

Congress of the United States

Washington, DC 20515

June 10, 2016

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

Dear Mr. Secretary:

We have long been concerned about the impacts of a crude oil train derailment in and around the Columbia River Gorge and what it would mean for local residents and surrounding natural resources. Those concerns became all-too-real on June 3rd when 16 rail cars from a 96-car Union Pacific crude oil train derailed near Mosier, Oregon. At least one rail car transporting Bakken crude ruptured, several cars caught fire, hundreds of residents were evacuated, and sheen has now been detected on the river.

This accident, once again, raises the question of whether railroads should be required to re-route trains carrying flammable liquids around environmentally-sensitive areas like the Gorge and endangered communities.

Congress has certainly done its part to address concerns. Now we are awaiting the Department of Transportation's (DOT) action. The "Fixing America's Surface Transportation Act" (FAST Act) (Public Law 114-94), enacted on December 4, 2015, when implemented, will make significant improvements to the transportation of crude-by-rail, as well as other hazardous materials. The bill:

- Required each Class I railroad transporting any hazardous material to provide accurate, real-time information, including the identity, quantity, and location of hazardous materials on each train, to fusion centers, state and local emergency responders, and law enforcement personnel;
- Directed each Class I railroad to provide advanced notification and detailed information, including routes, on the movement of trains transporting crude to each state emergency response commission;
- Phased-out or required retrofitting of all DOT-111 and CPC-1232 tank cars used to transport flammable liquids;
- Required each tank car built or retrofitted to the new standard be equipped with an insulating blanket and top fittings to mitigate releases during accidents;
- Established a competitive grant program to assist communities in preparing for and responding to hazardous materials incidents, including crude-by-rail;
- Reauthorized funding for hazardous materials training grants to states for emergency responder training; and
- Required regular reporting to Congress on the status of a final rule to require railroads to develop and implement comprehensive oil spill response plans.

Additionally, the bill required regular reporting to Congress on industry-wide progress toward modifying rail tank cars. Although the first report is not due until December 1, 2016, we request a status update on implementation of the FAST Act directives and on the manufacture and modification of rail tank cars, including the number of DOT-111 and CPC-1232 tank cars that have been built or retrofitted to the new standards, the number of such tank cars that have been purchased and put in service by shippers and railroads, and the number of such tank cars currently in rail transportation compared to the number of older DOT-111 and CPC-1232s that fail to meet the new standard set forth by the DOT. As these new rail tank cars come online, we urge you to prioritize their use when flammable liquids are transported in National Scenic Areas like the Columbia River Gorge, as well as other environmentally sensitive areas.

We also request an update on the status of a final rule requiring railroads to develop and implement comprehensive oil spill response plans, which are crucial for adequately preparing Federal, state, local and regional response teams to respond to an accident or incident involving the transportation of hazardous liquid, including crude oil, ethanol, and other petroleum-based products. They ensure that personnel are trained and available and equipment is in place to respond to a spill, and that procedures are established before a spill occurs.

We have heard from many responders in Oregon that little information has been shared with them on the potential consequences of a spill, and that plans for coordinating with federal, state, local and regional response teams and the railroads should a spill occur have not been set-forth. This is especially true for areas where there is limited road access, such as the Columbia River Gorge or the Cascade Mountain Range. We are expecting a record breaking forest fire season again this year and communities need to know what the plan is for addressing accidents that could spark a fire.

Responders are not able to determine a railroad's worst-case discharge on their own, nor are they able to determine what specific resources are available or should be acquired, where those resources will be positioned, or what procedures are in place without significant input from the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the railroads. While the railroads are providing some information to responders, it is not nearly enough to adequately prepare them for a potential spill. This has been echoed by the Government Accountability Office which is currently evaluating the adequacy of emergency response resources, including training, with respect to crude-by-rail trains.

The fact is this rulemaking has languished for far too long at the DOT. Your last letter to the House Committee on Transportation and Infrastructure stated that PHMSA is "working expeditiously" to issue a final rule by June 2017 and even that date, according to your letter, may be adjusted as PHMSA moves forward with the rulemaking process. That is nearly three years, at a minimum, after the Advanced Notice of Proposed Rulemaking was published and long after you have left office and a new administration that may or may not finalize this rulemaking is in place. In our view, this is far too long and the accident in the Gorge underscores that. We strongly urge you to re-assess your timeline and make finalizing this rulemaking a DOT priority.

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Thank you for your consideration of these matters and we look forward to your response.

Sincerely,



PETER DeFAZIO
Ranking Member
Committee on Transportation
and Infrastructure



GREG WALDEN
Member of Congress