

United States Senate

WASHINGTON, DC 20510

June 26, 2014

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

Dear Secretary Foxx:

As we near the one-year anniversary of the tragic oil train accident in Lac Megantic, Quebec, we remain concerned that first responders in Oregon and elsewhere have inadequate information to protect their communities from potential accidents involving crude-by-rail trains.

Public safety officials should be made aware of all crude-by-rail routes and have the option to access information about all crude-by-rail shipments, regardless of size or origin, given the hazards presented by oil shipments of any size. The availability of information and notification requirements for railroads should not be segregated by the geographic origin of the oil being transported, or the size of the shipment.

To this end, on May 9, 2014, we asked you to expand the scope of the emergency order currently requiring railroads to notify states of crude -by-rail shipments from the “Bakken formation of the Williston Basin” (Bakken oil) in excess of 1,000,000 gallons. We voiced our concern that this notification requirement, while a good first step, was too narrow and should include non-Bakken oil and shipments of less than 1,000,000 gallons. On June 10, 2014, we reiterated these concerns to the National Transportation Safety Board (NTSB). In that letter, we attached maps showing that twice as much crude-by-rail loading capacity exists outside the Bakken formation (in seven states and two Canadian provinces) as within it. We asked the NTSB to evaluate aspects of the emergency order.

Acting Chairman Christopher A. Hart responded to our questions today in the attached 13-page letter. He highlighted the NTSB’s concerns with the current Department of Transportation’s framework, and attendant shortfalls, for community notification relating to crude-by-rail shipments. As Chairman Hart said in his letter, “crude oil of all types and from all regions are flammable materials,” and “accidents involving crude oil or flammable liquids of any kind, especially when these liquids are transported in large volumes such as in unit trains or in blocks of tank cars, can have disastrous consequences, including devastating environmental contamination.”

Acting Chairman Hart cites examples of accidents involving non-Bakken oil, such as one in New Augusta, Mississippi that leaked North Alberta crude on January 31, 2014. Of that accident, Chairman Hart wrote that “while the derailment ... did not result in a fire or injuries, about 50,000 gallons of crude oil was released into a navigable waterway, affecting environmentally sensitive areas. Residents within a ½-mile radius of the scene had to be evacuated.” The New Augusta accident involved a mixed-freight train carrying crude oil and other hazardous materials, similar to the mix of materials that resulted in a fire and series of massive explosions following an April 22, 2008 derailment in Luther, Oklahoma. In addition to these accidents, our staff has identified other non-Bakken oil accidents such as the May 9, 2014 derailment of a train in La Salle, Colorado (spilled 6,500 gallons of crude from the Niobrara Basin), and the 103,000-liter (about 25,000-gallon) spill of North Alberta crude in White River, Ontario following an April 3, 2013 derailment.

Acting Chairman Hart also provided data showing that, with the exception of the Lac Megantic accident, every accident involving crude oil, ethanol and other flammable materials since 2006 has resulted in a hazardous materials release of less than 1,000,000 gallons. These accidents have resulted in tens of millions of dollars in damage, dramatic explosions and fires, injuries and a death. Even the accident that precipitated the emergency order in Lynchburg, Virginia, spilled just 30,000 gallons. However, the spill and resulting fire left the downtown under a cloud of billowing black smoke, required an evacuation and led utility officials in at least one downstream community to shut off water intakes on the James River.

The above listed examples, and others listed in Acting Chairman Hart’s letter, deserve additional consideration by the Department of Transportation. We believe these examples demonstrate that non-Bakken oil shipments of crude, and crude trains carrying less than 1,000,000 gallons pose an imminent hazard, as defined by 49 U.S.C. 5121(d), and deserve inclusion under the May 7, 2014 order. In addition to our immediate concerns with the emergency order, Acting Chairman Hart identified several other important areas that deserve your attention relating to crude-by-rail and hazardous material community notification and issues related to crude-by-rail shipments:

- **Real-time information for first responders:** The Department of Transportation has yet to implement adequate requirements for real-time, electronic information for first responders, despite the NTSB first calling for such measures in 2007, and again in 2009. As the letter states, “in several accident investigations, we have found that first responders did not have all the information necessary to develop the best response plan to protect themselves and their communities.” The letter also refers to testimony the NTSB received from fire chiefs in 2013 and 2014 highlighting the importance of increased information-sharing in protecting communities.
- **Oil spill response:** The letter cites “a lack of oil spill planning requirements for railroads that currently apply to other modes of transportation, such as marine and pipeline, to address their capability to respond to worst-case discharges.” It points out that “when accidents cause the release of petroleum products, the resulting cleanup is often very costly, and long-term monitoring may be required to mitigate impacts to community health and to ensure the effectiveness of environmental restoration actions.” To that end, the NTSB has recommended that Pipeline and Hazardous Materials Administration

(PHMSA) update its response plans in 49 CFR Part 130 to require comprehensive response plans for “worst-case discharges.” It also has recommended that the Federal Railroad Administration audit those plans, to “ensure that adequate provisions are in place to respond to and remove a worst-case discharge.”

- **Route planning:** The letter highlighted recent safety recommendations to the Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration concerning a “lack of route planning and selection requirements for hazardous materials other than those that are explosive, toxic by inhalation, or radioactive.”
- **Additional training:** The NTSB cites its concern “that the lack of a requirement for railroads to assist local emergency planners may leave communities unprepared for response to major hazardous materials releases, and, consequently, many communities learn about these hazards for the first time during an actual emergency.” It encourages the rail industry to play “a greater role in local emergency planning” and implementation of “effective public awareness programs.”

Finally, Acting Chairman Hart cites a gap in existing statute that exempts all transportation from emergency planning requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA). We plan to examine this exemption, seek ideas to effectively fix it, and look forward to working with your office to improve the information availability to first responders whose communities have hazardous materials traveling through them.

Thank you for your attention to this important matter,

Sincerely,


Ron Wyden
United States Senator


Jeff Merkley
United States Senator