

9/16/2014

76-R-14

A RESOLUTION

**Regarding Notice of Proposed Rulemaking Proceedings
“Hazardous Materials: Enhanced Tank Car Standards and
Operational Controls for High-Hazard Flammable Trains” Before
the Pipelines and Hazardous Materials Safety Administration in
Docket No. PHMSA-2012-0082 (HM-251)**

WHEREAS, each day, rail freight operations impact thousands of villages, towns, cities and counties across all regions of the United States of America; and

WHEREAS, safe rail operations are of critical interest to local units of government based on the need to prevent catastrophic accidents like the one that occurred in Lac-Megantic, Canada in July 2013 as well as several others since then; and

WHEREAS, local governments have the responsibility to provide emergency response to manage the impact of rail accidents and derailments in communities across the country and to oversee clean up and environmental remediation; and

WHEREAS, clean up, environmental remediation, medical expenses other personal injury damages or wrongful death claims for community residents have the potential to surpass the rail industry's ability to pay for them; and

WHEREAS, ethanol, crude oil, and other flammable Class 3 hazmat are a large and exponentially growing segment of rail freight being

shipped across the nation and will continue as a growing and market-flexible transport mode for this hazmat; and

WHEREAS, since 1991, it has been known to industry and federal regulators that there are safety-related defects in the DOT-111 tank car that serves as the primary tank car used in the shipping of these hazardous flammable materials via freight rail; and

WHEREAS, the federal Pipelines and Hazardous Materials Safety Administration (PHMSA) regulates the safe transport of hazardous materials by railroads in the United States with the mission “to protect people and the environment from the risks of hazardous materials transportation”; and

WHEREAS, the business decisions of railroad companies and hazardous material shippers impact the safety, environment, and emergency response systems in the communities in which the freight railroads traverse, but state and local governments have no ability to regulate railroad operations; and

WHEREAS, industry has failed to act in the last two decades to correct the known safety deficiencies in DOT-111 tank cars despite repeated National Transportation Safety Board warnings, and waited until 2011 to seek government approval to upgrade safety standards for tank cars meant to carry liquid hazmat; and

WHEREAS, the comments submitted to PHMSA on December 5, 2013 by Barrington, Illinois and the Illinois TRAC Coalition reflect the point of view of local governments, which is supported by recommendations of the National Transportation Safety Board, that changes are needed in federal

regulations and/or law to better protect public safety relative to tank car safety standards; and

WHEREAS, the August 1, 2014 NPRM released by PHMSA proposed various regulatory options for improving the crashworthiness of tank cars consisting of three standards of robustness and Option 1 is the best solution for maximizing the crashworthiness of tank cars and will best protect the public's safety; and

WHEREAS, the NPRM undercuts the strength of the proposed rules by limiting its coverage to only "high-hazard flammable trains" (HHFTs), defined as trains composed of 20 or more cars of Class 3 flammable liquids, and thereby exempts over 40% of rail car origins involving Class 3 hazmat commodities; and

WHEREAS, placed in the 2012 data context provided by PHMSA, this exempts from improved safety regulations 281,404 tank car originations annually – or 771 carloads of flammable hazmat traveling each day of the year in deficient tank cars throughout the United States; and

WHEREAS, if PHMSA does not bar the use of DOT-111 tank cars for all flammable hazmat service in its new regulations, those deficient tank car will be allowed to carry dangerous liquid hazmat for the remainder of their useful life (up to another 40 years); and

WHEREAS, any regulatory solution should solve the whole problem and not provide the public with a false sense of security around the rail transport of hazmat because federal Hazardous Materials Regulations (HMR) are

designed “to ensure that hazardous materials are packaged safely” – meaning ALL hazmat, and not just large quantities; and,

WHEREAS, PHMSA’s rationale for limiting the coverage of its new rules to HHFTs is not supported by the evidence the agency provides from its review of 46 mainline derailments that occurred between 2006 and 2013, in that those derailments show that the breach of even a single or a small number of tank cars can result in a significant release of hazmat; and

WHEREAS, a DOT-111 tank car is too dangerous for the shipment of any Class 3 hazmat and allowing a regulatory gap that extends their use for this transport will likely encourage industry to make operational changes that will continue to endanger the public and pose an environmental hazard; and

WHEREAS, it is critical in the event of a hazardous materials rail incident that local emergency responders are prepared and have access to adequate resources to appropriately respond; and

WHEREAS, preparation begins with local responder knowledge of what hazardous material is passing through a locality and the proper response beforehand, and

WHEREAS, railroads have the ability to inform local emergency responders about the hazmat threat to their localities and provide training for response to such, including information about the location and sufficiency of railroad assets which can be deployed to assist in an emergency response, and

WHEREAS, railroads have the ability to make the existence and location of hazardous cargo consists available promptly and directly to local emergency responders in the event of a rail incident;

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: The City of Evanston supports comments seeking to insure that all tank cars used in the transport of Class 3 flammable hazmat, not only those in HHFTs, will be covered by the agency's new rules.

SECTION 2: The City of Evanston supports comments supporting the Option 1 tank car standards, as that maximizes the crashworthiness and best protects public safety, as outlined in detail in Docket No. PHMSA-2012-0082 (HM-251).

SECTION 3: The City of Evanston supports comments seeking to require railroads to provide to local emergency responders: adequate and timely information about the hazmat traveling through their jurisdictions, sufficient training to prepare for emergencies, including response support from the railroads transporting such hazmat in order to provide an effective and coordinated response to hazmat rail incidents.

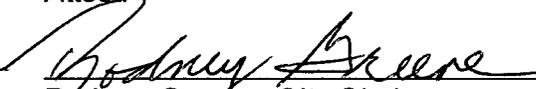
SECTION 4: This Resolution 76-R-14 shall be in full force and effect from and after its passage and approval in the manner provided by law.

SECTION 5: This adopted Resolution 76-R-14 shall be sent to the Pipelines and Hazardous Materials Safety Administration in Docket No. PHMSA-2012-0082 (HM-251) urging expeditious action so that rail transport of

all Class 3 hazmat is covered by the rules promulgated from the August 1, 2014
PHMSA NPRM.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: September 22, 2014

EXHIBIT 1
REAL ESTATE CONTRACT



PROPOSED RULEMAKING ON RAIL TANK CAR SAFETY

ISSUE SUMMARY & ACTION REQUEST

September 9, 2014

ISSUE SUMMARY:

In 2011, after a fatal ethanol train derailment in Cherry Valley, IL, the rail industry began the petition process before the Pipeline and Hazardous Materials Safety Administration (PHMSA) seeking improved performance standards for new rail tank cars carrying liquid hazmat in recognition that the current "workhorse" tank car of the fleet (the DOT-111) has a high tendency to puncture in accidents. These efforts began two decades after the National Transportation Safety Board had warned industry and regulators that there were significant safety-related flaws in this tank car's design. In 2012, the Illinois TRAC Coalition also petitioned PHMSA for improved standards to cover both new and existing tank cars.

The rulemaking process stalled, however, until the derailment of a crude oil train in Lac-Megantic, Quebec in July 2013 that killed 47 people. After that tragedy, PHMSA finally released its Advance Notice of Proposed Rulemaking (ANPRM) last fall asking for input into what safety-enhancing provisions should be included in the rulemaking. The comment period for that phase of the process was completed in December 2013, with those comments serving as the basis for *the rules PHMSA has now outlined in the NPRM that was released on August 1. Interested parties will have until September 30, 2014 to weigh in on the proposed rules the agency is planning to promulgate.*

While there are some positive aspects of the rules being outlined by PHMSA, including better safety standards and enhanced braking requirements for tank cars, there is a fundamental defect that must be rectified to adequately protect the safety of the public and the environment. **Rather than having the rules apply to all tank cars carrying flammable hazmat, PHMSA chose to minimize the scope of the rulemaking to deal only with enhanced tank car standards and operational controls for "high-hazard flammable trains" or HHFTs** (defined as any train with 20 or more cars of Class 3 flammable liquids, which the agency believes will be limited to crude oil and ethanol.)

In doing this, PHMSA has exempted from any safety-related upgrades fully 40% of the liquid hazmat that is shipped by rail in deficient DOT-111 tank cars. Its rationale for doing so is not supported by the evidence PHMSA provides from its review of 46 mainline derailments that occurred between 2006 and 2013. Those derailments show that the breach of even a single or a small number of tank cars can result in a significant release of hazmat. In 43 of the 46 mainline derailments used by the agency to support limiting new tank car standards and enhanced operational control to HHFTs, the accidents involved fewer than 20 tank cars releasing their contents. In fact, in 20 of these derailments, only a single tank car was breached. With 93% of these mainline derailments involving fewer than 20 tank cars breaching, it's indefensible for PHMSA to apply its rules solely to HHFTs.

The flammable hazmat that would be allowed by PHMSA to remain in DOT-111 tank cars for the next 40 years unless the agency can be convinced to adjust course on this exemption, includes highly dangerous substances like gasoline, diesel fuel, condensate, aviation fuel, acetone, corrosive flammable liquids, oil sands, and even crude oil and ethanol if it is on a manifest train. **Therefore, TRAC believes that any tank car carrying liquid hazmat must meet the most robust tank car standards as outlined in the NPRM.**

The NPRM also fails to adequately address emergency preparation and response for rail hazmat incidents at the local level -- where all emergencies occur. It is critical that new rules require that railroads provide adequate notice to local emergency responders of the type and frequency of hazmat transported within their jurisdictions. Railroads should also be required -- subject to PHMSA and FRA audit and enforcement -- to provide appropriate hazardous materials training and materials to local emergency responders, including the location of sufficient quantities of hazmat response assets to enable a coordinated response effort among the local responders and the railroad. Joint response training events between the railroad and local responders should be required with a reasonable amount of frequency.

ACTION REQUEST OF LOCAL GOVERNMENTS:

It is vital that local governments weigh in on this NPRM prior to the September 30, 2014 comment deadline.

To that end, a sample resolution is attached that local units of government can adopt and forward to PHMSA to indicate their support for the NPRM changes detailed in this summary.

Please act expeditiously to pass this resolution. Once adopted, a copy of your government's resolution should be submitted in **one** of three ways:

- Through the Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Via Fax: 1-202-493-2251.
- By mail: Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE., Washington, DC 20590.

Instructions: All submissions must include the agency name and docket number for this notice (as shown in the model resolution) at the beginning of the comment. To avoid duplication, please use only one of the three methods of delivery.

Any questions you may have on this matter can be directed to FightRailCongestion@gmail.com. Thank you!