

September 26, 2016

Administrator Marie Therese Dominquez  
Docket Management System  
U.S. Department of Transportation  
West Building, Ground Floor, Room W12-140  
Routing Symbol M-30  
1200 New Jersey Ave, S.E.  
Washington, DC 20590

**RE: Notice of Proposed Rulemaking  
Pipeline and Hazardous Material Safety Administration  
Docket No. PHMSA-2014-0105 (HM-251B)  
RIN 2137-AF08  
*Hazardous Materials: Oil Spill Response Plans and Information Sharing  
for High-Hazard Flammable Trains***

Dear Ms. Dominguez,

On behalf of the Pacific States/ British Columbia Oil Spill Task Force (Task Force), I am submitting this letter regarding the notice of proposed rulemaking addressing oil spill response plans and information sharing for railroads.

The Task Force consists of a coalition of West Coast states (Alaska, California, Hawaii, Oregon and Washington) and the Province of British Columbia, that share a common goal of protecting the region's natural resources and communities from oil spills. Over the past 5 years, movement of Bakken crude across the Northwest and California has increased dramatically from negligible volumes in 2010, to approximately 65 million barrels transported by rail through Washington, Oregon and California in 2015<sup>1</sup>. Given this growth of crude oil by rail across the West Coast, we have significant concerns about states ability to fully prepare and respond to rail spills.

I have provided comments on four issues where the Task Force has concerns regarding to the proposed rulemaking:

### **1. Federalism**

West Coast States have relied on the national framework for oil spill planning and response for the federal government, state and local governments, and industry as

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<sup>1</sup> Sources: WA Department of Ecology, OR Dept. of Environmental Quality, and CA Office of Spill Prevention and Response

provided for by the Clean Water Act (CWA) and the Oil Pollution Act of 1990 (OPA). By PHMSA continuing to base the oil spill response plan requirements of 49 CFR Part 130 on the authority of the CWA, the proposed rule continues to further the national framework for oil spill planning and response. This national framework is imperative for States so they can protect their waters from the harm of oil spills, in partnership with the federal government.

While the Federal Railroad Safety Act and the Hazardous Materials Transportation Act may preempt State laws that focus on rail safety (e.g. licensing, design, staffing and operation), states retain CWA authority to impose oil spill planning requirements. Response plans are not relevant to traditional railroad safety or operational requirements. Oil spill response planning pursuant the CWA is designed to minimize the environmental harm of spilled oil from reaching state waters independent of the train and its normal operation.

The Task Force appreciates and supports PHMSA's continuance and proper reliance of CWA authority and its national framework of federal and state action.

## **2. Railroad Information Sharing**

We appreciate PHMSA's assertion in the NPRM that information on crude by rail shipments should be made available to first responders and the public. This is consistent with PHMSA's previous determination that crude by rail information that is required to be reported by rail carriers is not business confidential or proprietary information, nor is the information security sensitive. [See 79 FR 59891].

We believe that there will be confusion by providing rail carriers the ability to give notice to states that they believe the information being provided is security sensitive or proprietary and exempt from public disclosure. A state receiving the notice from the rail carrier may assume that the information is exempt from public disclosure based solely on the railroad's stated belief, despite PHMSA's understanding of the public disclosure status of this information. For this reason we recommend removing subsection 174.312(a)(2)(iii) of the proposed rule in order to avoid this confusion.

## **3. Basic Response Plans & the Clean Water Act**

The Task Force notes the Clean Water Act does not make a distinction between "basic" response plans and "comprehensive" response plans. The NPRM explains the response plan elements required by the Clean Water Act [81 F.R. 50076, Tables 4 and 5], however, the rulemaking retains this distinction. For example, a basic plan is not required to demonstrate an actual contract with a cleanup contractor, designation of a Qualified Individual, any drills or exercise requirements, or consistency with Area Contingency Plans.

The Task Force is concerned that the “basic” response plan requirements do not provide sufficient protection for the environment or the public. They should at least contain the statutory minimums of the CWA.

#### 4. Scope & Short Lines

Short lines will not meet the criteria of any single train transporting 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train transporting 35 or more loaded tank cars of liquid petroleum oil throughout the train consist. However, several short line railroads on the West Coast will be transporting multiple tank cars of oil within their consist, yet they will not be required to have any of “comprehensive” response plan elements this NPRM is establishing.

Short line railroads would be free to transport 19 tank cars consecutively or up to 34 tank cars within a consist. This could be close to 1,000,000 gallons of oil.

There are significant State waterways along the West Coast that would have little guarantee of adequate response with “basic” response plans. Short line railroads carrying oil as cargo should be prepared for spills beyond the “basic” requirements currently in Part 130.

In conclusion, I thank you for considering the Task Force’s comments and recommendations contained in this letter regarding the proposed rulemaking. We appreciate PHMSA’s efforts to improve the safety in transportation of oil by rail in our region.

Respectfully submitted,



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Executive Coordinator  
Pacific States/British Columbia Oil Spill Task Force