

June 30, 2021; **additional groups added August 1, 2021, letter resent**

Re: PHMSA Special Permit DOT-SP 20534 for LNG Transport by Rail Car

Dear President Biden,

We are writing to ask your Administration to take an action that is urgently needed to provide protection to environmental justice communities in New Jersey and Pennsylvania that are threatened by the transport of liquefied natural gas (LNG) by rail car under a Special Permit issued by the Trump Administration. The Special Permit allows LNG to be transported by rail through one of the most densely-populated areas of the nation, notwithstanding the Department of Transportation's forthcoming suspension of this activity pending further analysis.

On December 5, 2019, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued Special Permit DOT-SP 20534 to Energy Transport Solutions authorizing the transportation in commerce of methane, refrigerated liquid in DOT specification 113C120W tank cars.¹ This permit authorizes the first and only use in the nation of DOT 113C120W tank cars, which have never been tested for carrying LNG on railways.

The rail cars were designed 50 years ago and not intended for the transportation of LNG, but for other cryogenic materials. They are being repurposed to transport LNG in this Special Permit. Through the PHMSA public process, our organizations objected to the proposed issuance of this permit based on public safety concerns and environmental grounds. PHMSA issued the permit despite many objections from the public and organizations.

This permit allows rail tank cars that have not been proven safe for the transport of LNG, a hazardous, flammable, and potentially explosive cargo. The complex and unique dangers of LNG have not been fully studied by the appropriate government agencies but the permit was nonetheless rushed to approval under the Trump Administration, endangering lives and the environment with potential catastrophe, should there be a release of LNG.

The actions authorized by the Special Permit are reckless and ill-considered and pose unacceptable dangers that cannot be justified. An environmental impact statement was not prepared under the National Environmental Policy Act, leading to a wholly inadequate environmental review. What is known about the properties of LNG justifies the suspension of this Special Permit. We are asking you to rescind the Special Permit, which is set to expire on November 30, 2021.

¹ <https://www.phmsa.dot.gov/safe-transportation-energy-products/liquefied-natural-gas-transportation-rail>

We are encouraged that the Administration has listed two rulemaking actions in its upcoming regulatory agenda addressing the transportation of LNG by rail on the nation's railways under PHMSA federal regulations. As stated:

“PHMSA proposes to amend the Hazardous Materials Regulations (HMR) to suspend authorization of liquefied natural gas (LNG) transportation by rail pending completion of the companion rulemaking under RIN 2137-AF54.”²

“This rulemaking would amend the Hazardous Materials Regulations governing transportation of liquefied natural gas (LNG) in rail tank cars. This rulemaking action would incorporate the results of ongoing research efforts and collaboration with other Department of Transportation Operating Administrations and external technical experts; respond to a mandate in Executive Order 13990 for PHMSA to review recent actions that could be obstacles to Administration policies promoting public health and safety, the environment, climate change mitigation; and provide an opportunity for stakeholders to contribute their perspectives on rail transportation of LNG.”³

We are asking your Administration to take action now on Special Permit DOT-SP 20534 for the same reasons that your Administration is using to suspend the federal rulemaking. Special Permit DOT-SP 20534 was issued for use by Energy Transport Solutions from a planned LNG liquefaction plant in Wyalusing Township, Bradford County, PA to the Gibbstown Logistics Center in Gibbstown, Greenwich Township, Gloucester County, NJ on the Delaware River.

The proposal to export LNG by ship from the Gibbstown deepwater port has not been fully authorized at this time and the export dock has not been constructed. The route would commence, end and travel through hundreds of communities in both Pennsylvania and New Jersey. The rail route directly exposes communities of color and low-income populations, already overly burdened with environmental injustices, with this unjust and intolerable risk.⁴ The probable rail route exposes these environmental justice communities with the most intense and inescapable impacts should there be an LNG vapor cloud release, fire, or explosion.

Subsequent to the issuance of the Special Permit, PHMSA issued RIN 2137–AF40, Hazardous Materials: Liquefied Natural Gas by Rail, 49 CFR Parts 172, 173, 174, 179, and 180, [Docket No. PHMSA–2018–0025 (HM–264)]⁵, a rule authorizing the bulk transportation of LNG by rail tank car for carriers nationwide. In that rule, PHMSA included specifications based on public comments received by the agency concerning

² <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2137-AF55>

³ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2137-AF54>

⁴ <https://www.delawareriverkeeper.org/taxonomy/term/1174>

⁵ **Federal Register** / Vol. 85, No. 143 / Friday, July 24, 2020 / Rules and Regulations, p. 44994

safety. One was the requirement for enhancements to the outer tank, which was indicated by a new specification suffix "9" (DOT-113C120W9).⁶ As stated in the rule:

"Finally, in this final rule PHMSA is also adopting enhanced outer tank requirements compared with the requirements that apply to other DOT-113C120W-specification tank cars, including a thicker 9/16th inch outer tank made from high quality TC-128B normalized steel."⁷

However, Special Permit DOT-SP 20534 does not have the condition that was imposed in the federal rule requiring the enhancement of the outer tank in the design of the DOT-113C120W9 rail tank cars. The Special Permit that authorizes the use of the old design rail tank cars is obviously allowing substandard rail tank cars to be utilized – cars that were considered and rejected by PHMSA in the subsequent federal rulemaking. The communities in Wyalusing, Gibbstown, and all those in between should not be forced to bear the risks DOT seeks to eliminate in its suspension of the LNG by rail rule.

We ask that Special Permit DOT-SP 20534 be suspended by PHMSA immediately to provide fair and equal treatment under federal regulations and to prevent potentially disastrous consequences for the public and the environment. In short, we are asking you to provide equal protection to all Americans.

Thank you for your attention to this important matter.

Sincerely and respectfully submitted,

Representatives of the Delaware River LNG Coalition, in alpha order:

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⁶ *Id.*

⁷ *Id.*, p. 44996

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CC: Brenda Mallory, Chair of the Council on Environmental Quality
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