

CITY OF ALBANY OIL TRAIN SAFETY BLUE RIBBON PANEL REPORT

Panel Members

Albany Mayor Kathy M. Sheehan, Chair
Hon. Carolyn McLaughlin, Common Council President
Hon. Dorcey Applies, Common Council 1st Ward
Hon. Vivian Kornegay, Common Council 2nd Ward
Hon. Lucille McKnight, Albany County Legislator District 1
Hon. Craig Apple, Albany County Sheriff
Bill Law, Vice President, Mount Hope Neighborhood Association
Charlene Benton, President, Ezra Prentice Neighborhood Association
Georgeann Payne, President, North Albany Neighborhood Association
Acting Chief Brendan Cox, City of Albany Police Department
Chief Warren Abriel, City of Albany Fire Department
Miriam Stuart, Director, Shepherd's Purse
Ray Brescia, Director, Government Law Center at Albany Law School
Dr. Erin Bell, Environmental Health Sciences Department, University at Albany School of Public Health
Steven T. Longo, Executive Director, Albany Housing Authority

On July 29, 2014, Mayor Kathy Sheehan convened a Blue Ribbon Panel ("Panel") tasked with studying rail safety within the City of Albany. Panel members included various experts in the fields of public health, law, public safety, along with community leaders. The Panel consisted of three working groups focused on the following issues:

- 1) The proposed United States Department of Transportation ("USDOT") regulations (since finalized as the USDOT Final Rule -Enhanced Tank Car Standards and Operational Controls for High Hazard Flammable Trains)
- 2) Potential Health Impacts on Ezra Prentice residents; and
- 3) Improving communications between the various stakeholders and public.

When the Panel was formed, Mayor Sheehan noted, "We need to build on the positive momentum we've achieved from local and federal actions taken to date to improve rail safety. The unprecedented increase in rail traffic impacts everyone who lives, works, shops and drives near the tracks. My administration is committed to giving community members a voice as we develop realistic solutions for keeping people safe." The Panel shared the Mayor's concerns. Understanding the need to advocate on behalf of our communities to federal officials, state officials, and the industry, members set forth to discuss the issues compile their findings into a report.

The initial goal of the Panel was to complete its work by the end of September 2014. However, given pending regulatory changes and the pending New York State Department of Environmental Conservation ("DEC") action regarding Global Companies permit, this report was delayed to incorporate those decisions and findings.

It is noteworthy that in 2014 data from the federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) indicated a record number of 141 spills from oil trains. By comparison, between 1975 and 2012, U.S. railroads averaged just 25 spills a year.¹

The USDOT noted in the recently issued Final Rule that “Crude oil and ethanol comprise approximately 68 percent of the flammable liquids transported by rail. The inherent risk of flammability of these materials is compounded in the context of rail transportation because petroleum crude oil and ethanol are commonly shipped in large quantities, either as large blocks of material in a manifest train or as a single commodity train (commonly referred to as a “unit train”). As detailed in the NPRM [Notice of Proposed Rulemaking], in recent years, train accidents/incidents (train accidents) involving the release of a flammable liquid and resulting in fires and other severe consequences have occurred.”²

In light of the ever increasing volume of crude oil transported throughout the United States and within our region, there has been progress on the regulatory front. In December 2014, Mayor Sheehan signed onto comments submitted by Albany County to the U.S. Department of Transportation regarding the NPRM: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. The comments submitted expressed concerns regarding the safety of crude oil transit and the need for additional protections on the federal level due to the inability of local governments to impose binding requirements due to federal preemption.

On May 1, 2015, USDOT announced a Final Rule to Strengthen Safe Transportation of Flammable Liquids by Rail (“Rule”). While the Rule did create new standards and safety measures that are unprecedented, there are additional measures that the Panel recommends.

Senator Charles Schumer, in response to the Final Rule issuance proposed legislation to address outstanding issues that were not resolved in the Rule. Many of the proposals in Senator Schumer’s legislation have been incorporated into the Panel’s findings. We thank Senator Schumer for his leadership on this issue.

Subsequently, the DEC announced that it would rescind the previously issued Negative Declaration and Notice of Complete Application for Global Companies’ Title V air permit modification application for facilities at the Port of Albany. This decision would result in Global Companies having to complete an environmental review of said project. The review will allow the impact of permit changes to be considered by the general public. The Panel supports a full environmental review.

The Panel thanks our federal and state partners for the work accomplished thus far and seeks to continue working together.

The following report summarizes the findings of the Working Groups with input from other interested parties. Special thanks to Senator Charles Schumer, Albany County Executive Dan

¹ <http://www.nbcnews.com/news/investigations/oil-train-spills-hit-record-level-2014-n293186>

² http://www.dot.gov/sites/dot.gov/files/docs/final-rule-flammable-liquids-by-rail_0.pdf - Page 6.

McCoy, and the community members and advocacy groups for their input and contributions to the Panel's efforts.

Federal Safety Regulations Panel Recommendations

Responses to the U.S. Department of Transportation Final Rule for the safe transport of crude oil and other flammable materials by rail.

The Federal Rule does create enhanced standards for tank cars and provides clear standards that will allow the industry to begin the process of adapting their practices and improving their cars to enhance safety; however there are gaps in the Rule that need to be addressed, especially the need for timely implementation of new tank car standards. We should not be waiting eight years to phase-out these outdated cars that have proven to be dangerous, time and time again.

Recommendations

- Institute “Positive Train Control” (PTC) by December 15, 2015, without any extensions. The industry will already have received seven years to comply with the PTC mandate by December 2015.
 - In the event that the Federal Railroad Administration (“FRA”) grants an extension, the extension should be limited to six months and any subsequent extension beyond that must be conditioned upon each company demonstrating to FRA that implementation has been delayed due to forces beyond the applicant’s control. The case-by-case extension process should be limited to a two year period. This standard is outlined in Senator Schumer’s proposed legislation.
- The time frame for phase-out of older DOT-111 tank cars must be decreased. While, the Rule does require retrofitting of some DOT-111s as early as January 2017, certain DOT-111s and CPC-1232s will not be phased out until 2023. It is understandable that implementation takes time and this is an ambitious timeline, however the rapid pace at which the industry is growing leading to greater volumes of volatile and flammable materials being transported requires expeditious preparation and action. The phase-out time must be shortened to protect the safety of our communities.
- The Panel agrees with the adoption of the DOT 117 enhanced tank car standards. The Panel supported the adoption of proposed tank car option 1 – Tank car option 1 included a 9/16 inch steel tank shell, electronically controlled pneumatic (ECP) brakes, and was equipped with rollover protection. The DOT 117 standard includes many of the option 1 standards and enhanced design standards to include high-power capacity pressure relief valves and design modifications to prevent bottom outlets from opening during an accident. While the Panel recognizes the efforts of USDOT, Federal Railroad Administration (“FRA”), and PHMSA in adopting these safety standards, it reiterates major concerns regarding the timeline for retrofitting and phase-out of certain rail cars expressed above.
- Create a volatility standard and require stabilization or conditioning of Bakken crude prior to shipment to decrease likelihood of catastrophe in case of derailment.

- Re-define “high-hazard flammable train” (HHFT) – Current definition eliminates trains carrying under 20 tank carloads of flammable liquids. Trains of all lengths carrying flammable liquids should be included in the HHFT definition.
- The Panel fully supports the Rule requirement that mandates railroads to study routing decisions based on risk. The Panel recommends that special consideration be given in the routing rules for operations near residential areas.
- The Rule only requires that the rail carriers provide appropriate contact information for the carrier to the localities if they request it. There are no provisions beyond this to mandate the companies to provide the information or to provide any additional information and/or proper notification to localities. Additional detailed reporting requirements should be mandatory and information should be made available for first responders and local officials.
- There must be more comprehensive reporting requirements imposed on the industry to ensure the safety of our communities and to close the communication gap between companies and the general public. We strongly encourage the industry and federal government to engage extensively with localities when reconstituting their stakeholder group meant to provide first responders with the key information needed to effectively prepare for and manage the incidents involving bulk shipments of products by rail.
- Strengthen federal regulations by incorporating provisions for environmental justice areas directly impacted by oil transport when determining routes for transportation of oil.
- Enhance safeguards and evaluate operating procedures for switch rail operators.
- Increase federal and state aid grant funding for the purchase of firefighting equipment and firefighter training.
- Apply speed restrictions to include populous areas with a high volume of rail transport not classified as High Threat Urban Areas (“HTUA”). The City of Albany is not classified as a HTUA despite being a population center in close proximity to significant rail operations. In his proposed legislation, Senator Schumer recognizes that the Rule does not address speed restrictions for areas outside of the definition of HTUA that have a high volume of oil train traffic. The ever-growing volume of oil train traffic in our region justifies the imposition of a 40 mph speed limit, similar to what are imposed for High Threat Urban Areas. It seems illogical that standards applied to the Capital Region and Albany should be less stringent than areas that see little to no oil train traffic. Schumer’s bill would apply a speed limit to any trains using DOT 111s to carry crude oil that travel in a county with a population density greater than 20 people per sq. mile. The population density threshold is a clear standard that encapsulated high density populations excluded within the HTUA definition. The Panel recommends adopting Senator Schumer’s proposed standard or a similar standard.
- The industry should be required to create comprehensive oil spill response plans for all trains carrying crude oil, petroleum, and other hazardous products, as recommended by the National Transportation Safety Board (“NTSB”).

Recommendations for companies transporting oil and other hazardous materials in the City of Albany.

Recommendations

- Establish an annual grant to the Albany Fire Department from CSX and Canadian Pacific Rail for \$60,000 each at a minimum to purchase safety equipment and provide emergency training for Albany first responders.
- Additional funding will be necessary to allow the localities to deliver information to the public and facilitate lines of communication open regarding operations and addressing concerns. Community awareness is vital and educating the public about the industry impacts on their communities should be the financial responsibility of the industry.
- Require companies to provide information on products being transported throughout communities. Relevant notices and information must be provided to first responders in impacted areas.
- Establish a Community Benefits Agreement between CSX and Canadian Pacific with impacted communities residing in close proximity to railroads such as Ezra Prentice to mitigate implications of oil transport (i.e. sound barriers, scholarship funds, landscaping, jobs, and internships).
- Evaluate stabilization methods to incorporate prior to shipment of oil and other hazardous materials and promptly implement these methods.
- Ensure that any track used in the City of Albany is inspected for wear and damage at least twice weekly.

Potential Health Impact on Residents of Ezra Prentice Homes

Air Quality Issues

- New York State Department of Environmental Conservation (“DEC”) test results for the period of May - July 2014
- Air Sampling in response to reported odors vs. continuous air sampling (long-term and short-term sampling)
- Health issues reported by residents affected by operations in the Port

Recommendations

- We recommend that air sampling for volatile organic pollutants and hydrogen sulfide continue. The Panel thanks the DEC for its recent commitment to continued sampling and hopes it will consider the additional Panel conclusions outlined below:
 - DEC should closely coordinate with Albany County Department of Health in the continued sampling process. Results should be reported to the community on a regular basis.
 - The sampling should be both long and short term, so as to obtain average concentrations over periods of days to weeks, and there should be short term samples taken at times when odors are detected by the community and/or when some event occurs which is indicative of possible release of air pollutants from the Port facility.
 - The short term samples are important to determine peak releases that would not be caught in longer term sampling. While the sampling that was conducted by DEC did not detect concentrations that pose clear adverse health effects, they

were limited in duration and there were no community-reported odors during the sampling period.

- The Panel strongly supports and thanks the DEC for the decision reversing the negative declaration for Global Companies expanded permit application. The Panel supports a full environmental review process.
- Work with community residents, local health clinics and public health practitioners to establish health programs with the community residents.
 - The goals of these programs would be to:
 - increase knowledge of health resources that are available,
 - increase knowledge of actions that individuals can take to improve their own health, and
 - promote a sense of empowerment within the community for addressing health and environmental concerns.
 - These programs could include, but are not limited to, training for the prevention of asthma/wheeze attacks and support for good respiratory health and chronic disease care.
 - These programs would be held in the neighborhoods and would serve the dual purpose of improving access to care issues for the community as well as providing the basis for understanding the underlying health concerns and conditions prominent in the neighborhood, a necessary marker for understanding whether environmental conditions are influencing health outcomes in the community.
- Similarly, we would like to recommend the creation of environmental programs, such as public gardens, which can be used to improve air quality and the overall environmental condition of a neighborhood while increasing access to quality food and provides an additional framework for engaging the community, particularly children, in programs designed to promote good health.

Noise Impact Issues

- 24/7 Global Companies operation
- Trains, movement of tank cars
- Highway traffic on Route 32
- Impact on health

Recommendations

- We recommend immediate action for the construction of a sound/safety wall that would separate the residences from the Port of Albany and from the rail traffic.
 - A sound/safety wall would have the following benefits:
 - It will reduce the noise coming from the trains and traffic, noise that interferes with sleep, leading to stress and potential health issues.
 - It will reduce the dust that comes from the traffic, and will serve to partially protect the community from other air pollutants released from the Port.

- A sound barrier would be an action that can be undertaken immediately and will be a show of good faith to the community. This recommendation is consistent with that made by the Albany County Department of Health.

Rail Yard and Global Operations Impacts on Ezra Prentice Homes

- Stress/anxiety because of close proximity
- Exposure to pollutants

Recommendations

- See recommendation above regarding sound/safety wall.
- Consider de-commissioning track nearest Ezra Prentice Homes.
- Discussion with industry to determine best arrangement of rail operations near Ezra Prentice Homes for noise reduction.

Improving communications between the various stakeholders and public

Recommendations

- **Conflicting Information Problem** - City of Albany Residents have experienced mixed and often conflicting information concerning the transportation of oil and rail traffic in the city, air quality concerns and general impact on health of neighborhoods adjacent to rail lines.
 - Create a formal communications plan to address fundamental concerns in neighborhoods throughout the city affected by oil transport that highlight the following:
 - A series of FAQs to educate City residents.
 - Include stakeholders to keep the message comprehensible to the public and consistent with research/testing.
- **Lack of an Emergency Preparedness Plan**– In the event of emergency, residents who lack information will operate from an emotional response (Anger/Sadness/Fright/Anxiety) if information of actual risk has not been clearly provided. Creating peace of mind for residents will assist emergency responders and will help keep people safe in an emergency. The suggestion outlined above regarding creation of an oil spill response plan is vital to this effort.
 - Create and distribute an information channel in both traditional and electronic media to inform city residents of best practices in the event of an incident either adjacent to the port of Albany or any related facility in the city.
 - Potentially leverage website, newsletter and/or a telephone hotline as vehicles to distribute up-to-date information on rail transport accessible to all concerned residents
 - Leverage the county Special Needs registry for the elderly, mobility impaired or families requiring special assistance in complying with any direction from emergency response personnel.

- Partner with educational institutions and Not-For-Profits who may be able to assist affected neighborhoods with best practices and additional information to meet unanticipated gaps in services.
- **Scientific Testing and Reporting and Corporate Communications** – The lack of information flow and poor communication between state agencies, private companies, and local officials have created silos of information with reporting responsibilities that may not include all stakeholders.
 - Make a formal request that information sharing be as comprehensive as possible among regulatory agencies and include local officials who often are in the best position to inform the public.
 - Attempt to minimize conflicting meetings/presentations to the public that detract from overall clarity on the important issues at hand.
 - Consistent sharing of information from all regulatory agencies to avoid a catch-up scenario in the news cycle (traditional and social media) when information is parceled out and local officials and city residents are in a last-to-know situation.