL**

Dear Secretary Foxx,

We are writing to you as the co-chairs of a Coalition of local governments in the greater Chicagoland area known as TRAC. Because of the large number of trains that pass through our communities on a daily basis, many of which are located on the Canadian National Railroad's EJ&E line that runs in an arc through dozens of Chicago suburbs and promises to be the likely route over which CN will transport unit trains of crude oil, we have been quite concerned about matters of rail safety in the transport of explosive and flammable hazmat for some time.

Following the National Transportation Safety Board's release in 2012 of its investigation into the tragic incident in the neighboring community of Cherry Valley, Illinois that killed one woman and injured nine others when a unit train of ethanol derailed, we have been focused on the defective DOT-111 tank cars that are the primary rail cars used for the transportation of highly explosive hazmat like crude oil, ethanol, and petroleum mixes. As the NTSB's report highlighted, federal regulators have known since 1991 that the DOT-111 has a high propensity to rupture in derailment scenarios. It also laid out recommendations for specific retrofits that can be performed on these tank cars to make them safer. Following the catastrophic incident that occurred last July in Lac-Mégantic, in which 60 of the 63 DOT-111 tank cars that derailed ruptured, resulting in the deaths of 47 innocent victims and losses that are now estimated by local town officials at up to \$2 billion, the public has become aware of the dangers inherent in the DOT-111 and is demanding answers as to why this tank car continues to be used in the transportation of highly explosive hazardous materials.

We are seeking some clarification from you about the decisions made at the January 16 private meeting you convened with representatives of the railroad and oil industries – especially in light of yesterday's recommendations by the NTSB on rerouting crude-by-rail (CBR) outside of major cities. Not only have the media reports been quite vague about details, but they also present conflicting views as to what has been decided beyond the scope of the ongoing rulemaking proceeding that is currently pending at the Pipeline and Hazardous Materials Safety Administration (PHMSA).

On the one hand, we were very pleased to see that you had initiated this meeting, as we believe it demonstrates a clear sense of urgency around an issue that has been back-burnered for way too long. The past year's history of multiple explosive derailments of CBR tank cars is a grim wake-up call that aggressively addressing known defects with the existing and newly manufactured fleet of DOT-111 tank cars must become ***the***

top priority for federal hazmat and rail regulators. On the other hand, we find it unacceptable that USDOT would have excluded the only local government party in the ongoing PHMSA rulemaking proceeding that filed substantive comments and represents the interests of the many communities in the United States through which unit trains composed of defective DOT-111 tank cars pass on a daily basis laden with highly explosive crude oil and ethanol.

If the reports in the media are to be believed, the interests of smaller suburban and rural communities throughout the United States seem to have been sacrificed, with the winners being the country's major cities if – and only if -- they have no proximate refineries that would preclude a reroute. By taking the smoke and mirrors step of rerouting these rolling tank car bombs through smaller communities, regulators place them in the very areas where the mustering of trained emergency response teams with the ability and resources to contain a catastrophic event cannot even begin to match the response capabilities of large urban areas.

Simply stated, the compromise that has been struck is a lose/lose solution for both the safety of the American public and involved industries that will continue to be liable for using tank cars unsuitable for the transport of these explosive commodities. Furthermore, this exculpatory solution by regulators seems to be giving industry a pass for its negligent failure to respond in a timely fashion to the grave warnings issued by the NTSB over the past 20-plus years urging that the DOT-111 be built to more robust safety standards. If those recommendations had seen any responsive action on a timely basis, we would not now be at this crossroads where regulators must weigh protecting public safety against potential negative impacts on U.S. energy independence.

TRAC believes the U.S. Department of Transportation must fast-track efforts to create DOT-111 tank cars standards that serve the interests of ***ALL*** Americans by getting to the root problem of using a tank car that escalates a simple derailment into a catastrophic incident. In support of that goal, we have taken every opportunity provided by federal regulators to comment from the perspective of local governments relative to these critical issues of public safety, including testimony at the August 2013 joint public meeting held by PHMSA and the FRA. Additionally, we have been working with the National League of Cities and the Union of Quebec Municipalities to get the word out to other local governments about the dangers involved in the continued use of DOT-111 tank cars for the transport of flammable and/or explosive commodities.

As the former mayor of Charlotte, I'm sure you can understand why we are so concerned about this matter – especially in light of this week's startling report by McClatchy's Curtis Tate that it has determined after it analyzed federal data that more oil was spilled from trains in the U.S. in 2013 than in every year between 1975 and 2012 combined. Local governments have the responsibility of responding when something goes wrong. It's local governments that must deal with the consequences of these accidents – both the immediate response and what must be done in the aftermath of a worst case scenario event.

Representatives of TRAC had the opportunity to travel to Lac-Mégantic, Quebec this past December to meet with local government leaders there and tour the disaster zone that resulted from that cataclysmic derailment that occurred just days after you were sworn into your position heading USDOT. It was an eye-opening experience to understand what occurred there, and know how taxpayers are being burdened with remediation and rebuilding costs because the involved railroad declared bankruptcy. We highly encourage you to make a similar trip to Lac-Mégantic so you can fully understand the tragic consequences of failing to act in a timely fashion. We respectfully submit that such a visit would leave an indelible impression on you, and help you

understand why we bring such a sense of urgency to our requests of regulators to act expeditiously in getting the existing defective DOT-111 tank car fleet removed from crude, ethanol and petroleum service.

Despite the unequivocal evidence of a need for prompt action, the January 2014 USDOT publication providing a timetable for the Department's active rulemaking procedures indicated a prolonged review on addressing the fleet of DOT-111 tank cars despite all of the studies, meetings, and reviews that have occurred on the matter since 1991. Apparently, PHMSA plans to release a final rule for comment in November of this year with stakeholder comments not due until January of 2015. Why is this necessary? TRAC believes that such a timeline that sets a goal on needing yet another year to conclusively address the defects associated with the DOT-111 tank car is nothing more than a continuance of the foot-dragging that has become the hallmark of the regulatory history with this tank car. It would be one thing if the defects with the DOT-111 had only recently come to light; however, given the twenty plus years that have passed since the NTSB first called industry's attention to the defective nature of the DOT-111, USDOT's sanctioning of additional years of inaction is unconscionable.

When we initially filed our petition for rulemaking with PHMSA in April 2012, all segments of industry were aligned against a retrofit of the existing fleet. Since that time, opinions have changed and the railroad industry is on board with accelerated action due to a combination of its common carrier obligations and liability concerns. Most recently, one of the tank car manufacturers (The Greenbrier Companies) announced its support for a DOT-111 retrofit program. To the extent that there are issues, financial or otherwise, that stand in the way of speedy action by industry in meeting an aggressive retrofit challenge, we suggest that regulators and Congress work in partnership to address those issues from the perspective of incentivizing immediate action rather than accepting that very little can be done to jumpstart retrofit efforts. A lengthy phase-out period on the use of these defective tank cars accomplishes nothing more than endangering the American people through ongoing use of a rail car that has been a known – but ignored threat – for far too long.

We thank you for your attention to this critical matter, and look forward to hearing from you at your earliest opportunity to provide clarification around the issues we have raised. In addition, we would welcome the opportunity to brief you personally about this issue, as well as initiate a conversation on how best to handle the liability costs incurred in cleaning up and rebuilding after one of these catastrophic derailments.

Sincerely,



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