

---

# Transporting Crude Oil in New York State:

A Review of Incident Response and Prevention  
Capacity  
*Status Update*

---

December 2014







## Introduction

North American production of crude oil has boomed in the last five years, helping to position the United States as the leading worldwide producer. The Bakken shale oil formation, which underlies parts of Montana, North Dakota, Saskatchewan, and Manitoba, is responsible for much of the new oil production in the U.S. and Canada. In the absence of pipelines from the Bakken formation, railroads transport much of this newly-produced crude oil to refineries and ports across the country. Domestic shipments of crude oil by rail have grown from 9,500 train car loads in 2008 to 407,642 loads in 2013, an increase of over 4,000 percent.<sup>1</sup>

Despite having no refineries, as much as 1,000 miles of New York State's 4,100-mile rail network is part of this rail pipeline from the northern Great Plains. The Port of Albany has become a major hub for crude oil transshipment and storage, receiving crude oil by rail and transferring them to ships or barges that further transport the crude oil down the Hudson River. Significant volumes pass by rail through the Capital Region en route to refineries in the Mid-Atlantic States. Communities in 22 counties, including Buffalo, Syracuse, Utica, Albany and Plattsburgh as well as nearly all of the state's major waterways, are subject to this network.

In recognition of the increased risk of accidents and public concerns associated with the significant volume of crude oil transported through New York State, on January 28, 2014, Governor Andrew M. Cuomo issued Executive Order 125 (EO 125), directing state agencies to immediately conduct a coordinated review of New York State's crude oil incident prevention and response capacity. In EO 125, Governor Cuomo called upon state agencies to address the following specific issues:

- (i) the State's readiness to prevent and respond to rail and water incidents involving petroleum products;
- (ii) statutory, regulatory, or administrative changes needed at the State level to better prevent and respond to incidents involving the transportation of crude oil and other petroleum products by rail, ship, and barge;
- (iii) the role that local governments across the State play in protecting their communities and their residents from spills of petroleum products shipped by rail and water; and
- (iv) enhanced coordination between the State and federal agencies to improve the State's capacity to prevent and respond to incidents involving the transportation of crude oil and other petroleum products by rail, ship, and barge.

On April 30, 2014, five state agencies submitted to the Governor a report entitled "Transporting Crude Oil in New York State: A Review of Incident Prevention and Response Capacity" (EO 125 Report). These agencies included the Department of Transportation (NYSDOT), Department of Environmental Conservation (NYSDEC), Department of Health (NYSDOH), Division of Homeland Security and Emergency Services (DHSES), and Energy Research and Development Authority (NYSERDA). The report provided an overview of the crude oil boom and New York State's capacity to effectively prevent and respond to incidents involving the transportation and storage of crude oil. It included 27 recommendations for action by the federal government as well as steps that could be taken by state and local governments and industry.

---

<sup>1</sup> According to the Association of American Railroads

## Progress Report on Report Recommendations

Since the EO 125 Report was issued, New York State agencies have continued to implement the recommendations identified in the report and continue to press actions needed at the federal level and from the crude oil production and rail transport industries. This status update outlines the many actions taken by State agencies over the past six months to work with federal and local partners, to implement new procedures, and to work with the oil production and transportation industries to best protect New York's citizens and resources from the risk posed by crude oil shipments. As further detailed in this report, the State will continue to address the vulnerabilities posed by crude-by-rail transport and urge the federal government and affected industries to act swiftly to address issues over which the State has no authority.

### Continued Need for Expeditious Federal Action

The federal government is vested with exclusive statutory and regulatory authority over the interstate transportation of crude oil. Therefore, it is incumbent on the federal government to match the State's aggressive commitment to protecting New Yorkers affected by the sharp expansion of this industry. In response to New York State's urging, Federal agencies have begun to update regulations covering the standards for tank cars used in the transport of flammable volatile crude oils and have started the federal rulemaking process to require the crude-by-rail industry develop comprehensive oil spill plans, similar to what are already in place for tanker vessels and barges.

On May 7, 2013, the U.S. Department of Transportation (USDOT) issued an Emergency Order requiring railroad carriers to inform first responders about crude oil being transported through their towns and communities. The railroads provide that information to DHSES in its role as the lead for the State Emergency Response Commission (SERC). Through the SERC, DHSES has shared that information with local governments and the public.

New York has repeatedly called for the expeditious implementation of new tank car standards and effective operational controls by the federal government. On July 23, 2014, USDOT issued two regulatory proposals. The first proposal is USDOT's "Notice of Proposed Rule Making (NPRM) for Hazardous Materials: Enhanced Train Car Standards and Operational Controls for High-Hazard Flammable Trains."<sup>2</sup> The NPRM proposes new tank car standards and operational controls to increase crude-by-rail safety; however, the timetable for implementation of this rule is unacceptably slow. New York and other states have called for USDOT to move even faster to protect residents affected by crude-by-rail transport and to provide the tank car manufacturers the assurance they need to move forward with new car production.

The second USDOT proposal, "Advanced Notice of Proposed Rulemaking (ANPRM) for Hazardous Materials: Oil Spill Response Plans (OSRPs) for High-Hazard Flammable Trains,"<sup>3</sup> seeks to address the loophole New York identified in the federal Oil Pollution Act of 1990 (OPA 90), whereby crude oil trains are not subject to the comprehensive oil spill plans that govern vessel and barge transport because tank cars are treated as individual containers, none of which meet the 42,000 gallon OPA 90 threshold. This

---

<sup>2</sup> Docket No. PHMSA-2012-0082 (HM-251)

<sup>3</sup> Docket No. PHSA-2014-015 (HM-251B)



is a common sense proposal that aligns federal regulatory standards and must be implemented as soon as possible.

On September 29, 2014, New York submitted comments on the two federal proposals. While specific changes are recommended (see Appendices 6 and 7, pages 34 and 45, respectively), New York strongly urges USDOT to finalize both rulemakings as quickly as possible.

FRA also issued an NPRM governing the “Securement of Unattended Equipment,”<sup>4</sup> which is intended to strengthen existing regulations and to codify many of the additional securement requirements included in FRA’s Emergency Order 28 (EO 28) which was issued following the tragic derailment in Lac-Megantic, Quebec on July 6, 2013. New York State submitted comments to the docket on November 6, 2014 (see Appendix 8, page 50).

The EO 125 Report also called on federal emergency response agencies to work with the State on spill contingency plans. Since then, the State secured the commitment of the U.S Coast Guard (USCG), the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) to expedite emergency response activities. In addition, in consultation with NYSDEC, this year USEPA inspected four Major Oil Storage Facilities (MOSF) in New York which are used to transfer crude oil from rail tank cars to other transportation modes. These facilities are licensed by NYSDEC, but are also subject to federal regulatory requirements and inspections. The coordinated inspections held in 2014 demonstrate the State’s commitment to work with federal agencies to best protect New Yorkers from potential oil spills from these facilities.

**Table 1: Progress on Recommended Federal Actions**

Federal / International Recommendations	4/30 Status	11/30 Status
<p>1 The Pipeline and Hazardous Material Safety Administration should finalize new and retrofitted tank car regulations immediately</p>	<p><b>Begun, not complete</b></p>	<p>USDOT issued proposed regulations on 7/23/14. New York State issued constructive comments on 9/29/14 and urged expeditious finalization. The details of New York’s recommended amendments to the proposed rules are addressed in general comment #3 of the NPRM letter (Appendix 6, page 34).</p>
<p>2 The Federal Railroad Administration (FRA) should strengthen the voluntary measures put forward by the American Association of Railroads (AAR) and codify them in regulations</p>	<p><b>Petition sent to USDOT</b></p>	<p>USDOT issued proposed regulations on 7/23/14. New York State issued constructive comments on 9/29/2014. The federal NPRM addresses some of the voluntary measures put forward by the AAR. All identified safety measures should be codified into the finalized rule. See general comment #4 of the NPRM letter (Appendix 6, page 34).</p>

<sup>4</sup> Docket No. FRA-2014-0032

Federal / International Recommendations

4/30 Status

11/30 Status

<p>3 The United Nations, which assigns unique hazardous materials identifiers, should recommend new classifications based on crude oil characteristics to enable appropriate packaging and to inform response personnel as to the qualities of the crude oil</p>	<p>Canadian and U.S. governments have requested; petition sent to UN in support</p>	<p>The UN has yet to act upon this important petition.</p>
<p>4 FRA regulations governing the requirement for railroads to develop route-specific contingency plans should be updated as trains carrying crude oil in DOT-111 tank cars do not currently meet the volume threshold, which is done by container, rather than the total volume of the train</p>	<p>Petition sent to USDOT</p>	<p>USDOT issued proposed regulations on 7/23/14. New York State issued constructive comments on 9/29/2014 and urged the expeditious closing of the comprehensive oil spill response plan loophole through regulations called for in the federal Oil Spill Pollution Act of 1990. See the response to question #1 of the ANPRM letter (Appendix 6, page 34).</p>
<p>5 USDOT must restore cuts and increase the amount of matched funding available through the Hazardous Materials Emergency Preparedness (HMEP) grant program to account for the increased risk to New York State from crude oil transiting federally-regulated travel corridors</p>	<p>Petition sent to USDOT</p>	<p>As part of its 2015 funding application, DSHES will request an increase in funding available to improve New York’s ability to address planning, preparedness and response efforts specific to the transportation of crude-by-rail. New York calls upon USDOT to approve the much-needed request.</p>
<p>6 USCG, EPA and NOAA should expedite the update of environmental and contingency response plans</p>	<p>Begun, not complete</p>	<p>New York State secured the commitment of federal agencies to update environmental and contingency response plans. Since that time, New York has worked in concert with the USCG, USEPA, and NOAA to identify information sources necessary to update these plans.</p>
<p>7 FRA should expeditiously amend its regulations to make industrial facility railroads subject to the same standards and inspection protocols as general system railroads</p>	<p>Petition sent to USDOT</p>	<p>USDOT did not address this issue in either the NPRM or ANPRM. New York State included a request for USDOT to address industrial facility track (general comment #4) in its letter on the NPRM (Appendix 6, page 34).</p>
<p>8 USCG and EPA should update the delayed Oil Spill Research and Technology Plan as soon as feasible</p>	<p>Plan in draft; update 17 years overdue</p>	<p>New York State secured the commitment of the USCG and USEPA to update this critical plan. USCG and USEPA will provide an update timeline in the coming months.</p>



**Federal / International Recommendations**

**4/30 Status**

**11/30 Status**

<p>9 USCG should establish a civilian planning position in Sector NY in order to provide organizational continuity to better support New York State-centric preparedness and response</p>	<p>Petition sent to USCG</p>	<p>The USCG responded to New York’s request on 5/12/14. The USCG noted that additional civilian planning staff would be hired for the USCG District Office in Boston and uniformed USCG members would be added for Sector NY. New York State remains concerned that uniformed USCG members will bear the bulk of the planning responsibilities in New York, which fails to address long-term institutional memory concerns.</p>
<p>10 USCG should review the Vessel Response Plans of the tanker and tugs carrying crude oil in New York State to ensure their response protocols account for the unique risks posed by Bakken and Canadian tar sands crude oil</p>	<p>Petition sent to USCG</p>	<p>New York State has coordinated with the USCG to utilize the existing inventory and to fill the gaps noted in response coverage. The Coast Guard has stated that it is exploring enhancements to the Response Resource Inventory of spill response assets in a given area, and will focus on ensuring that VRPs, contingency plans, and response resources are coordinated and reflect that response protocols are adequate, and that exercises ensure the plan’s effectiveness.</p>
<p>11 The U.S. Department of Homeland Security should update the authorized equipment list eligible for grant funding to include crude oil firefighting equipment</p>	<p>Petition sent to USDHS</p>	<p>On 6/9/14, USDHS confirmed amended eligibility rules to include crude oil firefighting equipment.</p>

**State Implementation of 4/30 Report Recommendations**

The EO 125 Report detailed 12 recommendations the State should implement in order to reduce the State’s vulnerability from accidents/spills related to the transport of crude oil. State agencies have and will continue to aggressively implement Governor Cuomo’s crude oil transport safety agenda to ensure the safest possible transshipment of crude oil products through New York State, and to work with the most affected communities to protect public health.

As a direct result of the Governor’s aggressive response to crude-by-rail issues, NYSDOT’s rail safety inspection program has been strengthened and expanded. As part of his 2014-15 Executive Budget, the Governor included five additional railroad inspectors to augment the existing inspection partnership with the Federal Railroad Administration (FRA). NYSDOT has hired all five inspectors, and they have started the FRA-mandated six to twelve-month certification and training period. One inspector has earned initial FRA certification, two more will be certified by the end of the year, and the remaining two have started the process.

Collectively, the addition of these new rail inspectors will significantly enhance New York’s ability to monitor the safety of rail operations throughout the State. In addition to an increased capacity to inspect track structures and tank car equipment, expanded capabilities include the enforcement of applicable regulations affecting the rail transport of crude oil and other hazardous materials and train crew compliance with operating rules. Additionally, NYSDOT will administer civil service exams for the

rail inspector positions, so that if a position becomes open due to retirement or attrition, NYSDOT has a pool of qualified personnel able to fill the position quickly.

Additionally, New York State has created an interagency working group to increase training and drill opportunities, working in partnership with federal and local governments and crude-by-rail companies. Since April 30, New York State has led or partnered on the following training and rehearsal activities:

- On May 6-7, 2014, DHSES conducted a two-day training drill at the Port of Albany to simulate risks associated with ignitable liquids such as crude oil;
- In June 2014, CSX Transportation partnered with the State to provide railroad and tank car training for local and State responders in the Hudson Valley, Albany, Syracuse and Buffalo;
- DHSES has increased the emphasis upon crude oil-related training available and delivered to fire departments and is updating and developing new training programs;
- On October 21, 2014, Canadian Pacific sponsored NYSDEC spill containment boom training for local first responders on the Hudson River in Albany;
- On October 30, 2014, NYSDEC held tabletop drills with terminal operator, Global Partners, at their Port of Albany facility
- On November 4, 2014, NYSDEC held tabletop drills with terminal operator, United Riverhead, at their facility on Long Island; and
- DHSES is working with the railroads to increase coordination and cooperation regarding training exercises they provide or coordinate.

### Additional State Actions

As the State has worked with federal and local agencies and the affected industries, new challenges emerged in response to which the State has begun to take decisive action. These actions complement the steps taken above to implement the recommendations that emerged from the EO 125 Report.

### Aggressive Inspection Blitzes

At Governor Cuomo's direction, NYSDOT has undertaken a targeted campaign to inspect train tracks and crude oil tankers in areas where the shipment of crude oil by rail has increased dramatically. Working in conjunction with FRA, NYSDOT has conducted seven rail inspection "blitzes" this year.<sup>5</sup> The inspections focus on tracks, track hardware and tank car mechanical safety equipment, including wheels and brakes. The state/federal teams also perform hazardous material inspections to ensure that the tank cars are in compliance with federal safety regulations, including valves, valve closures, and placards that describe the cargo being shipped. They also check tank car inspection and pressure test dates.

Sites which have been the focus of inspection blitzes include:

- Canadian Pacific Rail
  - Mainline from Rouse's Point to Albany
  - Kenwood Yard (Albany)
  - West Albany Yard (Colonie)

---

<sup>5</sup> NYSDOT conducted inspection blitzes on the following dates: February 27, March 26, April 30, June 17, July 16, September 24, and October 15, 2014.





- CSX Transportation
  - Mainline rail across the state (Selkirk - Buffalo) (Buffalo-Selkirk-New Jersey line)
  - Selkirk Rail Yard (Selkirk)
  - Frontier Rail Yard (Buffalo)
  - Niagara Rail Yard (Niagara Falls)

The inspection blitzes have produced the following results:

- Inspected 6,664 rail cars, including 4,656 DOT-111 cars;
- Inspected approximately 2,564 miles of track;
- Detected 740 track and rail equipment defects, including 12 hazardous materials defects which were corrected by the railroads:
  - Rail equipment and hazardous material defects are typically corrected prior to departure from the yard; or, the affected cars are taken out of service until such time that repairs can be completed
  - Critical track defects require an immediate reduction of allowable track speeds until repairs are undertaken; non-critical track defects must be completed within 30 days
- The joint NYSDOT/FRA rail safety enforcement program provides a safety quality assurance role in identifying safety defects and working with the railroads to promptly address them before they escalate to a derailment or other potential crude oil incident.

### Strategic and Tactical Guidance for Fire Departments

In October 2014, the Office of Fire Prevention and Control within DHSES released strategic and tactical guidance for fire department operations during the initial phases of a rail incident involving crude oil.<sup>6</sup> This guidance was provided in recognition that any significant derailment involving a crude oil spill or fire will likely require a large scale and multi-agency response from all levels of government. The guidance builds upon existing materials, such as the Emergency Response Guidebook (ERG), to assist fire department personnel with making strategic decisions and to provide guidance and recommendations for the tactics appropriate for a crude-by-rail incident.

The guidance also includes estimates of the foam and water supplies needed for scenarios including a single rail car involved in fire with exposure to two additional cars and a three-car scenario with exposures. These scenarios serve to illustrate the level of resources that may be required to provide for effective operations for fire and vapor suppression and can assist fire departments with both pre-incident planning and response efforts. The guidance document, which will be updated and redistributed as necessary, is available on the DHSES website (<http://www.dhSES.ny.gov/ofpc/alerts-bulletins/information/documents/2014/crude-oil.pdf>).

---

<sup>6</sup> Available at: <http://www.dhSES.ny.gov/ofpc/alerts-bulletins/information/documents/2014/crude-oil.pdf>

## Improving Spill Response

As part of NYSDEC’s implementation of the recommendations in the EO 125 report, work is proceeding to increase planning and preparedness to respond to spills of crude oil that might occur along the rail transportation corridors. An important aspect of this work is an initiative to carefully identify and evaluate sensitive environmental resources and public infrastructure along the corridors. NYSDEC is developing a baseline inventory of these “sensitive receptors” from a variety of sources. Once this baseline inventory is complete, NYSDEC intends to complete outreach to local emergency response agencies in each of the affected counties to seek additional information, confirm the baseline data, and obtain input on hot spots to prioritize response actions among these receptors. As this information becomes complete, NYSDEC will develop “Geographic Response Plans” (GRPs) to provide specific response strategies and tactics to protect the priority sensitive receptors that have been identified. Once developed, these GRPs would be made available to local, State and federal response agencies so that the response measures identified could be implemented as quickly and effectively as possible in the event of a spill of crude oil near a priority receptor.

To accomplish all of these tasks, NYSDEC will need assistance from consultants knowledgeable and experienced in collecting, organizing and evaluating the data and then producing the GRPs. NYSDEC estimates that the cost of this consultant assistance will be approximately \$500,000. On October 3, 2014, NYSDEC requested that the Office of the State Comptroller, as the fund administrator, release the necessary resources (see Appendix 3, page 25). NYSDEC received an unsatisfactory response and will continue to press the Comptroller to release the funds immediately (see Appendix 4, page 29).

**Table 2: Progress on Recommended State Actions**

State Recommendations	4/30 Status	11/30 Status
1 New York State should hire additional railroad inspectors and train new and existing staff in other inspection program components	Hiring process begun	Governor Cuomo’s Executive Budget called for five additional NYSDOT rail inspectors, who have all been hired and begun the FRA-mandated 6-12 month training period.
2 The Navigation Law should be amended to enable greater Oil Spill Fund program capabilities	Legislative language being considered	New York State will evaluate this and all proposals with a fiscal component as part of the State’s budget making process.
3 The State should partner with federal, local, and industry partners to increase the number, frequency, and variety of preparedness training opportunities and drills	Planning begun	New York State has created an interagency working group to increase training and drill opportunities, working in partnership with federal and local governments and oil production and transportation companies.
4 New York State should enact legislation to require crude oil producers to provide information on the volume and characteristics of crude oil transiting the state	Legislative language being considered	New York State considered legislative language to address the lack of information on the amount of crude oil transported through New York State, but federal action through the USDOT 5/7/14 emergency order addressed the information need for state and local responders.



**State Recommendations**

**4/30 Status**

**11/30 Status**

<p><b>5</b> The State should develop a one-stop web portal that provides access to emergency points of contact, training, grants and other preparedness and response resources</p>	<p><b>Planning begun</b></p>	<p><b>New York State will release the one-stop web portal by the end of the year.</b></p>
<p><b>6</b> New York State should partner with federal, industry and local response organizations to develop and deploy a comprehensive, geographically-tiered equipment network to ensure timely and effective response in underserved areas</p>	<p><b>Planning begun</b></p>	<p><b>New York State is in the process of finalizing a tiered response equipment deployment. New York State will also integrate response system assets and abilities, along with those provided by the railroads, into the standardized spill and fire response planning process being developed by the interagency working group.</b></p>
<p><b>7</b> New York State should develop a comprehensive database of available response equipment to support timely and effective response</p>	<p><b>Planning begun</b></p>	<p><b>New York State will release the database of available assets when the one-stop web portal is finalized. Foam equipment data from survey of County Fire Coordinator's is available on DHSES's web page. A map of the state will display assets for each county.</b></p>
<p><b>8</b> New York State should partner with EPA and USCG to expand upon existing environmental and contingency plans and develop Geographic Response Plans for all areas of the state</p>	<p><b>Agreement in place; State participation subject to funding</b></p>	<p><b>EPA has obligated funding to update response plans, USCG has expedited updates. NYSDEC will continue to urge the Comptroller to release the funds for the State portion.</b></p>
<p><b>9</b> New York State should promulgate regulations that require placing oil containment booms around waterborne transfers and only allow transfer operations in locations that meet state regulatory requirements or have USCG approval</p>	<p><b>Regulatory language being considered</b></p>	<p><b>Fire hazards associated with booming around a ship during transfer are being examined, along with other issues involved in rule making.</b></p>
<p><b>10</b> New York State should amend existing legislation to improve rail incident reporting requirements and ensure railroad reporting compliance</p>	<p><b>Legislative language being considered</b></p>	<p><b>New York State will evaluate legislative language for the coming legislative session.</b></p>
<p><b>11</b> New York State should develop more effective airborne contaminant plume modeling capability to assist first responders</p>	<p><b>Review and planning process underway</b></p>	<p><b>New York State convened a modeling comparison workshop with a Bakken crude oil scenario on October 20, 2014. State and federal representatives participated in the workshop. A final report will be completed by 12/31/14.</b></p>

## State Recommendations

## 4/30 Status

## 11/30 Status

<p>12 The Disaster Preparedness Commission should conduct a review of current federal, state, local, and industry response plans to ensure efficient planning and application</p>	<p>Review begun</p>	<p>New York State formed an inter-agency working group (DHSES, NYSDEC, NYSDOH, and NYSDOT) to improve coordination and integration of planning, preparedness and response through the development, adoption, and maintenance of a standardized response plan. This group met with the Class I railroads (Norfolk Southern, Canadian Pacific, and CSX Transportation) to discuss increased coordination of training exercises and response efforts where practical and effective to do so. EPA has participated in working group meetings/calls since September 2014, and USCG began attending group meeting in October. This planning effort will provide the basis for spill and fire response drills and exercises.</p>
---	---------------------	---

## The Railroad and Oil Producers Must Act to Protect New Yorkers

In the EO 125 Report, State agencies recommended the railroad and crude oil industries undertake critical actions to protect New Yorkers. The crude oil transportation industry's actions must mirror the seriousness, aggressiveness and commitment to safety that the State is demanding of itself and its federal partners. Crude oil producers, railroads, shippers, storage and trans-loading facilities, and, ultimately, out-of-state refineries — each of whom are profiting from this boom — must commit to the highest possible standards to ensure that this industry can be operated safely. No state can afford another crude oil incident.

New York State is disappointed with the crude oil producers' unwillingness to invest in critical equipment that would reduce the volatility of Bakken crude. The dissolved gases in Bakken crude contributed to the severity of the Lac-Megantic incident. On October 21, 2014, NYSDEC Commissioner Joe Martens and NYSDOT Commissioner Joan McDonald wrote North Dakota Governor Jack Dalrymple to urge him to move forward expeditiously with a proposed rulemaking before the North Dakota Industrial Commission (NDIC), which would require gas separation prior to making the crude oil available for shipment. North Dakota, as the primary producer of Bakken crude, is uniquely positioned to require such measures before the crude enters the federally-regulated rail transportation network. On November 13, 2014, the NDIC proposed draft regulations and signaled they would vote in favor of the measure later this month.

On April 30, 2014 immediately following the State agencies' report, Global Partners, one of the terminal operators at the Port of Albany, announced that it would phase out the use of inadequate DOT-111 tank cars in favor of CPC-1232 cars, which the industry agreed to voluntarily upgrade to in 2011 due to inability of the federal government to set new standards. Global Partners claims the majority of cars carrying crude into their Port of Albany facility are now the CPC-1232 model.

While the CPC-1232 cars provide some additional protections, the April 30, 2014 incident in Lynchburg, VA, in which CPC-1232 cars were breached along with older DOT-111 tank cars, reveals the urgency of finalizing the new federal tank car standard for high-hazard flammable trains. The railroad



manufacturing industry reports that it is standing by, ready to build, but needs to know the specification to which they must build.

**Table 3: Progress on Recommended Industry Actions**

Industry Recommendations	4/30 Status	11/30 Status
<p>1 The American Petroleum Institute (API) along with its member oil companies should commit to reducing the volatility of Bakken crude before submitting a tank car for shipment</p>	<p>Petition sent to API</p>	<p>New York State urged the federal government to mandate dissolved gas separation in its regulations. No commitment was made in the NPRM or ANPRM to require such action. Additionally, New York State urged North Dakota to promulgate regulations currently under consideration by the North Dakota Industrial Commission (NDIC). On November 13, 2014, the NDIC proposed draft regulations and signaled they would vote in favor of the measure later this month.</p>
<p>2 The Class I railroads should implement a web-based information access system to provide real-time information on hazardous materials</p>	<p>Commitment to create by the end of the year</p>	<p>In response to DHSES’s inquiry on the issue, CP, via Railroads of New York (RONY), has indicated that it is using “AskRail” a free mobile application intended to provide real time access to info re: rail cars carrying hazardous materials. Phase I was implemented on 10/14/14, providing access to information about individual railcars. Phase II, which will provide access to full train consist information, will be in place by the second quarter of 2015. CP indicates that all Class I railroads are supporting development of this system. New York State has not been provided access to this information to date.</p>
<p>3 AAR in conjunction with API should clarify and expand community engagement requirements outlined but not explained in the voluntary measures undertaken by the railroads</p>	<p>Petition sent to AAR and API</p>	<p>New York State continues to urge the rail and oil production industry to clarify this commitment.</p>
<p>4 Class I railroads should conclude their computer model-based route risk analysis, which accounts for twenty seven factors affecting the transportation of hazardous material by rail, as soon as practical and update it regularly</p>	<p>Petition sent to AAR</p>	<p>As part of their voluntary efforts, the AAR committed to begin utilizing the Rail Corridor Risk Management System (RCRMS) by 7/1/14. To date, New York State has not received confirmation from the railroads that they have finished and are utilizing this risk-based routing analysis. Further New York State reiterates its support for continuous updating of the factors considered in that analysis in a transparent process.</p>

## Conclusion

Since January 2014, when Governor Cuomo signed Executive Order 125 directing state agencies to conduct a coordinated review of New York State's crude oil incident prevention and response capacity, significant progress has been made to better protect New York's communities and environment from the potential risks associated with the transport of crude oil.

In the state's April 2014 EO 125 report, state agencies identified 27 recommendations for state government, federal government and industry to reduce risks and increase safety in the transport of crude oil. To date, State agencies have started to implement all 12 state government recommendations and have completed five. Specifically, New York State has taken 66 actions to better prepare state and local responders in the event of a crude oil incident (see Appendix 1, page 16). New York State will continue to work to fully implement all 12 recommendations.

Of the 11 federal government recommendations, one has been implemented while progress has been made on six recommendations, such as regulations to improve standards for tank cars and updating environmental and contingency response plans. While New York State is pleased these regulations have been proposed, they need to be promulgated as quickly as possible to provide for the safety of New Yorkers and the environment. No progress has been made on implementing four federal government recommendations.

While the rail industry has made progress on one recommendation and instituted several voluntary measures outside of the report's recommendations, the oil production industry has actively opposed taking protective measures.

While New York State has implemented important safety measures to better protect the state's cities, towns and villages, challenges remain to further improve the federally regulated rail industry. New York State is committed to seeing all recommendations in the report implemented in a timely manner. The State will continue to urge federal officials and industry to expeditiously take measures to further safeguard New Yorkers.

With all of these efforts, New York State remains the most aggressive state in the nation in pursuing actions that will help to ensure the public and the environment are protected from the risks associated with the federally regulated transport of crude oil.



# Appendices

<b>Appendix One</b>	Timeline of Federal, State, and Industry Actions
<b>Appendix Two</b>	Governor Cuomo’s Letter to President Obama
<b>Appendix Three</b>	NYSDEC Deputy Commissioner Eugene Leff’s Letter to the Executive Deputy Comptroller for Operations John Traylor
<b>Appendix Four</b>	Executive Deputy Comptroller for Operations John Traylor’s response to NYSDEC Deputy Commissioner Gene Leff
<b>Appendix Five</b>	Commissioners Martens and McDonald Letter to Governor Dalrymple of North Dakota
<b>Appendix Six</b>	New York State Comments on USDOT Notice of Proposed Rulemaking [Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains]
<b>Appendix Seven</b>	New York State Comments on USDOT Advanced Notice of Proposed Rulemaking [Oil Spill Response Plans for High-Hazard Flammable Trains]
<b>Appendix Eight</b>	New York State Comments on USDOT Notice of Proposed Rulemaking [Securement of Unattended Trains]

## Timeline of Federal, State, and Industry Actions

<b>Jan 28, 2014</b>	<b>Governor Andrew M. Cuomo issues Executive Order 125 directing several state agencies to do a top-to-bottom review of accident prevention and response capacity related to rail and water shipments of crude oil from the Bakken oil fields in North Dakota, Manitoba and Alberta, Canada.</b>
<b>Jan 28, 2014</b>	NYS Departments of Environmental Conservation, Health, Transportation and the Division of Homeland Security and Emergency Services issue a letter to federal partners regarding concerns related to the transportation, storage, and transfer of crude oil.
<b>Feb 12, 2014</b>	NYSDEC holds a public informational meeting with Global Oil and the public at Giffen Memorial Elementary School.
<i>Feb 21, 2014</i>	<i>In response to New York State calls for immediate, decisive protective measures, the US Department of Transportation and the nation's major freight railroads announce agreement to institute voluntary operating practices: increased track inspections; braking systems; use of rail traffic routing technology; lower speeds; community relations; increased trackside safety technology; increased emergency response training and tuition assistance; and emergency response planning.</i>
<b>Feb 21, 2014</b>	Members of Governor Andrew M. Cuomo's office meet with senior representatives of the U.S. Departments of Transportation and Homeland Security and the Environmental Protection Agency to urge the federal government to expeditiously promulgate regulations and to update critical emergency preparedness plans.
<b>Feb 25, 2014</b>	USEPA, in consultation with NYSDEC, completes a Spill Prevention, Control and Countermeasure (SPCC) inspection of Global Partner's Port of Albany Major Oil Storage Facility (MOSF). Global Partners was found to be in compliance with its SPCC requirements.
<i>Feb 26, 2014</i>	<i>Federal regulators issue emergency rules requiring extensive tests on crude oil moving by rail, concluding the system had become "an imminent hazard to public health, safety and the environment."</i>
<b>Feb 26, 2014</b>	USEPA, in consultation with NYSDEC, completes an SPCC inspection of Buckeye's Port of Albany MOSF. The inspection detailed minor concerns. Buckeye is in the process of upgrading certain portions of its facility and will make those repairs as part of its upgrade.
<b>Feb 28, 2014</b>	Governor Andrew M. Cuomo announces rail inspection blitzes in Albany and Buffalo.
<b>Mar 3, 2014</b>	Governor Andrew M. Cuomo issues a letter to USDOT and USDHS Secretaries urging federal officials to expedite and strengthen rail safety standards that would require rail companies to report derailments, the federal government to increase inspections, and the federal government to petition the UN for a new unique identifier for Bakken crude oil during transport.





<b>Mar 5, 2014</b>	NYSDOT announces \$10,000 fine to CSX Rail for failing to make timely notification of two derailments that occurred in February in Albany and Ulster counties.
<i>Mar 6, 2014</i>	<i>USDOT issues an emergency order requiring all shippers to test product from the Bakken region to ensure the proper classification of crude oil before it is transported by rail, while also prohibiting the transportation of crude oil in the lowest-strength packing group.</i>
<b>Mar 12, 2014</b>	NYSDEC Commissioner Joe Martens meets with Albany community groups.
<b>Mar 14, 2014</b>	Deputy Secretaries Karen Rae and Basil Seggos issue a letter to Edward R. Hamberger, President and CEO of the Association of American Railroads (AAR). This letter requests an opportunity to meet to discuss the industry's support for stronger regulations and to improve coordination with the industry in order to better prevent and respond to accidents.
<b>Mar 24, 2014</b>	NYSDEC issues Notice of Incomplete Application to Global Partners for its application at their New Windsor facility
<b>Mar 24, 2014</b>	NYSDEC Commissioner Martens writes to USEPA Administrator Gina McCarthy to request that USEPA immediately update the Inland Area Contingency Plan for New York and to assist in the development of General Response Plans in critical locations across the state.
<b>Mar 26, 2014</b>	NYSDOT completes second rail inspection blitz in Albany and Buffalo.
<b>Mar 31-Apr 4, 2014</b>	Four DSHES/OFPC staff complete foam operations training conducted at Texas Engineering and Extension Service's (TEEX) fire training facility by National Foam.
<b>Apr 9-10, 2014</b>	NYSDEC sponsors a Regional Response Team (RRT) II meeting in Albany. RRT II is co-chaired by the USCG and USEPA and is responsible for petroleum spills in New York and New Jersey. NYSDEC Commissioner Joe Martens addressed the group. DSHES staff participated in the meeting as well.
<b>Apr 10, 2014</b>	As a result of the RRT II meeting, NYSDEC, USCG and USEPA agree to a partnership to update environmental and contingency response plans.
<b>Apr 23, 2014</b>	NYSDOT, FRA Regional Administrator and CSX Division Manager meet to discuss operational and safety issues with crude oil unit train activities in New York State.
<b>Apr 28-May 2, 2014</b>	As part of their emergency preparedness training, New York's National Guard and Air National Guard members simulate a train accident that resulted in hazardous material spills that created casualties and threaten communities near the site.
<b>Apr 29, 2014</b>	DHSES Commissioner Jerome Hauer sends a petition to USDHS to request foam and associated equipment be added as items eligible for USDHS grant funds. USDHS confirms that these items are eligible on June 16, 2014.
<b>Apr 29, 2014</b>	NYSDOT Commissioner Joan McDonald and DHSES Commissioner Jerome Hauer issue a letter to Jack Gerard, President and CEO of the American Petroleum Institute (API), seeking his support in encouraging all members of the API to actively mitigate dissolved gases to decrease the risk in transporting crude oil by rail.

<b>Apr 29, 2014</b>	<p>NYS DOT Commissioner Joan McDonald issues a letter to USDOT Secretary Anthony Foxx and AAR President Edward Hamberger, requesting their support in two areas:</p> <ul style="list-style-type: none"> <li>• improving the current voluntary operating practices which USDOT and AAR have agreed to by better recognizing that human factors are the cause of 47% of the railroad incidents in New York State. Human factors in the packaging of petroleum products also should be addressed by USDOT and AAR; and</li> <li>• expanding the definition of high-threat-urban-areas (HTUAs) in New York State to include all metropolitan areas with a population of 50,000 or more. Currently, only New York City and Buffalo are designated as HTUAs in New York.</li> </ul>
<b>Apr 29, 2014</b>	A second letter to Secretary Foxx from Commissioners McDonald and Hauer, issued that same day, makes several recommendations to strengthen State/federal rail safety enforcement capabilities.
<b>April 29, 2014</b>	<p>NYSDEC Commissioner Joe Martens issues a letter to Admiral Robert Papp, Commander of the USCG, urging action by the Coast Guard in four areas:</p> <ul style="list-style-type: none"> <li>• completing the development of best practices for responding to oil spills, as required by the federal Oil Pollution Act of 1990;</li> <li>• completing updates of Area Contingency Plans and Geographic Response Plans in critical locations across New York State;</li> <li>• ensuring that Coast Guard-required Vessel Response Plans fully address the hazards presented by crude oil transport by barge; and</li> <li>• establishing a civilian planning position in Sector NY to better support preparedness and response activities in New York State.</li> </ul>
<b>Apr 30, 2014</b>	<b><i>Transporting Crude Oil in New York State: A Review of Incident Prevention and Response Capacity</i></b> with 26 recommended actions to be undertaken by federal, State, and industry is submitted to Governor Andrew M. Cuomo pursuant to EO 125.
<b>Apr 30, 2014</b>	Governor Andrew M. Cuomo writes to President Barack Obama to request that the federal government expedite several actions which are needed to ensure the protection of New York's communities and natural resources. (See Appendix 2, page 23)
<b>Apr 30, 2014</b>	DHSES Commissioner Jerome Hauer issues a letter to USDOT, requesting an increase in funding available to DHSES (OEM and OFPC) via the HMEP grant program.
<b>May 6-7, 2014</b>	DHSES conducts a two-day training drill at the Port of Albany to simulate risks associated with ignitable liquids such as crude oil.
<b>May 12, 2014</b>	NYS DOT announces that it is fining Canadian Pacific the maximum allowed, \$5,000, for failing to report the derailment of four tank cars carrying crude oil at the Kenwood Yard in Albany.



- 
- May 13, 2014** The New York State Department of Civil Service approves two new rail safety inspection titles (Operating Practices Inspector and Hazardous Materials Inspector), allowing NYSDOT to expand into these important new inspection disciplines related to crude oil safety.
- May 13, 2014** USEPA, in consultation with NYSDEC, completes an SPCC inspection of United Riverhead’s MOSF in Riverhead, NY. Minor issues were noted, and all but one have been rectified. United Riverhead is waiting for approval from the local fire marshal.
- May 20, 2014** USEPA, in consultation with NYSDEC, completes an SPCC inspection of West Seneca Terminal’s MOSF in West Seneca, NY. The facility was found to be in compliance with all requirements.
- May 28, 2014** NYSDOT staff meets with FRA Regional staff and CP Rail management to discuss operational and safety issues with crude oil unit train activities in New York State.
- May 28, 2014** NYSDOT staff also meets with FRA Regional staff and the Brotherhood of Maintenance of Way union employees to discuss operational and safety issues related to crude oil transport in New York State.
- May 29, 2014** Members of Governor Andrew M. Cuomo’s office meet with members of President Obama’s staff to raise New York State concerns about crude-by-rail security.
- June 2014** NYSDOT hires two new rail safety inspectors (Track & Structure and Motive Power & Equipment) which will allow NYSDOT to increase its capacity to perform track structures and rail car equipment inspections related to crude oil safety.
- June 2, 2014** NYSDOT holds a joint meeting with FRA Regional staff and CSX to discuss ongoing operational and safety issues with crude oil unit train activities in New York State.
- June 2, 2014** DHSES (OEM and OFPC) distribute updated guidance within the HMEP grant application to the Local Emergency Planning Committees (LEPC) of each county to update local and county-level plans, including HM Response Plans required by GML 204f, and link or integrate those plans as necessary. Counties are required to do so prior to the application due date of September 1, 2014.
-

<b>June 2014-present</b>	Initial meetings between DHSES/OFPC and NYSDEC to discuss EO 125 recommendations common to both agencies expand to include OEM, NYSDOH and NYSDOT. An interagency working group of these core agencies is formed to integrate planning efforts to include spill response, fire response and public health. The group is focusing on adding fire and public health planning content into the existing spill response Area Contingency and Geographic Response Plan model used by the Regional Response Team (USEPA/USCG) to allow integration of local, county, State and Federal response to any crude oil incident. Plans will also provide the basis for multi-agency response drills and functional exercises. Working group has scheduled bi-weekly meetings and/or conference calls (7+ meetings including August 21 meeting with Class I RR's). USEPA begins participating in meetings in September and the USCG attends the meeting slated for October 29, 2014.
<b>June 2014-present</b>	DHSES/OFPC requests that Counties review and update Hazardous Materials Response Plans required by GML 204f to ensure crude oil risk is adequately addressed. OFPC staff has met with over 28 counties to assist with review and update of these plans. Effort is ongoing.
<b>June/ July 2014</b>	Railroad and tank car training for local and State responders in the Hudson Valley, Albany, Syracuse, and Buffalo is sponsored by CSX Transportation.
<b>Summer 2014-present</b>	DHSES/OFPC offers an updated Live Fire Foam Operations course. 163 student completions in eight courses completed this year to date in Albany, Cattaraugus, Chautauqua, Erie, Niagara (2), and Onondaga counties and at the Academy of Fire Science. An additional two courses take place during the week of 10/27/14 in Ulster County.
<b>July 2014</b>	OFPC staff member completes "Crude by Rail" training program conducted by the Association of American Railroads (AAR) at their training facility in Pueblo, Colorado.
<b>July 1, 2014</b>	Nineteen DHSES/OFPC staff complete vendor-provided foam operations training reviewing operation of OFPC's foam trailer
<b>July 8, 2014</b>	Governor Andrew M. Cuomo's office convenes a meeting, attended by staff from NYSDOT, NYSDEC, NYSDHSES and NYSDOH, with Class I railroads CSX, CP, Norfolk Southern to discuss crude oil transport safety, security and preparedness.
<b>July 10, 2014</b>	NYSDOT and FRA participate in tabletop exercise hosted by Amtrak to discuss prevention and preparedness activities related to crude oil transport and incidents.
<b>July 11, 2014</b>	DHSES, on behalf of the State Emergency Response Commission (SERC), distributes information to counties in response to a USDOT emergency order concerning railroads transporting one million or more gallons of crude oil in a single train. The DHSES information is sent to New York counties through which these trains transit.
<b>July 22, 2014</b>	NYSDOT participates in webinar with FRA and state managers on crude oil transportation and the FRA/PHMSA proposed rulemaking.



<b>Aug 5, 2014</b>	NYS DOT and FRA staff meet with the CSX Albany Division Engineer to discuss track maintenance and inspection issues.
<b>Aug 7, 2014</b>	DHSES/OFPC distributes a survey to the County Fire Coordinator of each county to identify the existing foam supplies and equipment currently available at the local and county levels. As of October, 33 counties and NYC (FDNY) have responded to the survey. This data has been compiled into a database and will be available via the DHSES-maintained Crude Oil Webpage to be released prior to the end of the year. It will be updated as additional survey data is returned. Railroad and other assets will be added as well.
<b>Aug 21, 2014</b>	Members of Governor Andrew M. Cuomo's office and staff from NYS DOT, NYSDHSES (OEM, OFPC), NYSDEC, and NYSDOH meet with representatives of the Railroads of New York (RONY) and Class I railroads which transport crude oil through New York State: Norfolk Southern (NS), CSX Transportation and Canadian Pacific (CP). Agenda includes evaluation and discussion of how to most effectively coordinate training, preparedness and response efforts between the State and the railroads.
<b>Sep 2014</b>	NYS DOT hires two new rail safety inspectors (Hazardous Materials) which completes the addition of five new inspectors to NYS DOT's rail safety inspection program.
<b>Sep 9 – 11, 2014</b>	NYS DOT staff attend the Association of State Rail Safety Managers meeting, hosted by FRA, in Washington DC.
<b>Sep 19, 2014</b>	Four DHSES/OFPC staff complete vendor-provided foam operations training addressing fire department operations at fuel terminals and highway incidents with an emphasis upon crude oil.
<b>Sep 29, 2014</b>	New York State submits comments to the federal docket on the Advanced Notice of Proposed Rule Making (ANPRM) for Hazardous Materials and on the Notice of Proposed Rule Making (NPRM) for Hazardous Materials: Enhanced Train Car Standards and Operational Controls for High Hazard Flammable Trains.
<b>Sep-Oct 2014</b>	DHSES/OFPC acquires an additional foam response trailer, additional foam concentrate inventory, and places into service four additional trailers to transport that inventory to support local and county supplies at any crude oil incident. Trailers are pre-positioned in Albany, at the State Preparedness Training Center in Oriskany and at the Academy of Fire Science in Montour Falls.
<b>Oct 2014</b>	DHSES/OFPC staff conduct awareness level presentations on crude oil at each of the five DHSES Regional Workshops across the State (Erie, Onondaga, Warren, Sullivan and Nassau Counties).
<b>Oct 2014</b>	Two DHSES/OFPC staff attend firefighting training at the Texas Engineering and Extension Service's (TEEX) facility conducted by National Foam.
<b>Oct 1, 2014</b>	DHSES/OEM awarded 25 counties HMEP grant funding in the amount of \$6,870 each, totaling \$171,768. Counties use these funds to support local plan development/updates compliant with the federal SARA Title III law.

---

<b>Oct 3, 2014</b>	NYSDEC requests that the Office of the State Comptroller, as the Oil Spill Fund administrator, release the necessary resources (see Appendix 3, page 25). NYSDEC received an unsatisfactory response and will continue to press the Comptroller to release the funds immediately (see Appendix 4, page 29).
<b>Oct 8, 2014</b>	OFPC releases Strategic and Tactical Guidance for Rail Incidents Involving Crude Oil to provide initial guidance and recommendations to the fire service for any potential crude by rail incident.
<b>Oct 15, 2014</b>	State hosts conference call to follow up on the August 21 meeting between the interagency working group and representatives from RONY, CP and CSX. Discussion involves the status of ongoing efforts; planning for proposed tabletop exercises with CSX for crude oil incident scenarios involving their rail line; and proposing a similar exercise with CP.
<b>Oct 21, 2014</b>	NYSDEC Commissioner Joe Martens and NYSDOT Commissioner Joan McDonald issue a letter to Governor Jack Dalrymple of North Dakota, urging the North Dakota Industrial Commission to act quickly on regulations to require the treatment of Bakken crude oil prior to shipment. If approved, these regulations would enhance safety and reduce the risk to states through which the Bakken crude oil is transported (See Appendix 5, page 32). On November 13, 2014, the NDIC proposed draft regulations and signaled they would vote in favor of the measure later this month.
<b>Oct 21, 2014</b>	Boom deployment and oil spill training is sponsored by Canadian Pacific Railroad in the Albany area. This training involved DEC, DHSES, and local responders.
<b>Oct 21, 2014</b>	DHSES staff leads a plume modeling workshop to assess the State's crude oil incident plume modeling capabilities. OEM, OCT, DEC, OFPC, DOH, DOT, DMNA/CST, DTRA, NOAA, and IMACC representatives support the workshop. An AAR/plume model report is in draft form and is forthcoming.
<b>Oct 30, 2014</b>	A tabletop drill is held, sponsored by Global at its facility in the Port of Albany.
<b>Nov 4, 2014</b>	A training and equipment deployment drill is scheduled with United Riverhead and local responders at its facility on Long Island.
<b>Spring 2015</b>	Local Responder and Spill Responder training is planned along the upper Hudson River or Lake Champlain.

---



ANDREW M. CUOMO  
GOVERNOR

April 30, 2014

The Honorable Barack Obama  
President of the United States of America  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear President Obama:

As a result of the recent boom in domestic petroleum production, New York State is experiencing a dramatic increase in the number of crude oil trains passing through the state from production areas in the Upper Midwest to refineries in the Mid-Atlantic and Canada. This type of crude oil, known as Bakken crude, is highly volatile and is being transported in significant volume across the country by inadequate rail tank cars. New York and all the states subject to this crude oil boom are extremely vulnerable to the impacts of a derailment, spill, fire, or explosion, as demonstrated by three catastrophic incidents in the last nine months involving such trains. I urge your immediate attention to this issue.

On January 28, 2014, I issued Executive Order 125 directing New York State agencies to evaluate New York's capacity to prevent and respond to crude oil accidents. Today, the agencies issued their findings and recommendations to me and a copy of their report is enclosed. The report determines that, while the State can and will undertake aggressive actions to protect our communities and natural resources, New York's readiness depends almost entirely on appropriate federal regulation of the industry. Thus, the report identifies a series of federal actions that should be expeditiously implemented. I ask that you prioritize the following federal actions:

1. Finalize the Pipeline and Hazardous Material Safety Administration's new tank car regulations to remove the inadequate DOT-111 tank car from crude-by-rail service;
2. Strengthen and codify into federal regulation the voluntary safety measures adopted by railroad companies governing the shipment of crude oil;
3. Update critical environmental and contingency response plans and partner with New York State to develop area-specific geographic response plans to protect New York and its environment; and
4. Develop appropriate classification and testing of Bakken and similar crude oils in order to provide critical information to state and local emergency responders who would be on the front lines of any incident.

WE WORK FOR THE PEOPLE  
PERFORMANCE \* INTEGRITY \* PRIDE

printed on recycled paper

---

The report also suggests actions that New York State will undertake to supplement areas of federal primacy. These include increasing inspections, prepositioning spill and fire response equipment, increasing training and readiness drills for state and local first responders, and enacting legislation to ensure timely rail incident reporting. New York will continue to aggressively pursue measures that ensure its safety. However, the fundamental responsibility for the safe transportation of crude oil across the country resides with federal agencies.

Sincerely,



ANDREW M. CUOMO

Enclosure





**New York State Department of Environmental Conservation  
Deputy Commissioner**

Office of Remediation & Materials Management, 14<sup>th</sup> Floor  
625 Broadway, Albany, New York 12233-1010  
Phone: (518) 402-2794 • Fax: (518) 402-8541  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

OCT 03 2014

Mr. John Traylor  
Executive Deputy Comptroller for Operations  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

Dear Mr. Traylor:

In recent meetings, our agencies have discussed the use of the New York Environmental Protection and Spill Compensation Fund (Spill Fund) to improve the State's readiness to respond to spills of crude oil that may occur due to the great increase in crude oil transportation across the State. The Department of Environmental Conservation (DEC) believes that the increased volume in crude oil transportation increases the risk of spills and that we should act expeditiously to improve our preparedness. This is a necessary complement to the steps being taken by the state and federal Departments of Transportation and others to prevent spills, particularly from rail transportation of crude oil. This letter lays out additional detail to support our request to use the Spill Fund for planning, purchase and deployment of spill response equipment, and training and exercises to increase our preparedness.

As you know, both the Navigation Law (Article 12, Section 176) and Environmental Conservation Law (Article 17, Title 10) mandate that DEC undertake oil and hazardous material spill prevention, response, and remediation. Under state and federal Law, DEC is also responsible for collaborating with the United States Coast Guard (USCG), the United States Environmental Protection Agency (USEPA), and other federal agencies in planning, preparedness, and response to spills. DEC represents New York State on the Regional Response Team, which is responsible for these efforts under the National Contingency Plan and National Response Framework. Further, Governor Cuomo's Executive Order 125 (EO-125) directed DEC to review the State's current spill prevention plans and preparedness. In light of the above, we have concluded that several actions are needed to address the increased risk of spills associated with the increase in crude oil transportation in New York. These include:

- 1) updating and enhancing the "Inland Area Contingency Plans" for areas that include the railroad transportation corridors used for crude oil shipments. The corridors currently in use traverse the west shore of Lake Champlain and the Mohawk River Valley--both areas with potentially significant public health and environmental risks should an incident occur. The Plan updates will include identifying sensitive environmental resources and human infrastructure that need protection (e.g., water supplies) within the corridors. Specific "Geographic Response Plans" (GRPs) will need to be developed to prepare for response actions at these sensitive locations;
- 2) updating the existing "Coastal Area Contingency Plan" covering another major transportation artery, the Hudson River, including updating the existing GRPs;

- 3) pre-deploying spill response equipment at sensitive locations to be used by local response agencies during an incident until the arrival of Oil Spill Response Organizations (OSROs) that will bring additional specialized staff and equipment. OSROs may be engaged by responsible parties or government agencies (state or federal); and
- 4) providing additional staff at DEC for planning, training, exercises, and response actions.

GRPs are localized response plans called for in the Oil Pollution Act of 1990, which provide tactical response strategies for areas of sensitive environmental or socio-economic resources. GRPs are map-based plans with specific instructions for first responders. GRPs identify initial actions that can be taken by local first responders to protect the identified sensitive resources from an oil spill. They include contact names, numbers, response asset locations, and operational instructions. To be effective, they are developed with input from various stakeholders, tested, shared with local responders, coupled with routine training and drills, and periodically updated. GRPs currently being developed for sensitive locations along the railroad corridors (including completely inland areas) are being modelled after those developed by the Massachusetts Department of Environmental Protection for the coastal areas of that state. (See <http://grp.nukaresearch.com>). The USEPA has made \$250,000 available to convert any Geographic Response Plan created during the process of writing the Inland Area Contingency Plan into an electronic format available for general use.

DEC has begun working with the USEPA and USCG to update the Area Contingency Plans and GRPs in accordance with the Oil Pollution Act of 1990. The National Oceanographic and Atmospheric Administration (NOAA) of the United States Department of Commerce is also engaged, providing technical support to the USCG and USEPA in both planning, readiness, and response to oil and hazardous materials spills. Using funds obligated by Congress for recovery from Hurricane Sandy, NOAA has been able to direct contractual funds to update the Environmental Sensitivity Indexes (ESIs) for the coastal areas of Long Island Sound, New York Harbor and the Hudson River Estuary. Due in large part to a request from the State of New York, priority has been given to the update of Long Island Sound and Hudson River estuary sections, and it is expected that these maps and databases will be updated by early 2015. These ESIs will become a part of the existing Area Contingency Plans, and will help formulate updated GRPs for these areas.

The USCG has made \$125,000 available this federal fiscal year to be used for contractual support for the creation or upgrade of GRPs in the Coastal Zones of Long Island Sound, the Hudson River, and New York Harbor. The USCG has indicated that they are requesting a similar amount for the next federal fiscal year.

DEC is committed to support all of the efforts undertaken by these federal agencies to improve planning and preparedness efforts in New York. However, without additional funding, these efforts will be delayed. The increased risk due to crude oil transportation exists now. Our plans to increase preparedness will not only serve to better protect public health and safety and the environment but will also help to safeguard the Spill Fund from larger expenses due to increased spill impacts that could result from a lack of adequate preparedness.



3.

The prudence of investing in preparedness for spills is obvious. A major accident involving a tank vessel carrying 50,000,000 gallons of crude oil down the Hudson River toward an out-of-state refinery could threaten both water supply intakes and ecologically sensitive wetlands. Time is of the essence in such an event. The cost of responding to the drinking water threat and the shoreline contamination could increase exponentially as time passes without effective countermeasures. Charges and third-party claims against the Spill Fund could thus balloon in a direct relationship to any delay.

DEC previously shared with you an estimate of the capital costs associated with DEC's planned actions. The first task is to prepare Sensitive Resource Maps for the inland areas, identify sensitive locations, and develop GRPs for each location. The estimated cost to hire a contractor to assist in the development of GRPs for the inland areas is \$500,000, based on the costs for the Massachusetts Department of Environmental Protection to implement its GRP initiative. Once tasked, the contractor would assist with the outreach to local response agencies and emergency managers and work with DEC, other state agencies, and our federal partners to complete the necessary reports and plans. The work product will be maps for the rail corridors and GRPs with strategies and tactics for each sensitive area. As part of the development of the GRPs, the equipment and staffing required to carry out an effective response will be identified. As stated above, it is expected that the resources of the responsible party, along with those of the state and federal contractual Oil Spill Response Organizations (OSROs), will be available for response to an incident, but often not for eight to 24 hours. It is this gap in response that falls to the local response agencies to fill. A great deal of the rail routes across New York are in lightly populated, undeveloped areas, where there are no oil spill response assets located. Equipment made available for immediate use by local responders can greatly mitigate the impacts of spills.

The second item in the capital cost estimate is the purchase and deployment of response trailers containing spill containment, collection, and diversion equipment to be made available to local response agencies at key locations. In Massachusetts, this has been local fire departments or Hazardous Materials Response Teams. Contractor support is necessary not only for the development of the GRPs, but also for training of local response agencies.

The annual costs are associated with trailer inspections and maintenance as well as periodic training and exercises. It is expected that these activities will be carried out mostly by contractors with direction and oversight provided by DEC staff. We have learned from the experience of Massachusetts (and in similar programs in New York created by the Office of Fire Prevention and Control), that this annual inspection and maintenance program is necessary to ensure the continued viability of the response assets. Our current estimate includes identifiable long-term costs for equipment maintenance, training and exercises. However, there may be other unanticipated costs.

DEC, along with its state and federal partners, intends to create steering committees to help create and carry out these tasks. Along with other partner agencies, including the NYS Office of Emergency Management, NYS Office of Fire Prevention and Control, and NYS Department of

Health, DEC will need to engage with the appropriate response organizations within each area to form these steering committees. This outreach will take place through formal notice and also be shared at venues of opportunity, such as NYS Office of Emergency Management regional meetings, Local Emergency Planning Committee (LEPC) meetings, and other similar venues. Although regional steering committees are envisioned in all nine DEC regions, the initial committees will be formed in those regions which comprise the rail corridors.

DEC understands the Office of the State Comptroller's (OSC) concerns about the long-term financial viability of the Spill Fund. The current projections of costs needed to initially implement the EO-125 recommendations represent DEC's best estimates at this time. Other unanticipated costs may arise and we recognize that these will need to be discussed with OSC to ensure that any future costs would not endanger the viability of the Spill Fund. Further, DEC is open to starting a dialogue with you and the Division of the Budget on the long-term health of the fund. This dialogue will help us prepare potential 2015-16 Executive Budget Article VII recommendations.

DEC believes all of the actions outlined above are needed to reduce the incidence and severity of spills to insure the long-term viability of the Spill Fund to address the new issues facing us with the increase in crude oil transport in the State and to ensure we can maintain our current response program. Using Spill Fund resources now on the actions outlined above is an essential and appropriate way to safeguard the fund by reducing possible future fund expenditures.

DEC is committed to continuing our long and productive relationship with OSC to ensure that the Spill Fund is used to provide maximum protection for public health and safety and the environment. We request OSC's approval of the immediate expenditure of \$500,000 to take a substantial step in addressing this current challenge and are committed to working together to provide a strong, viable Spill Fund. Please contact me if you would like to further discuss these important initiatives.

Sincerely,

  
Eugene J. Leff  
Deputy Commissioner for Remediation and  
Materials Management

cc: S. Baker, OSC  
Commissioner Martens  
M. Gerstman  
R. Schick  
M. Ryan  
A. English  
D. Farrar



THOMAS P. DiNAPOLI  
STATE COMPTROLLER



JOHN C. TRAYLOR  
EXECUTIVE DEPUTY COMPTROLLER  
FOR OPERATIONS  
Tel. (518) 402-4103

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
110 STATE STREET  
ALBANY, NEW YORK 12236

November 13, 2014

Mr. Eugene Leff  
Deputy Commissioner  
Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12236

Dear Mr. Leff:

We are in receipt of your letter of October 3, 2014 requesting that the New York Environmental Protection and Spill Compensation Fund (Fund) provide resources toward the Department of Environmental Conservation's (DEC) implementation of Executive Order 125.

Specifically, DEC is requesting \$500,000 toward the development of Geographic Response Plans (GRP). This would be part of a larger effort to update and enhance the Island Area and Coastal Area Contingency Plans, pre-deploy and maintain spill response equipment at sensitive areas to be used by local response agencies and add additional staff at DEC for planning, training, exercises and response actions. The total estimated cost by DEC staff for this effort is over \$2 million with at least \$112,000 in recurring annual costs. Your letter also points out that there are likely to be additional unanticipated costs that will arise. Finally, DEC's EO 125 report outlines participation and resource needs for other state and local response agencies as well.

Our understanding is that GRP costs can be financed using available federal funding from the United States Coast Guard and the Environmental Protection Agency, and we assume there are no impediments to DEC moving forward with GRP development utilizing these funds. We understand that costs associated with a recent preparedness drill in the Port of Albany were supported in part by the industry.

We are appreciative of DEC's efforts to develop a plan to deal with the important issue of addressing the increased risk of spills from crude oil transportation in New York State. The Fund certainly recognizes and agrees that investing in preparedness for such spills is important from both a financial and environmental perspective. However, we also have a responsibility to protect the State's ability to finance and conduct ongoing spill cleanup operations. As you note, we must ensure that any future costs from this proposal do not endanger the viability of the Fund.

From a financial perspective, while the Fund currently has a positive cash balance, current projections already forecast a potential deficit if spending and revenue trends continue. These projections demonstrate that we will have to carefully manage existing Fund operations in order to avoid a deficit in the current Financial Plan period, especially with the solvency of the Fund dependent on the recoupment of monies expended for cleanups. Given the new threat posed by potentially large oil spills along our transportation corridors, it is critical that the Fund be fully capitalized.

As a policy matter, there is a need for more clarification by the Executive around the appropriate role of the Fund in any oil spill prevention strategy. For example, given the large multi-agency, intergovernmental effort required to develop and implement an effective spill response program, it may make sense to finance all or a large portion of this effort outside the Fund so that public safety costs can be sufficiently addressed, including potential grants to first responders.

As a legal matter, Article 12 of the Navigation Law does not specifically provide for spending on oil spill prevention efforts absent an existing discharge. While DEC may incur certain costs under the Department's administrative budget, such costs may only be paid from the Fund upon the certification of the Fund Administrator pursuant to Navigation Law section 186(2). As you know, we require that the necessary backup and supporting documentation for these specific expenditures be provided in advance to the Fund to allow for the Administrator's certification prior to encumbrance.

Conversations with the Department, the Division of the Budget and other stakeholders that have taken place subsequent to receipt of your letter indicate all sides recognize the need for a comprehensive, sustainable EO 125 funding solution. Our expectation is that the Executive would address this in the SFY 2015-16 Executive Budget by delineating the specific plan of finance and new program requirements that are necessary for implementation of EO 125 without negatively impacting the Fund. We appreciate your willingness to include us in discussions on this plan, and are happy to provide any appropriate assistance.



Mr. Eugene Leff

- 3 -

November 13, 2014

We recognize that the ability of DEC to respond quickly to a major oil spill along a rail or marine transportation corridor is crucial to ensure public safety and protect the State's natural resources. We also have an obligation to maintain the Fund's viability. In light of these obligations, and in the absence of a comprehensive EO 125 funding plan, we regret that we cannot at this time advance Fund resources to seed your initiative.

We look forward to continuing our discussions on this very important issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Traylor", written over a horizontal dashed line.

John Traylor  
Executive Deputy Comptroller  
Office of Operations and  
Fund Administrator



STATE OF NEW YORK

October 21, 2014

The Honorable Jack Dalrymple  
Governor of the State of North Dakota  
600 East Boulevard Avenue  
Bismarck, ND 58505-0100

Dear Governor Dalrymple:

As a result of the recent boom in domestic petroleum production, New York State is experiencing a dramatic increase in the number of crude oil trains passing through the state from production areas centered in your state to refineries in the Mid-Atlantic and Canada. New York State is concerned with the volatility of Bakken crude oil and believes all the states subject to the boom continue to be vulnerable to the impacts of derailment, spill, fire or explosion. The devastating accidents in Lac Megantic, Quebec and Casselton, North Dakota demonstrate the critical need to address this issue.

New York State has worked hard to increase the safety of crude-by-rail since Governor Cuomo issued Executive Order 125, directing state agencies to evaluate the capacity to prevent and respond to crude oil incidents. On April 30, 2014, New York's environmental, transportation, health, energy, and homeland security agencies issued a report with recommendations for action at the federal, state, and industry levels. The report contains a priority recommendation that dissolved gas should be removed from Bakken crude prior to shipment in order to reduce its volatility. In recent comments on the proposed federal regulations on improved tank car standards, New York State again urged the U.S. Department of Transportation to require such pre-treatment. As this is a common practice in other oil producing areas, New York State believes it is not only prudent for health and safety purposes but also economically feasible. Importantly, the rail transportation industry strongly supports safer tank car standards and removal of dissolved gas prior to shipment.

While the federal government continues to develop more stringent regulations, New York State urges North Dakota to act swiftly on these regulations to require treatment of Bakken crude oil prior to shipment under the proposed rule amendment currently under consideration by the North Dakota Industrial Commission (Case No. 23084).





2.

Federal oversight of the interstate railroad network and tank car standards explicitly preempts states from independently regulating crude transport once the crude enters the railroad network. Once crude oil is shipped, neither New York nor any other state can regulate or impede shipments, as long as the shipments are in compliance with federal rules. Those rules are outdated and woefully inadequate, but until the federal government finalizes new regulations, states are subject to the legal principle of preemption. Therefore, North Dakota, through its oversight of oil and gas wells, is uniquely positioned to enhance safety and reduce downstream risk to many states before the crude oil enters the federally-regulated railroad network.

No single action will fully address our concerns, and a comprehensive approach including improved railroad safety, enhanced tank cars, increased emergency responder resources and training, and on-site stabilization of crude oil, is imperative. Only through such a comprehensive approach will we reduce the risk involved with shipping high-hazard contents. We appreciate your consideration and partnership on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph J. Mattons".

Joseph J. Mattons, Commissioner  
Dept. of Environmental Conservation

A handwritten signature in black ink, appearing to read "Joan McDonald".

Joan McDonald, Commissioner  
Dept. of Transportation



September 29, 2014

The Honorable Anthony Foxx  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, D.C. 20590

Re: Comments – Docket No. PHMSA-2012-0082 (HM-251)

Dear Secretary Foxx:

In recent years, the number of trains transporting crude oil through New York has increased significantly, resulting in increased risks of spills, threats to public health and safety, and potential damage to the environment. These risks have been dramatically demonstrated by derailments, spills, and fires in Lac-Megantic, Canada; North Dakota; Pennsylvania; Alabama; Virginia and elsewhere. Four crude oil train car derailments have occurred in New York State in the last year, though fortunately with no spills.

On January 28, 2014, Governor Andrew M. Cuomo issued Executive Order 125 (EO 125), directing a comprehensive evaluation of New York's readiness to prevent and respond to incidents involving the transportation, storage and transshipment of crude oil. In response to EO 125, a report, "Transporting Crude Oil in New York State: A Review of Incident Prevention and Response Capacity," was created as the result of a coordinated review conducted by five state agencies. USDOT reviewed the report with the ten critical federal recommendations and package of state administrative, regulatory, and legislative actions.

The recommendations for federal action include a request for USDOT to expeditiously strengthen its rules by replacing or retrofitting rail tank cars that have been deemed inadequate, as nearly 82 percent of tanks cars carrying Bakken crude across the nation are DOT-111 cars with a poor safety record, Federal investigations have confirmed that designs flaws make them susceptible to damage and loss of hazardous materials during a derailment. In addition, the report calls for USDOT to mandate and strengthen the voluntary railroad industry measures implemented by the American Association of Railroads (AAR) and its members.



Governor Cuomo remains committed to the partnership fostered between New York State and relevant federal agencies on these issues. Further, enhancing practices and strengthening regulations to ensure public health and safety and the protection of natural resources are critical. New York State urges USDOT to expedite the promulgation of these regulations to ensure the safety of those living and working along crude oil transportation corridors.

New York State respectfully submits the following comments for the Notice of Proposed Rule Making (NPRM) for Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains [Docket No. PHMSA-2012-0082 (HM-251)].

A. General comments are presented first, followed by specific comments responding to the questions posed within the NPRM.

**1. No single action will fix this problem; need a range of actions to comprehensively address safety issues:**

New York State stresses that any new regulations enacted should include actions that enhance safety from multiple approaches influenced by risk analysis. These approaches should include improvements to tank cars carrying crude oil, enhanced braking standards, appropriate speeds for trains with high-hazard contents, attention to the human factors involved in causing incidents, proper classification of contents at the site of shipment, degasifying crude oil at the shipment site, planning for incidents, response drills and training, and partnerships between all levels of government, the railroads and industry. Only with such a comprehensive approach will we reduce the risk involved with shipping high-hazard contents.

**2. Establishment of the requirements for “High-Hazard Flammable Train” (HHFT) designation:**

New York State strongly supports the intent of this rulemaking in updating and clarifying the regulations to prevent and mitigate the consequences of a train accident involving flammable liquids.

**3. Enhanced standards for both new and existing tank cars:**

For tank cars constructed after 10/1/15 that will be used for HHFT service, the NPRM has offered three (3) options for establishing a new DOT Specification 117 tank car. New York State strongly recommends adoption of Option 1, the FRA and PHMSA-designed car (or equivalent) which will provide the higher degree of tank car integrity and enhanced safety features as indicated in Table 2, page 45010.

New York State also agrees that existing tank cars will be used in HHFT service should be modified to meet the Option 1 performance requirements (except for top fittings protection). Those cars which are not retrofitted should be retired or repurposed.

New York State stands with other states and communities to reinforce the need to expedite the new tank car standards. Without such standards the tank car industry cannot do their part in building a safer tank car. They stand ready to build safer tank cars, but are waiting on the federal government to set the standards and harmonize them with Canadian standards. This delay is creating a backlog that will take years to clear.

**4. Strengthening of the AAR voluntary measures by codifying them in regulation:**

New York State appreciates the fact that the AAR and its member railroads voluntarily implemented a number of worthwhile measures which contribute to the safe rail transport of crude oil. However, New York State remains adamant that all eight provisions of the voluntary agreement as outlined in page 45034 need to be codified in regulation in order to ensure that a sustained commitment to the goals of these voluntary measures is maintained.

In addition to recommending the codification of the AAR voluntary measures, New York State again calls upon USDOT to amend its regulations to require that industrial railroad/track facilities be in conformance with the same standards and protocols that apply to the general system of railroads. In a letter to Secretary Foxx on 4/29/14, New York State requested that "FRA should move expeditiously to amend its regulations to require owners of industrial plant rail systems to perform and document periodic track inspections subject to review/audit by federal/state rail inspection staff."

New York State has the following comments regarding the proposed regulatory framework for the three voluntary measures considered in the NPRM:

*1. Rail routing risk assessment*

We support the proposed planning requirement for carriers to perform a routing analysis that considers 27 key safety and security factors in making route selections, as well as the expansion of these planning requirements to apply to HHFTs. These factors should be regularly updated with fresh data and evaluated for relevancy. Further, the factors and manner in which they are weighted in the analysis should be transparent. New York State suggests that the 27 factors should also be used in a risk analysis to determine resource allocation for response scenarios. Finally, New York State suggests adding a factor for economic risk as different potential accident sites vary in their economic vulnerability.

*2. Reduced operating speeds*

New York State remains committed to the imposition of speed restrictions for HHFTs which contain any tank cars not meeting the enhanced tank car standards proposed by this rulemaking. New York State recognizes that urban settings provide unique vulnerabilities and that a risk analysis-based speed limit that factored in location-specific conditions could be substituted for a blanket speed limit in urban areas. Such an approach, which New York State recommends be funded by the railroads and audited by federal and State agencies, could reduce the impact of uniform speed limitations on passenger and other freight rail services.



### 3. *Enhanced Braking*

New York State agrees with the proposed requirement that all HHFTs be equipped with alternative brake signal propagation systems. Additionally, New York State understands that all HHFTs will be operated with either electronic controlled pneumatic brakes, a two-way end of train device or distributed power, depending upon the outcome of the tank car standard proposal and implementation timing.

### **5. Reducing the volatility of Bakken crude oil prior to presenting a tank car for shipment:**

New York State has urged the American Petroleum Institute and its members to commit to reducing the volatility of Bakken crude through a degasification process at the load point. New York State strongly supports PHMSA's efforts to engage the industry through this rulemaking process.

New York State remains committed to reducing the risk posed by the transportation of Bakken crude-by-rail, and industry efforts to advance degasification will significantly mitigate the challenges faced by our first responders related to crude oil transport and HHFTs.

### **6. PHMSA should consider/recommend the establishment of a unique identification number (UN) for Bakken crude oil unless the commitment is made to reduce its volatile characteristics:**

Although classification and characterization of mined liquids and gases are a major topic covered in the NPRM, the specific issue of assigning a unique UN identifier to Bakken crude oil has not been addressed. The only reference in the NPRM to the issue of differentiating Bakken crude from other crude oil products is noted in Section V. B. p. 45042, which states: "With regard to the identification of Bakken crude oil versus crude oil extracted from other geographic locations, DOT acknowledges that the Hazardous Materials Regulations current shipping paper requirements do not distinguish Bakken crude oil from crude oil sourced in other locations. This may present compliance and enforcement difficulties, particularly with regard to subsequent railroads transporting petroleum crude after interchange(s) with an originating or subsequent carrier. DOT explained in the FAQ's document that railroads and offerors should work together to develop a means for identifying Bakken crude oil prior to transport, such as a Standard Transportation Commodity Code (STCC) number that identifies the crude oil by its geographic source."

Unfortunately, the use of a STCC on the waybill will be of little use to local first responders in identifying the tank car contents and associated risks during an incident. A hardcopy waybill in a burning engine car does little to inform first responders as to the threat they face.

## **7. Addressing human factors that contribute to rail incidents:**

### *Positive Train Control*

Positive Train Control (PTC) is set to be completed by 12/31/15, but an extension is under consideration. Given that PTC systems will effectively address many human factors that lead to incidents, USDOT should make every effort to maintain the current implementation schedule.

The NPRM discusses PTC and acknowledges its associated benefits in Section II. C., p. 45027, including the prevention of:

- Train-to-train collisions;
- Over speed derailments;
- Incursion into an established work zone; and
- Movement through a main line switch in the improper position.

Although there is no discussion in this NPRM regarding any extension of the proposed implementation date beyond 12/31/15, we urge USDOT to maintain the current implementation schedule, at least along major crude oil routes.

### **B. Specific Comments to Questions Posed in the NPRM:**

#### *A. High-Hazard Flammable Train (Page 45040)*

*Proposed definition of a "High-Hazard Flammable Train" (HHFT) as 20 or more carloads of flammable liquids (including crude oil and ethanol).*

New York State supports the definition of the HHFT as proposed. While recognizing the hazard posed by the derailment and subsequent spill or fire involving the failure of even one or two DOT-111 rail cars as shown by the Lynchburg, Virginia incident on April 30 of this year, this definition will establish a reasonable threshold for application of the routing and speed requirements proposed for HHFTs.

#### *B. Notification to State Emergency Response Commissions of Petroleum Crude Oil Train Transportation (Page 45040)*

*1. Whether codifying the requirements of the Order in the HMR is the best approach for the notification requirements, and whether particular public safety improvements could be achieved by requiring the notifications be made by railroads directly to emergency responders, or to emergency responders as well as SERCs or other appropriate state delegated entities.*



The SERC provides an appropriate mechanism to receive and disseminate the information provided by the railroads in response to USDOT's May 7, 2014 Order requiring notification.

*2. Whether the 1,000,000-gallon threshold is appropriate, or whether another threshold such as the 20-car HHFT threshold utilized in this NPRM's other proposals is more appropriate. If you believe that a threshold other than 1,000,000 gallons is appropriate, please provide any information on benefits or costs of the change, including for small railroads.*

Replacement of the 1 million gallon threshold with the 20-car proposed definition of an HHFT will provide for consistency between railroads regardless of size and better reflect the hazard posed by these shipments.

*3. Comments regarding parallel notification requirements for any affected TERCs.*

Recommend parallel sharing of information with TERCs consistent with the Security Sensitive (SSI) determination noted in comment to question 4 below.

*4. Comments regarding the other topics addressed in the FAQ's document. In particular, PHMSA seeks comments on the confidential treatment of data contained in the notifications to SERCs, and the adoption of a means for identifying Bakken crude oil prior to rail transportation.*

As the information provided to the SERC was limited to the average number of trains, the counties those trains are transiting through and the main rail lines used, the information provided was determined by New York State to not be SSI, nor can this information be readily limited or protected from any individuals motivated to identify it as the main rail lines are not secret or difficult to identify by readily available means and unit trains are readily identifiable by the number and type of rail cars. Adoption of a means to identify Bakken crude oil, or other "sweet" crudes with higher volatility than "traditional" crude oil prior to shipment would be beneficial from a response perspective to allow a more accurate and complete picture of the hazard present. Further, New York State needs to understand where these shipments are growing to determine planning and response needs.

*5. Whether PHMSA should place restrictions in the HMR on the disclosure of the notification information provided to SERCs or to another state or local government entity.*

As long as the information provided remains limited to average number of trains, counties impacted, and primary routes, no restriction of the distribution of this information should be enacted by PHMSA.

*6. Whether such information should be deemed SSI, and the reasons indicating why such a determination is appropriate, considering safety, security, and the public's interest in information.*

See the comment provided in #4 above.

*C. Rail Routing (Page 45042)*

New York State supports the planning requirement set forth in the NPRM for carriers to perform an increased risk assessment for improving public safety and environmental protection via routing analysis that considers 27 key safety and security factors in making route selections, as well as the expansion of these planning requirements to apply to HHFTs. As mentioned above, these factors, their weighting, and the data that support the analysis should be regularly updated, and a factor reflecting economic risk should be added.

*D. Classification and Characterization of Mined Liquids and Gases (Page 45042)*

New York State supports this proposed rule requiring offerors to better classify and test the components of mined liquids and gases and to certify the results. Current regulations require certification by the shipper that the package is suitable for the material shipped; "Operation Classification" has shown that the proper identification and classification of Bakken crude oil is commonly being neglected by shippers/oil companies. New York State also encourages industry to implement methods to degasify the crude oil prior to transport. Further processing including the stabilization of crude oil by removing volatile components and pressure would make the resulting crude oil safer to transport in HHFTs.

From a response perspective – while ensuring that products are properly classified, packaged, and labeled is important – response personnel will likely continue to treat all crude oil as a "worst case" scenario involving a higher volatility and more flammable product. Until proven otherwise, this is due to lack of information and is consistent with the initial guidance provided by ERG guide page 128 which covers a wide range of ignitable liquids.

*a. Speed Restriction (Page 45046)*

New York State supports speed restrictions for all HHFTs with tank cars not meeting or exceeding the proposed performance standards for the DOT Specification 117 tank car.

*1. What would the effects be of a 40-mph speed limit for HHFTs on other traffic on the network, including passenger and intermodal traffic, under each of the three described Options?*





The enhanced safety from lower speeds from trains transporting crude oil will likely impact passenger trains that share corridors in New York State. The less uniform the speed profile of trains in a given corridor, the more infrastructure is needed to support fluid train operations (to allow for more frequent meeting/passing and overtaking). Similarly, when the infrastructure is held fixed, this condition lowers the overall capacity of the corridor and leads to slower and less reliable train operations.

*7. What other geographic delineations—in addition to HTUAs and cities with 100,000 people or more—should PHMSA consider as an Option for a 40-mph speed restriction in the absence of a proposed DOT 117 tank car?*

New York State recognizes that urban settings provide unique vulnerabilities and that a risk analysis-based speed limit that factored in location-specific conditions could be substituted for a blanket speed limit in urban areas. Such an approach, which New York State recommends be funded by the railroads and audited by federal and State agencies, could reduce the impact of uniform speed limitations on passenger and other freight rail services. This analysis should be conducted as the DOT-111 cars are phased out so that when new tank cars are in service any appropriate speed restrictions can be in effect. Further the analysis should be transparent and shared with the appropriate state partners.

*8. How would the safety benefits of the proposed speed limits change if combined with the proposed braking systems?*

The reduction in kinetic energy, increased reaction time for crews to take precautionary action, and enhanced braking system performance would be additive benefits from a safety perspective. This addresses human factor causes in rail incidents.

*b. Alternative Brake Signal Propagation Systems (Page 45048)*

As PHMSA has offered evidence that both improved braking and distributed power offer a reduction in kinetic energy of any derailment, with a corresponding reduction in risk of tank failure during a derailment, New York State recommends that these protections be combined with increased protection in tank cars, and not be limited to cars of a certain type (DOT 111) or serve to justify a reduction in those protection standards.

*5. How would the safety benefits of the proposed braking systems change if combined with the proposed speed limits and tank car standards?*

Again, New York State considers these complementary benefits to be additive from a safety perspective. Redundancy of safety systems/features would generally be considered a positive or desired outcome.

*F. New Tank Cars for High-Hazard Flammable Trains (Page 45051)*

New York State strongly recommends the selection of the FRA/PHMSA Designed Car described as (Option 1) for new car construction. The increased tank thickness, head

shields, rollover protection, and enhanced braking requirements will contribute significantly to the survivability of the tank car protections. The establishment of new tank car standards must be set as soon as possible so that the rail car production industry can begin production of safer tank cars.

*4. What additional safety features not discussed here, if any, should PHMSA consider? If so, please provide detailed estimates on the costs and benefits of individual safety features.*

New York State recommends consideration be given to recessing or utilizing an internal valve for the bottom outlet, as is referenced in the discussion on Bottom Outlet Protection on p. 42, and as is in place on DOT-406/407 tank trucks, in order to provide increased protection for that valve should a derailment occur.

*b. DOT Specification 117- Performance Standard (Page 45057)*

New York State supports the goal of the proposed performance standard which is intended to encourage innovation in tank car designs (including materials of construction and tank car protection features) while providing an equivalent level of safety as the DOT Specification 117. This will avoid a narrowly prescriptive approach which may preclude new and beneficial design alternatives which may be able to achieve an equivalent performance outcome.

*G. Existing Tank Cars for High-Hazard Flammable Trains (Page 45058)*

*4. Should the CPC-1232 cars be exempted from some or all of the retrofiting requirements described here? If so, what are the benefits and costs of those exemptions?*

The incident in Lynchburg, VA on April 30<sup>th</sup> of this year may suggest that the CPC-1232 cars have not solved the problem. However, New York State looks forward to the NTSB's recommendations to craft a regulatory action on this question.

*In addition, while DOT's September 6, 2013 ANPRM, NTSB Recommendation R-12-5, and some commenters and petitions linked enhanced tank car specifications and retrofiting of existing tanks cars to only packaging group I and II materials, this NPRM proposes packaging requirements for all flammable liquids in a HHFT, regardless of packing group. Table 22 provides PHMSA's rationale for including flammable liquids in packing groups I, II, and III (Page 45062).*

*1. Are there any relatively lower hazard, lower risk flammable liquids that could potentially be exempt from the enhanced car standards for HHFT?*

New York State is not aware of any lower risk flammable liquids that should be exempt from the enhanced HHFT car standards. Any flammable liquid in trains of 20 cars or more (as in the proposed definition of HHFT) would represent a significant flammability risk should a derailment or spill occur.



*2. Is the current exception for combustible liquids sufficient to incentivize producers to reduce the volatility of crude oil for continued use of existing tank cars?*

New York State is not positioned to evaluate the economics of reducing volatility. However, given that degasification equipment is standard in other oil production regions, New York State finds it hard to believe that oil producers cannot make the economics work.

*6. Fire and explosion risk of Class III Flammable liquids*

*a. What characteristics of a released flammable liquid significantly affect the likelihood and consequence of fire or explosion upon release?*

*b. What physical or environmental features of a release affect the likelihood and consequence of fire or explosion upon release?*

*c. What existing scientific information is available concerning the explosion hazards of hydrocarbons and other liquids?*

*d. What types of flammable liquids are most susceptible to a high-consequence detonation explosion upon release?*

*e. What data exists on the relationship between liquid properties and fire and blast zone size?*

In general, additional data and evaluation is required to better identify the answers sought. Specific to Bakken crude oil transportation by rail, actual incidents have indicated that ignition related to the derailment itself is likely. As the spilled product is unconfined, “explosions” may have been primarily due to the failure of tanks from fire exposure, resulting in heat induced tears, and as such, likely produce more of a thermal event than an explosion with true blast effects.

*7. Should shippers be allowed to petition PHMSA for an exemption from the requirements for HHFT based on the properties of Class III liquids? What should be considered (e.g. chemical properties, historical data, scientific information) before issuing an exemption?*

Other than public safety or national security issues, significant justification should be required for any exemption considered for a Class III liquid. Regular operations should not be justification for exemption.

We greatly appreciate your consideration of these comments as well as your continued efforts to work with New York State and our other federal partners in striving to improve the safety of crude oil transportation by rail.

Sincerely,



---

Joan M. McDonald, Commissioner  
New York State Department of Transportation



---

Joseph J. Martens, Commissioner  
New York State Department of Environmental Conservation



---

Jerome M. Hauer, Ph.D., MHS, Commissioner  
New York State Division of Homeland Security and Emergency Services



September 29, 2014

The Honorable Anthony Foxx  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, D.C. 20590

Re: Comments – Docket No. PHSA-2014-015 (HM-251B)

Dear Secretary Foxx:

In recent years, the number of trains transporting crude oil through New York has increased significantly, resulting in increased risks of spills, threats to public health and safety, and potential damage to the environment. These risks have been dramatically demonstrated by derailments, spills, and fires in Lac-Mégantic, Canada; North Dakota; Pennsylvania; Alabama; Virginia and elsewhere. Four crude oil train car derailments have occurred in New York State in the last year, though fortunately none resulted in spills.

On January 28, 2014, Governor Andrew M. Cuomo issued Executive Order 125 (EO 125), directing a comprehensive evaluation of New York's readiness to prevent and respond to incidents involving the transportation, storage and transshipment of crude oil. In response to EO 125, a report, "Transporting Crude Oil in New York State: A Review of Incident Prevention and Response Capacity," was created as the result of a coordinated review conducted by five state agencies. USDOT reviewed the report containing ten critical federal recommendations including a recommendation to update regulations to require route-specific contingency plans for trains carrying crude oil.

Governor Cuomo remains committed to the partnership fostered between New York State and relevant federal agencies on these issues. Enhancing industry practices and strengthening regulations are critical to ensuring public health and safety and protection of natural resources. New York State urges USDOT to expeditiously promulgate regulations to safeguard the safety of those living and working along crude oil transportation corridors.

New York State respectfully submits the following comments on the Advanced Notice of Proposed Rule Making (ANPRM) for Hazardous Materials: Oil Spill Response Plans (OSRP) for High-Hazard Flammable Trains [Docket No. PHSA-2014-015 (HM-251B)]. The comments are presented as responses to the specific questions posed within the ANPRM.

Comments on the specific questions posed on page 45082:

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. 1,000,000 gallons or more of crude oil per train consist;
  - b. An HHFT of 20 or more carloads of crude oil per train consist;
  - c. 42,000 gallons of crude oil per train consist; or
  - d. Another threshold.

New York State recommends Option C: 42,000 gallons of crude oil per train consist. This would maintain consistency with the existing threshold for comprehensive Oil Spill Response Plans (OSRP) while recognizing the hazard posed by the derailment of even a small number of crude oil cars as evidenced by the derailment and subsequent fire in Lynchburg, Virginia in April, 2014. Comprehensive OSRPs for the railroads should be based on the same requirements imposed upon the owners and operators of vessels as dictated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (OPA 90).

2. *In exploring the applicability of comprehensive OSRP requirements to trains carrying large volumes of crude oil, are the requirements of comprehensive OSRPs clear enough for railroads and shippers to understand what would be required of them? If not, what greater specificity should be added?*

The use of comprehensive OSRPs is not a new concept. As stated in the ANPRM, the OSRPs are currently mandated by OPA 90. Facility Response Plans are required by USEPA for facilities which meet a quantity threshold and operators are required to submit plans and have preset agreements for response to releases of hazardous materials. Similar requirements apply to vessels (ships, barges, tankers, etc.) that meet a quantity threshold. The ability to complete these plans is widely held by personnel in industry, government, and the consulting arena, and we strongly urge PHSMA to extend this existing practice to rail transport. New York State believes the requirements of OSRPs are clear enough for railroads and shippers to understand what is required of them.

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.*

One significant change that New York State recommends has to do with the anticipated environmental impacts that comprehensive OSRPs submitted by railroads must address. The requirement that such a plan "identifies and ensures by contract or other means the availability of private personnel to remove, to the extent practicable, a worst case discharge (including that resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge" must address the impacts of discharges upon land and groundwater, as well as those that impact surface waters.

Additionally, OSRPs should clearly identify the roles and responsibilities of a shipper's own personnel and supporting contractors, including how they would integrate into the local (public agency) incident management system, as well as what role and responsibilities the shipper anticipates or expects local, county/regional and State agencies to play, prior to any incident. This would allow for increased awareness of the responsibilities of all parties and provide for an increased ability to meet those responsibilities or identify gaps which need to be addressed.



New York State emphasizes the continued need for regular exercise of these OSRPs, including the need for unannounced drills, in order to ensure that these plans remain current and widely shared among the local and regional emergency responders. The plans should be updated periodically (every three years) and reviewed when updated.

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.*

New York State calls on the federal government to set the standards for OSRPs and ascertain cost estimates to develop the plans based on those standards.

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?*

New York State stresses the importance of using risk analysis to determine the areas of highest vulnerability or most areas that have impediments to access for first responders. New York State acknowledges that costs are associated with response and recovery but at this time cannot estimate the cost without a risk analysis. Additionally, a risk analysis is necessary to determine the best allocation of resources along shipping corridors of crude oil. It is suggested that the same 27 factors used for the rail re-routing analysis be used for such a risk analysis exercise. Those factors and their respective "weights" in the analysis should be transparent and regularly reviewed and updated for relevancy. Further, the federal government needs to set the standards for response time for private partners according to the risk analysis to be sure that sufficient resources can be marshaled. Local government first responders will likely be the first on the scene of an incident and the railroads and industry must be prepared to assist with extraordinary measures in response and recovery.

As an example of the costs associated with response, New York State has provided the estimates for foam concentrate, a key resource. The cost for 600 or more gallons of Class B foam concentrate estimated as necessary for fire control and post-fire vapor suppression for an incident involving a single DOT-111 rail car carrying crude oil, pursuant to the flow rates identified in NFPA 11, exceeds \$23,000 at current New York State Contract pricing. Combined with the costs of the apparatus needed to apply "finished" foam onto a fire or spill, the estimated cost can total \$40,000 or more per unit. The challenges of having sufficient equipment available within the response time needed to protect the public and the environment are great. A risk analysis would help New York State determine the appropriate allocation of those resources. The federal government should identify resources which could be available to states, local governments and first responders for the purchase of equipment and materials.

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

To be most effective, training, drills, and exercises should include each agency that would respond to an actual incident to an incident in a defined area to allow verification of performance, increase interoperability and identify any gaps in coverage or capability. Costs associated with doing so include the costs of providing staffing (backfills) for career fire departments and other response agencies and consumables required for effective and realistic training such as training foam. Staffing backfill costs will vary by jurisdiction but can be significant, and if not addressed, limit participation of critical response agencies with a corresponding negative impact upon effectiveness.

7. *It is assumed that most railroads and shippers currently have basic OSRPs in place. What, if any, aspects beyond the basic plan requirements do these plans voluntarily address? To what extent do current plans meet the comprehensive OSRP requirements, including procurement or contracting for resources to be present to respond to discharges?*

To date, the railroads and associated shippers have not shared their OSRPs with New York State as they currently are not required to under federal law or regulations.

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?*

While recognizing the existing efforts of the AAR and the individual railroads to provide emergency response training and pre-position response equipment inventories and supplies, to be most effective these efforts must further integrate and be coordinated with local, county/regional, state and federal planning, preparedness and response efforts. This expanded effort must be formalized and reflected in OSRPs. The adoption of formal regulations requiring these measures should ensure a level playing field across the United States for all companies engaged in this industry. It would also ensure that all areas of the country have equal access to assets.

Instead of requiring that resources be procured on a route or locality basis, New York State believes that both physical and human resources should be available to respond within a set timeframe based on risk. Areas of high risk (i.e., frequently traveled routes, locations near sensitive resources, etc.) need to be identified and should get high priority for resource allocation. Analysis of any gap in response coverage should also merit special action by the railroads and shippers.

An important aspect of initial response is the ability of local response agencies to protect themselves and their response area. Even a 2 to 3 hour privately supported response time leaves a gap to be filled by local responders. These local resources should be provided training and equipment to cover this time period. Funding by the railroads, shippers, or the federal government should be provided to local agencies along the routes of the crude oil trains so they have the proper training and response posture.

A good example is the Traffic Incident Management (TIM) model promoted by USDOT. Here in New York State, NYSDOT, State Police, the Division of Homeland Security and Emergency Services and local governments have a strong TIM with participation by agency heads, executive staff, and front line staff.

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?*





The OSRP should be made available to SERCs, and other entities charged with emergency planning in the states. The information contained in these plans can be distributed to the local and regional emergency planning and response agencies using the same conditions and agreements for security currently in use to share similar plans developed pursuant to OPA 90. Release of the non-security sensitive portions of these plans to the public can also be accommodated using the policies already established for the Area Contingency Plans established by OPA 90. PHMSA can also benefit from the experience of the US Coast Guard, USEPA, and their state partners for the review of these proposed OSRPs. The policies already in place for the review and approval of the Contingency Plans required by OPA 90 could be applied to the OSRPs.

We greatly appreciate your consideration of these comments as well as your continued efforts to work with New York State and our other federal partners in striving to improve the safety of crude oil transportation by rail.

Sincerely,

A handwritten signature in black ink that reads "Joan McDonald".

Joan M. McDonald, Commissioner  
New York State Department of Transportation

A handwritten signature in black ink that reads "Joseph J. Martens".

Joseph J. Martens, Commissioner  
New York State Department of Environmental Conservation

A handwritten signature in black ink that reads "Jerome M. Hauer".

Jerome M. Hauer, Ph.D., MHS, Commissioner  
New York State Division of Homeland Security and Emergency Services



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
www.dot.ny.gov

JOAN McDONALD  
COMMISSIONER

ANDREW M. CUOMO  
GOVERNOR

November 6, 2014

U. S. Department of Transportation  
Dockets Management Facility  
Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Docket Number: FRA-2014-0032**

To Whom It May Concern:

In recent years, the number of trains transporting crude oil through New York has increased significantly, resulting in increased risks of spills, threats to public safety, and potential damage to the environment. These risks have been dramatically demonstrated by derailments, spills, and fires in Lac-Megantic, Canada; North Dakota; Pennsylvania; Alabama; Virginia and elsewhere. Four crude oil train car derailments have occurred in New York State in the last year, though fortunately with no spills.

New York State strongly supports the provisions of the Federal Railroad Administration's (FRA's) Executive Order 28 (EO 28) which was issued following the crude oil derailment and its devastating impacts in Lac Megantic, Quebec on July 6, 2013; and which serves as the source document for this proposed rule making. EO 28 was issued by FRA to address the immediate dangers arising from unattended rail equipment which is left unsecured on mainline tracks; and its six securement-related requirements govern when, where, and how certain hazardous materials tank cars may be left unattended.

On January 28, 2014, Governor Andrew M. Cuomo issued Executive Order 125 (EO 125), directing a comprehensive evaluation of New York's readiness to prevent and respond to incidents involving the transportation, storage and transshipment of crude oil. In response to EO 125, a report, "Transporting Crude Oil in New York State: A review of Incident Prevention and Response Capacity", was created as a result of a coordinated review conducted by five state agencies. That report offered ten critical federal recommendations and a package of state administrative, regulatory, and legislative actions.

Governor Cuomo remains committed to the partnership fostered between New York State and relevant federal agencies on these issues. Further, enhancing practices and strengthening regulations to ensure public health and safety and the protection of natural resources are critical.

NYSDOT respectfully submits the following comments for the Notice of Proposed Rule Making (NPRM): Securement of Unattended Equipment (FRA Docket No. FRA-2014-0032, Notice No. 1).



*C. Current Securement Regulations and Related Guidance (p. 53361)*

1. FRA issued Technical Bulletin MP&E 2010-01, Enforcement Guidance Regarding Securement of Equipment with Title 49 Code of Federal Regulations Section 232.103(n) (TB 10-01). While FRA continues to believe that the securement requirements of § 232.103 are not met where there is a complete failure to apply even a single hand brake on unattended equipment, FRA also recognizes that there are times when it is necessary to have unsecured equipment, such as during switching activities when assembling and disassembling trains within classification yards. Therefore, TB 10-01 provides guidance regarding alternative forms of securement in such instances.<sup>5</sup>

*FRA seeks comments on clarifying the rule to address the provisions of Technical Bulletin 10-01 in the final rule. (p. 53362)*

**NYSDOT is in agreement with adding the requirement that at least one hand brake must be applied except in limited circumstances, such as when skates or retarders are applied in a classification yard. This will add clarity to the general requirements for securing unattended equipment.**

*III. Section-by-Section Analysis (p. 53364)*

1. FRA also notes that this proposed rule does not include the portion of Emergency Order 28 that requires railroads to review, verify, and adjust, as necessary, existing requirements and instructions related to the number of hand brakes to be set on unattended trains and vehicles, and to review and adjust, as necessary, the procedures for verifying that the number of hand brakes is sufficient to hold the train or vehicle with the air brakes released. It was FRA's concern that existing railroad processes and procedures related to setting and verifying hand brakes on unattended trains and equipment were not sufficient to hold all trains and vehicles in all circumstances. FRA believes that the railroads have fulfilled this requirement and thus there is no need to include it in this proposed rule.

*FRA seeks comments on the exclusion of this Emergency Order 28 requirement here. (p. 53364)*

Section 232.103(n)(1) clearly stipulates that "Railroads shall develop and implement a process or procedure to verify that the applied hand brakes will sufficiently hold the equipment with the air brakes released." NYSDOT concedes that periodic review, verification and adjustment of those processes and procedures are an inherent obligation of the railroads. Therefore, given FRA's expressed confidence that the railroads have fulfilled this requirement, NYSDOT agrees that it is unnecessary to include it in this proposed rule.

*Proposed Amendments to 49 CFR Part 232 (p. 53364)*

*Section 232.103 General Requirements for all Train Brake Systems*

1. Proposed paragraph (n)(6) defines the type of cars covered by these requirements and is intended to ensure that proposed paragraphs (n)(7) and (n)(8) apply only to equipment that includes loads. Specifically, paragraph (n)(6) provides that the substantive requirements of paragraphs (n)(7) and (n)(8) will apply to :
  - (1) any loaded freight car containing PIH material, including anhydrous ammonia and ammonia solutions; or
  - (2) twenty (20) or more loaded cars or loaded intermodal portable tanks of any one or any combination of PIH materials (including anhydrous ammonia and ammonia solutions), or any flammable gas, flammable or combustible liquid, explosives or a hazardous substance listed at § 173.31(f)(2) of this title.

FRA notes that this language is broader than the language used in PHMSA's NPRM on Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (HHFTs). See 79 FR 45016 (Aug. 1, 2014). In that rule, PHMSA proposed certain new requirements for HHFTs, which it defines as "a train comprised of 20 or more carloads of a Class 3 flammable liquid and ensures that the rail requirements are more closely aligned with the risks posed by the operation of these trains." 79 FR at 45017. Paragraph (n)(6) proposes new securement requirements that would cover a single PIH tank car. Moreover, where the proposed PHMSA rule would only cover trains with 20 or more carloads of flammable liquids, paragraph (n)(6) proposes to cover situations where there are 20 or more carloads or loaded intermodal portable tanks of PIH materials, flammable gases, flammable or combustible liquids, explosives, other hazard substances listed at § 173.31(f)(2), or any combination thereof.

*FRA seeks comment on this proposal and also seeks comment on whether a defined term should be used for equipment covered under paragraph (n)(6). (p. 53365)*

**From the standpoint of public safety, NYSDOT supports FRA's broadening the language of this rule to include the securement of unattended equipment transporting hazardous materials beyond those defined as HHFTs in PHMSA's earlier NPRM.**

**A "defined term" for the equipment covered under paragraph (n)(6) which would provide a simple way to differentiate it from those defined elsewhere in regulation (e.g. HHFTs) would be advantageous.**

2. The proposed regulatory text exempts residue cars from consideration. Residue cars are defined by PHMSA under the HMRs. FRA will continue to rely on the HMRs for this definition, even if amended. Together, FRA and PHMSA are concurrently considering new regulations relating to the placement in trains of cars containing hazardous materials. In that effort, loaded and residue cars may be treated the same. FRA does not believe that any resulting train placement regulation would affect the securement regulations we are considering in the instant proceeding. Nevertheless, the parties have expressed concerns that such inconsistent use may foster confusion or be "pitted against one another.

*FRA seeks further comment explaining how such confusion or conflict may manifest itself. (p. 53365)*



Exempting residue cars from the requirements of this proposed rule would appear contradictory to the language contained throughout the Hazardous Material Regulations (HMRs). The HMR's have been written from a perspective that a packaging which contains residue remains potentially hazardous.

Although FRA does not believe that any resulting train placement regulation would affect the securement regulations we are considering, it is not clear what particular advantage is gained by granting this exception for residue cars. From a risk perspective, it would seem reasonable to treat all placarded residue cars as potentially hazardous until such time that they are cleaned and purged, including for the purposes of securement.

In order to avoid the potential for confusion in terms of interpreting the HMR's, NYSDOT contends that the provisions which apply to residue cars should remain consistent throughout. Therefore, we recommend that the exclusion outlined in 232.103(n)(6)(ii) be omitted from the proposed rule.

3. Proposed paragraph (n)(7)(i), however, differs from Emergency Order 28 in one manner. It allows a railroad to leave a train or equipment unattended on mainline track that is running through a yard or on mainline track that is adjacent to the yard without covering the location in the railroad's plan. This change is based on feedback received during the SWG meetings, which voted unanimously to adopt the proposed language in paragraph (n)(7)(i), with the recommendation of the full RSAC to move forward with the regulatory provision.

*FRA seeks comments on its treatment of tracks adjacent to the yard. (p.53366)*

Given that there are vast differences in surrounding population densities and in the amount of railroad activity that takes place at different rail yards, NYSDOT believes that there should be no differentiation in plan requirements simply because the mainline tracks go through or are adjacent to rail yards. There are many railroad yards located in rural areas of New York State with limited rail operation activity, low population density and in which ambient lighting may be poor or nonexistent. In a letter to President Obama dated September 23, 2014, Governor Cuomo recently outlined New York's safety concerns in and around the areas in which crude-by-rail trains dwell. Sufficient analysis of the safety risks and any mitigating circumstances should be part of a railroad's plan for all mainline tracks and sidings irrespective of whether those tracks go through or are adjacent to a rail yard.

4. FRA has decided not to continue the recordation requirement based on experience in enforcing Emergency Order 28. FRA has found that requiring recordation of securement information is superfluous because the verification requirement ensures that two individuals consulting with each other make certain that the appropriate securement method is used. The intent of the recordation requirement was to ensure the communications are taking place. FRA has found over the last year that communications occur in the course of the verification process. Therefore, it does not believe requiring railroads to make a record of each securement event is necessary to ensure proper securement.

Nevertheless, *FRA seeks comment concerning enforcement of the verification requirement, absent recordation.* (p. 53366)

Removing the recordation requirement would make enforcement of 232.103(n) extremely challenging. NYSDOT supports the provisions of Emergency Order 28, which currently requires railroads to have a written record of the number of hand brakes applied to an unattended train based upon communications between the train crew and qualified employee. This approach establishes a documented basis which is subject to verification by rail safety enforcement personnel. Having a written record of the number of brakes applied also aids the incoming train crew in its assessment of how many hand brakes need to be released before the train continues its movement; a train operated with a hand brake left applied inadvertently can result in severe wheel damage and an increased potential for a derailment to occur. Given that the proposed rule fails to codify the appropriate number of hand brakes to be set (based upon weight, number of rail cars and track gradient), and is proposing to eliminate the recordation provision of EO 28, our ability to verify that adequate securement of unattended trains and equipment has been achieved will be significantly diminished. NYSDOT strongly recommends that the recordation requirement be maintained in the proposed rule.

[Note: In reviewing the provisions of (n)(8) including related passages in (n)(7), some confusion has arisen. There appears to be some ambiguity regarding paragraph (n)(7)(ii) as it relates to the provisions of paragraph (n)(8)(i), as follows:

Paragraph (n)(7)(ii) refers to trains described in 232.103(n)(6) which are “left unattended on a main track or siding that runs through, or is directly adjacent to a yard” and states that the requirements of paragraph 8(i) and 8(ii) *shall apply*. However, paragraph (n)(8)(i) states, “Where a freight train or standing freight car or cars as described in paragraph (n)(6) of this section is left unattended on a main track or siding outside of a yard, and not directly adjacent to a yard, an employee responsible for securing the equipment shall verify with another person qualified to make the determination that the equipment is secured in accordance with the railroad’s processes and procedures.”

The wording *shall apply* would seem to render the provisions of paragraph (n)(7)(ii) moot, since it appears to default to the provisions of paragraphs (n)(8)(i) and (n)(8)(ii) for all trains left unattended, irrespective of their location relative to a yard.

NYSDOT is in agreement with the requirement that an employee responsible for securing the equipment shall verify with another qualified person that the equipment is secured in accordance with railroad procedures for all trains left unattended. Based upon our interpretation as written, we would suggest that paragraph (n)(7)(ii) could be omitted and the wording of (n)(8)(i) could be changed to: “Where a freight train or standing freight car or cars as described in paragraph 232.103(n)(6) of this section is left unattended on a main track or siding, an employee responsible for securing the equipment shall verify.....etc.”]



5. Proposed paragraph (n)(8)(ii) requires further protection of the locomotive to prevent movement of unattended equipment that could be caused by unauthorized access to the locomotive cab. The language approved by the SWG (Securement Working Group of the Railroad Safety Advisory Committee) provided that the controlling locomotive cab shall be locked on locomotives capable of being locked or the reverser on the controlling locomotive shall be removed from the control stand and placed in a secure location. FRA has made slight alterations to the language in paragraph (n)(8)(ii) from the language that was approved by the SWG in order to more accurately address the lock requirement. FRA understands that the reverser provision is intended for the interim period until locks are installed or when a locomotive has been equipped with a lock but the lock has become inoperative. FRA also notes that under this proposal a railroad would be free to require both the locking of the locomotive and the removal of the reverser. FRA does not intend to limit a railroad to just one or the other.

*FRA seeks comment on this understanding, particularly as to whether the alternative of becomes broken or otherwise ineffective or whether, in the interest of safety redundancy, the regulations should require railroads to both lock cab doors and to remove reverser handles.*  
(p. 53366)

**NYS DOT supports the view that redundancy of safety or security procedures is beneficial in terms of addressing risk. Therefore, we are in agreement that both the locomotive cab door lock should be engaged (if operative) and the reverser should be removed and secured where feasible when the train is left unattended.**

6. In most instances, FRA would consider a locomotive with an ineffective locking mechanism to be noncompliant with paragraph (n)(8)(ii) if the locomotive is left unattended with the reverser remaining in the control stand. FRA recognizes that there may be times when a locomotive's lock becomes inoperative and its reverser cannot be removed, thus making compliance with proposed paragraph (n)(8)(ii) nearly impossible. Accordingly, for such instances, FRA proposes an exception under paragraph (n)(8)(iii). FRA believes that application of this exception would only be utilized on the rare occasion where older locomotives with integrated reversers may be utilized or where weather conditions make the reverser necessary for operations (i.e., to prevent the locomotive from freezing).

*FRA seeks comments on the intent, application, and language of this proposed exception.*  
(p. 53367)

**The data provided in the analysis section of the NPRM indicates that the cost associated with repairing or replacing a locking mechanism is relatively small. It is accepted that the goal of this particular exception is to provide relief in the rare instances where “non-conforming” equipment ( e.g. locomotive cabs without operative locks or removable reversers) would require. However, given the acknowledged security concerns inherent with leaving trains unattended, consideration should be given to requiring that the affected equipment be attended until such time that the inoperative locking mechanisms can be repaired or replaced in conformance with paragraph (n)(8)(ii).**

7. Under this proposal, FRA expects that the crew will discuss the equipment that is impacted, the responsibilities of each employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, how the verification will be determined, and any other relevant factors affecting securement.

*FRA seeks comments on whether these expectations are reasonable, accurate, and either sufficiently comprehensive or somehow lacking. (p. 53367)*

**The specific job briefing requirements should be left up to the railroads. NYSDOT agrees that effective policies and procedures are important. However, our larger concern remains the ability to record or document the actions taken in accordance with those policies and procedures. As previously noted, a more uniform approach to ensuring that unattended trains are left with a sufficient number of hand brakes could be accomplished by codifying in regulation the appropriate number of hand brakes required given the weight, number of cars, and track gradient. This would ensure uniformity amongst all railroads, and would allow inspectors the ability to verify that unattended trains are left with the required amount of hand brakes applied.**

8. FRA recognizes that in some instances, there may only be one crew member performing a switch or operation and that would have to secure equipment alone at the end of the activity. FRA believes that the issue of self-satisfying a job briefing is best left to the railroad when complying with part 218.

*FRA seeks comments on how to apply this requirement in a situation involving a single person crew and how it interrelates with part 218. (p. 53367)*

**NYSDOT acknowledges that single person crews pose a challenge in terms of ensuring that the safety benefits inherent with effective job briefings are assured in all instances, including single-person operations. At a minimum, the procedures for conducting job briefings should be established in the railroad's operating rules or in its timetable special instruction for all locations and operations to ensure that expectations are clearly established.**

9. Under paragraph (n)(10), FRA is proposing to require railroads to develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the rail equipment or train is left unattended. As it may be necessary for emergency responders to modify the state of the equipment for the performance of their jobs by going on, under, or between equipment, it is critical for the railroad to have a qualified employee subsequently inspect the equipment to ensure that the equipment continues to be properly secured before it is again left unattended. Paragraph (n)(10) states:

“ Each railroad shall adopt and comply with procedures to ensure that, as soon as safely practicable, a qualified employee verifies the proper securement of any unattended equipment when the railroad has knowledge that a non-railroad emergency responder has been on, under, or between the equipment.”





*FRA seeks comments on what should be considered “as soon as safely practicable.”  
(p. 53367)*

Clearly, the type and severity associated with any emergency event will significantly influence the definition of “as soon as safely practicable”. NYSDOT would recommend that, given their significant training regarding personal safety and protection, the first responders on-site would be a reasonable ‘real time’ resource to provide the requisite guidance in each case.

NYSDOT consulted with counterparts from the NYS Division of Homeland Security and Emergency Services (DHSES), Office of Fire Prevention and Control (OFPC) on this topic. OFPC recommends that for scenarios in which first responders access unattended equipment without the on-site presence of railroad personnel, effective communication and coordination will be critical in assuring that the incident scene and access to the equipment be turned over to the appropriate railroad representative (i.e. “qualified employee”) when it is has been determined safe to do so. In no case should the affected equipment be left in a potentially unsafe or unattended condition prior to the arrival of railroad personnel designated by the railroad to inspect and assume responsibility for that equipment and its proper securement.

Section 232.105 General Requirements for Locomotives (p.53367)

1. FRA proposes a new paragraph (h) to §232.105 to provide further requirements concerning locking mechanisms on locomotive doors. While proposed §232.103(n)(8)(ii) provides securement controls for the controlling locomotive cab that is left unattended on a mainline track or siding as part of a train that meets the minimum quantities of hazardous materials established in §232.103(n)(6)(i), FRA believes that additional requirements should apply to all locomotives left outside of a yard.

*FRA also proposes to include this requirement in § 232.105 so that it applies to all locomotives left unattended outside of a yard or on a track immediately adjacent to a yard, not just those locomotives defined under § 232.103(n)(6).*

*FRA seeks comment on this requirement. (p. 53367)*

NYSDOT supports the intent of this proposal to provide securement controls for all locomotives left unattended outside of a yard. The proposed 232.105 requires that locomotives have operative locks by 2017; however, other than the language in paragraph (n)(8)(ii) for hazardous trains as defined in paragraph (n)(6)(i), there is no requirement for the train crew to apply the lock. We suggest additional wording to that included in paragraph (n)(8)(ii) to cover all unattended locomotives on mainline tracks and sidings regardless of the lading carried by the train.

2. *For the purposes of this regulation, “operative” means that, when applied, the locking mechanism will reasonably be expected to keep unauthorized people from gaining access into a locomotive*

*while the locomotive is unoccupied. However, in doing so, the railroad must assure that ingress and egress is provided for in normal circumstances and emergencies.*

*FRA seeks comments on this understanding. (p. 53368)*

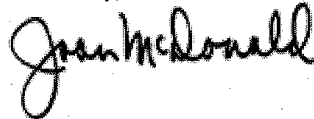
**NYSDOT believes that the proposed definition is reasonable. It is understood that whatever type of locking mechanism is provided by the railroad would be based upon its effectiveness and appropriate functionality to accommodate the required ingress/egress under all conditions.**

*3. FRA also seeks information and comments on the possibility of a qualified person finding difficulty accessing the locomotive cab in the event of an unintentional movement of the equipment. (p. 53368)*

**Based upon our response to 2. above, we would rely upon the railroad to develop appropriate procedures to address this scenario. In the event there is unintentional movement of the equipment as described, and access to the cab is problematic, we would expect that the qualified person would likely attempt to apply the hand brake from the outside of the locomotive.**

Thank you for providing this opportunity to submit comments. NYSDOT urges FRA to strongly consider the comments and recommendations of this Department. If you have any questions, please feel free to contact Clifford Thomas, Director of the Rail Safety Bureau at (518) 457-7475.

Sincerely,

A handwritten signature in black ink that reads "Joan McDonald". The signature is written in a cursive style with a large, looped initial "J".

Joan McDonald  
Commissioner