

November 25, 2013

To: Cambridge City Clerk

From: Mayor Henrietta Davis *hdp*

Please place the attached documents on the Communications and Reports from City Officers.

Thank you.



## RAIL TANK CAR ISSUE SUMMARY & ACTION REQUEST

### ISSUE SUMMARY:

In response to the findings stemming from the National Transportation Safety Board's (NTSB) investigation of a June 2009 Canadian National Railway (CN) freight train derailment outside of Rockford, Illinois, the Village of Barrington and the Illinois-based TRAC Coalition jointly filed a petition on April 3, 2012 with the Pipelines and Hazardous Materials Safety Administration (PHMSA) asking that it promulgate rules that will make the fleet of new and existing tank cars that carry ethanol and crude oil by rail in North America more crashworthy in derailments and accidents. ***PHMSA released its notice of proposed rulemaking on September 6, 2013 and is seeking input from local governments by December 5, 2013.***

The 2009 accident investigated by the NTSB involved a train containing 74 cars of ethanol that derailed after the rail bed underneath the train had washed away. One person was killed and nine others injured when several of the derailed tank cars split open and started a massive fire that took over 24 hours to burn itself out. Since 1991, the tank cars involved in the accident – DOT-111 tank cars – have been known by federal regulators and the freight rail industry to have high failure rates in accidents because they puncture easily.

The more recent July 6, 2013 catastrophic derailment of a train carrying 72 tank cars of crude oil in Lac-Megantic, Canada that caused 47 deaths also involved the defective DOT-111 tank cars. ***With the exponential growth of this dangerous hazmat traveling by rail over the last five years, it is clear that there is a growing potential for catastrophic derailments in communities all across North America.*** In fact, the problems with this defective tank car is garnering national media attention, including this September 5, 2013 "NBC Nightly News with Brian Williams" piece that provides an excellent overview of the problem:  
<http://investigations.nbcnews.com/news/2013/09/05/20343288-danger-on-the-tracks-unsafe-rail-cars-carry-oil-through-us-towns?lite>

In response to the Rockford derailment, industry convened a working group made up of the Association of American Railroads (AAR), freight railroads, and shippers to set manufacturing standards for new cars and asked PHMSA to adopt those standards in 2011. However, the industry request explicitly asked that the existing fleet of tank cars not be retrofitted to make them safer due to the cost of a retrofit program. The AAR calculated that a retrofit of a tank car would cost \$15,000, but with an average life span of over 30 years for the existing fleet, that amounts to less than \$500 a year.

Backed by NTSB expertise, the April 3, 2012 petition by Barrington & the Illinois TRAC Coalition made the case that improved construction standards for only newly manufactured tank cars is not sufficient for protecting public safety. ***As the NTSB experts recognized, while the improved AAR standards would make new cars safer than the existing cars, communities would be no safer if old and new tank cars are comingled when these tank cars derail.*** With an eight-year average age for the existing tank car fleet, failure to require a retrofit program would allow tank cars that are filled with ethanol and crude oil – and known to be dangerous – to roll freely through American communities for the next three decades.

This issue goes far beyond the daily challenges of dealing with freight rail operations in our communities. According to Federal Railroad Administration safety statistics, between 2000 and 2011 there has been – on average – a *reportable* freight derailment in this country over five times every day. Additionally, the derailment in Lac-Megantic has already been ball-parked at over \$200 million to fund the environmental

remediation and clean-up costs alone. Since that sum far surpasses the liability insurance cap of the involved railroad, it has entered bankruptcy proceedings. Given inadequate insurance protection across the rail industry, it is unclear as to who will be footing the bill when it comes to paying the catastrophic costs associated with a major tank car derailment. For these reasons, it is way past due for federal regulators to prioritize the concerns of local governments to remedy the known safety flaws with the DOT-111 tank car.

**ACTION REQUEST OF LOCAL GOVERNMENTS:**

***It is vital that local governments weigh in on this important issue prior to the December 5, 2013 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 rail safety changes detailed in this summary and in this rulemaking document:

[https://www.federalregister.gov/articles/2013/09/06/2013-21621/hazardous-materials-rail-petitions-and-recommendations-to-improve-the-safety-of-railroad-tank-car?utm\\_campaign=subscription+mailing+list&utm\\_medium=email&utm\\_source=federalregister.gov](https://www.federalregister.gov/articles/2013/09/06/2013-21621/hazardous-materials-rail-petitions-and-recommendations-to-improve-the-safety-of-railroad-tank-car?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov)

***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](mailto:FightRailCongestion@gmail.com). Thank you!

**(CITY, TOWN, VILLAGE, COUNTY OF \_\_\_\_\_) RESOLUTION  
SUPPORTING THE RETROFIT OF EXISTING DOT-111 RAIL TANK CARS  
THAT TRANSPORT PACKING GROUPS I AND II HAZMAT  
BEFORE THE PIPELINES AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
IN DOCKET NO. PHMSA-2012-0082 (HM-251)**

**Whereas**, 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 (1) the need to prevent catastrophic accidents like the one that occurred in Lac-Megantic, Canada in July 2013; and (2) the responsibility local governments have to provide emergency response units to manage the impact of rail accidents and derailments in communities across the country; and (3) significant costs associated with clean-up, environmental remediation, medical expenses, other personal injury damages or wrongful death claims for community residents that have the potential to surpass the rail industry's ability to pay for them; and

**Whereas**, ethanol and crude oil are a large and exponentially growing segment of hazardous materials being shipped across the nation via freight rail, which will continue to be a preferred transport mode of choice 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; and

**Whereas**, the business decisions of railroad companies and hazardous material shippers impact the safety, environment, and emergency response system 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 defects in DOT-111 tank cars, and waited until 2011 to seek government approval to upgrade safety standards for newly manufactured DOT-111 tank cars; and

**Whereas**, a tank car expert from the National Transportation Safety Board testified in 2012 that a retrofit of existing tank cars is necessary because co-mingling existing unsafe DOT-111 tank cars with newly manufactured ones "does nothing to improve the safety in an accident"; and

**Whereas**, the petition for rulemaking submitted to PHMSA on April 3, 2012 by Barrington, Illinois and the Illinois TRAC Coalition reflects 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 DOT-111 tank car safety and train consist dissemination; and

**Whereas**, the April 3, 2012 petition provides a compelling rationale for making long overdue changes in safe rail operations vis-a-vis retrofitting existing DOT-111 tank cars; and

**Whereas**, the April 3, 2012 petition demonstrates that the cost of a DOT-111 tank car fleet retrofit for existing cars would be of nominal expense over the remaining average thirty-year lifespan for the existing fleet, and

**Whereas**, PHMSA issued on September 6, 2013 (78 Federal Register 54849-54861) an Advance Notice of Rulemaking seeking by November 5, 2013 the input from local and state governments on the issue of retrofitting the DOT-111 tank car.

**Therefore, Be It Resolved** by the Corporate Authorities of \_\_\_\_\_, (State) as follows:

**Section 1:** We support the April 3, 2012 petition of Barrington, Illinois and the Illinois TRAC Coalition seeking new regulations to retrofit existing DOT-111 tank cars used to transport Groups I and II Packing Materials.

**Section 2:** This Resolution shall take effect from and after its passage and approval as provided by law.

**Section 3:** This adopted Resolution shall be sent to the Pipelines and Hazardous Materials Safety Administration in Docket No. PHMSA-2012-0082 (HM-251) urging expeditious action on the joint Barrington and Illinois TRAC Coalition April 3, 2012 Petition No. P-1587.

**PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010 BY ROLL CALL VOTE AS FOLLOWS:**

**AYES:** \_\_\_\_\_

**NAYS:** \_\_\_\_\_

**ABSENT:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_

**APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012**

**BY:** \_\_\_\_\_

**(Print Name)** \_\_\_\_\_

**(Title)** \_\_\_\_\_

**ATTESTED AND FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012**

**(Print Name)** \_\_\_\_\_

**(Title)** \_\_\_\_\_