



September 26, 2014

U.S. Department of Transportation
West Building, Ground Floor, Room W12-140, Routing Symbol M-30
1200 New Jersey Avenue, S.E.
Washington, DC 20590

RE: Comments on ANPRM for Oil Spill Response Plans (OSRP) for High Hazard Flammable Trains, Docket no. PHSMA-2014-0105 (HM-251B)

Delaware Riverkeeper Network submits this comment letter in response to the U.S. Department of Transportation and Pipeline and Hazardous Materials Safety Administration's Public Notice for comment on Docket No. PHSMA-2014-0105 (HM-251B), Advanced Notice of Proposed Rulemaking for Oil Spill Response Plans (OSRP) for High Hazard Flammable Trains.

Delaware Riverkeeper Network is dedicated to the Delaware River Watershed, the protection and restoration of all its communities and represents our members who live within and outside of the Watershed.

We support a rulemaking that will improve oil spill response planning for high hazard flammable trains. According to PHMSA, more than 1.15 million gallons of crude oil was spilled from rail cars in 2013, which is more oil than was spilled in the prior 37 years combined. Especially when oil enters a stream or river, it can significantly harm water quality, species and their habitat, and can have human health effects.

Prevention of spills is the first defense required but preparedness to respond quickly and effectively to oil spills and oil train accidents is crucial to prevent environmental and human health damages multiplying when a derailment or other oil train accident occurs. The marked increase in accidents involving high hazard flammable trains mandates urgent action by the federal government to greatly improve emergency planning, response, and public involvement which currently is inadequate and exposes communities to unacceptable risks.

Comment on threshold question

We support PHMSA's decision to consider a crude oil train in its entirety and not just individual tank car capacity when determining the threshold for comprehensive OSRPs. This is

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partly due to the fact that if one rail car derails, others will likely derail. In addition to decreasing the threshold for a comprehensive OSRP, area-specific comprehensive plans should be required for each inland or coastal area with an EPA or Coast Guard Area Contingency Plan through which the rails run.

Responses to individual requests for comment

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 24,000 gallon per train threshold should trigger a comprehensive OSRP. This threshold will be met by one crude oil tank car. This is the correct threshold to set because if released, this amount of crude oil can cause substantial harm to the environment. For example, a spill of 25,000 gallons of oil in Wyoming resulted in a *three mile* trail of contamination. A basic OSRP is not adequate for the protection of public health and the environment because it does not require compliance with 40 CFR Part 300 and Area Contingency Plans, a basic plan does not require the identification of the designated qualified individual and immediate communications between said individual and the appropriate federal official and response personnel, and does not require the identification and contractual availability of response personnel and equipment. Basic plans also do not describe the training, equipment, testing, drills, and response actions of personnel and are not submitted to the FRA.

In the event that a 24,000 gallon threshold is not approved, 42,000 gallons of crude oil per train consist would be preferable to and provide more protection than the current 42,000 gallon single packaging threshold for comprehensive OSRPs. The current standard most likely never triggers the requirement for a comprehensive OSRP because single cars do not carry 42,000 gallons. A threshold of 1,000,000 gallons is also inappropriate because the current 1,000,000 gallon threshold applies to stationary facilities and includes all oil containers, including drums, at the facility. Trains carrying volatile crude oil are substantially different than such facilities. The risk of a leak or accident is much greater for a rail car because of the nature of rail transport, as demonstrated by the dozens of recent accidents from derailments.

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.

No requirements should be removed from comprehensive OSRP requirements. However, additional requirements should be added to provide for greater protection of public health and the environment. Comprehensive OSRPs should require immediate communication between the designated qualified individual and local officials in addition to appropriate Federal officials. Additionally, comprehensive OSRPs should include a list of all state and federal agencies that will be immediately notified in the event of an accident or spill. Comprehensive OSRPs should also

outline the way in which emergency plans will be effectively communicated and distributed to members of potentially affected communities.

Comprehensive OSRPs should also be submitted to, reviewed and approved by the FRA. The current requirement that these plans be submitted to the FRA is inadequate. Review and approval of these plans should be required before transport of petroleum oil products is permitted. The review and approval should be conducted by a program within the FRA that audits response plans to ensure compliance with comprehensive OSRP requirements including the effective removal of a worst-case discharge, the mitigation or prevention of a substantial threat of a worst-case discharge, and ensures that the plan ensures the timely availability of resources. The timely availability of resources includes the proper training of first responders.

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.

The costs incurred to create and implement a comprehensive OSRP for trains carrying more than 24,000 gallons of crude oil should be considered the cost of doing business, and are minimal when compared to the costs incurred to clean up and attempt to remedy crude rail accidents. For example, in 2013, over 1.15 million gallons of crude oil were spilled in over 35 accidents, and clean-up costs of *one* accident alone are estimated to total at least \$180 million.

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?

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

The costs incurred to create and implement a comprehensive OSRP for trains carrying more than 24,000 gallons of crude oil should be considered the cost of doing business, and are minimal when compared to the costs incurred to clean up and attempt to remedy crude rail accidents. For example, in 2013, over 1.15 million gallons of crude oil were spilled in over 35 accidents, and clean-up costs of *one* accident alone are estimated to total at least \$180 million.

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?

Resources should be procured to respond on a county level. Resources, including trained personnel, must be available to ensure a quick response in the event of an accident and/or spill. Once a rail car carrying crude oil derails and is ablaze, the temperature in nearby tank cars quickly rises and sets off a chain reaction in nearby cars. Therefore, the ability for trained personnel to respond quickly, on a county level, could prevent a seven tank car fire from becoming a one hundred tank car fire.

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?

All comprehensive OSRPs should be provided to state emergency response commissions, tribal response commissions, fusion centers, and other entities designated by each state. These plans should also be made available to the public via an easily accessible web platform. The website should include everything interested parties need or want to know and everything an emergency response team would want to tell them. In addition to providing this information online, meetings should be held in neighborhoods and communities along oil train routes. These meetings should be used to educate community members about evacuation plans and how to access up-to-date information in the event of an emergency.

Sincerely,



Maya van Rossum
the Delaware Riverkeeper



Tracy Carluccio
Deputy Director