



STATE OF NEW YORK

January 28, 2014

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

The Honorable Jeh Johnson
Secretary
U. S. Department of Homeland Security
12th & C Street S.W.
Washington, D.C. 20024

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue S.W.
Washington, D.C. 20585

Admiral Robert J. Papp, Jr.
Commandant
U.S. Coast Guard
2100 2nd Street S.W.
Washington, D.C. 20593

Dear Secretaries Foxx, Moniz and Johnson and Admiral Papp:

In response to the considerable increase in crude oil shipments by rail, ship, and barge and an increase in serious derailments involving the transportation of crude oil, Governor Andrew M. Cuomo has issued Executive Order 125, directing our agencies to immediately conduct a comprehensive review of New York State's crude oil transportation accident prevention and response programs. It is incumbent that the federal government, having jurisdiction over the movement of crude oil by rail and water, take immediate action to assist New York in minimizing the risk to our State's communities and critical natural resources.

Crude oil rail shipments have grown from next to nothing four years ago to 800,000 barrels per day now in the U.S. In the past six months alone, there have been four severe accidents in North America involving DOT-111 tank cars resulting in damage and catastrophic loss, including the deaths of 47 people in Québec, the evacuation of thousands of people and the needless devastation of entire communities. In the most recent North Dakota derailment, of the 20 tank cars that derailed, 18 were punctured, spilling more than 400,000 gallons of crude oil into the environment.

The Port of Albany has become a major distribution center for the transportation of crude oil, receiving and sending shipments by rail and transferring them to ships and barges down the Hudson River and other waterways to refineries in the Mid-Atlantic States and Canada. The increased volume and frequency of shipments of crude oil by rail has only increased the State's vulnerability to a serious incident.

However, federal law preempts New York from regulating rail freight transportation or freight car safety. It is therefore incumbent on the federal government to act in order to protect our people and communities.

The recent agreement between the U. S. Department of Transportation and the rail and petroleum industries on voluntary measures is a necessary interim step, but we urge you to collectively utilize the powers of your respective Departments to ensure permanent regulations are adopted expeditiously. New operations and safety regulations as well as new crude oil transportation design standards must be informed by the Departments of Transportation, Energy and Homeland Security to adequately protect the public, prevent spills and safeguard our natural resources.

As far back as 1991, the National Transportation Safety Board (NTSB) called into question the structural integrity of tank cars used to transport crude oil. Today, only 15 percent of the current DOT-111 tank cars meet industry safety standards. Voluntary efforts are insufficient to tackle this growing problem. A comprehensive strategy developed by the U.S. Departments of Transportation, Energy and Homeland Security that addresses the safe transport of crude oil is required. The residents of New York cannot wait for the federal government to address these issues in an unsynchronized manner. Government must work for and protect the public.

With respect to rail infrastructure, railroads are required to keep both their equipment and track in a safe condition. New York works in partnership with the Federal Railroad Administration (FRA) to verify industry requirements. In response to the increase in crude oil transport, both State and FRA track inspectors have focused efforts on the most impacted rail sections. Additionally, based upon the recent Cheektowaga, New York derailment investigation, State rail inspectors have refined their inspection strategy to highlight areas of similar design. New York will also be increasing rail yard inspections in those yards that most frequently handle crude oil. Furthermore, while the aforementioned agreement signals intent to develop safer transportation routes, it makes no mention of increased federal track and equipment inspections, increased federal support for critical route track maintenance, improved oversight of railcar-to-vessel and vessel-to-vessel crude oil transfers, or other measures that would be necessary components of a comprehensive system-wide safety approach. We cannot afford to pursue piecemeal solutions. We need to do more to protect the public.

In order to reduce the risks associated with the transport of crude oil to our State's communities, it is essential that your departments work with New York State to:

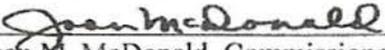
- Revise the design specifications for DOT-111 tank cars to minimize crude oil release and/or explosion in the event of a derailment or accident.
- Aggressively phase out DOT-111 tank cars that cannot be retrofitted to meet new federal requirements or repurpose the tank cars for non-hazardous product transportation.
- Require new standards to test the properties of crude oil being shipped by rail and implement more stringent handling requirements.
- Amend the federal standards for flammable liquids to include new combustible liquids such as Bakken crude oil that have a lower flashpoint temperature.
- Review the routing of trains transporting crude oil and other petroleum products to ensure the routes are the most appropriate, safest and most secure.

To a great extent, crude oil transportation in New York State is occurring on and alongside the Hudson River, one of the nation's most treasured waterways. The State has made substantial progress in restoring this vital natural resource. We must take all reasonable measures to protect this river and the other water bodies upon, over, and along which crude oil shipments occur. We ask the U.S. Coast Guard to help New York State ensure that facilities and vessels involved in crude oil transfer and transportation on and along New York's waterways are operated safely by imposing the following requirements:

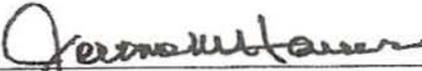
- Transfers from vessel to vessel and from railcars to vessels must have all necessary equipment in place to prevent and respond to spills.
- Transfers from vessel to vessel must occur only in locations and under conditions that have been approved by the Coast Guard.
- Vessels receiving crude oil must have agreements in place with entities capable of quick and effective response to spills.
- Booming must be required before any transfer.
- The protections and response assets positioned along the River must be evaluated to ensure that the Coast Guard's pre-deployed assets are readily available to all stretches of the Hudson River including those between our towns and cities in order to ensure that emergency responders can immediately initiate cleanup operations.

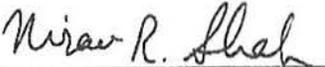
We urge you to work quickly with New York to resolve issues arising from the transportation of crude oil in order to protect our communities from future disasters.

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
Division of Homeland Security and Emergency Services


Dr. Nirav Shah, Commissioner
New York State Department of Health