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AND FIRST-CLASS MAIL

Pipeline and Hazardous Materials Safety Administration
U.S. Dept. of Transportation, Docketing Management System
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Avenue SE
Washington, DC 20590

Re.: **Docket No. PHMSA-2018-0025 (HM-264) and RIN 2137-AF40;**
Notice of proposed rulemaking (“NPRM”) to authorize the transportation of methane, refrigerated liquid (aka liquefied natural gas or “LNG”) by rail in DOT-113C120W specification rail tank cars

Dear Pipeline and Hazardous Materials Safety Administration (“PHMSA”):

On behalf of Martin County, Florida (“County”), I respectfully submit the following comments in connection with the above-captioned NPRM.

I. Background

As stated in the NPRM, PHMSA, in coordination with the Federal Railroad Administration (“FRA”), is proposing changes to the Hazardous Materials Regulations (“HMRs”) to allow for the bulk transport of LNG in rail tank cars. This rulemaking proposes to authorize the transportation of LNG by rail in the DOT-113C120W specification rail tank cars. Presently, HMRs do not authorize the bulk transport of LNG in rail tank cars. The NPRM was instigated by a petition for rulemaking by the Association of American Railroads (“AAR”). Significantly, AAR expresses the opinion that LNG transported by rail would be less dangerous than by highway.

II. Analysis

a. Legal requirements.

- i. PHMSA and FRA are legally required to ensure the safety of LNG transport.

“Federal hazardous materials law authorizes the Secretary of Transportation to ‘prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.’” NPRM at 6 (citing 49 U.S.C. 5103(b)(1)). The Secretary has delegated this authority to PHMSA to promulgate the HMRs “to achieve three primary goals: (1) help ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) minimize the consequences of an accident or incident should one occur.” *Id.*

- ii. Under the National Environmental Protection Act of 1969, Section 102, 42 USCA Section 4332 et seq. (“NEPA”), PHMSA and FRA are required to assess the environmental impact of transport of LNG by rail.

Informative is Calvert Cliffs’ Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971). In Calvert Cliffs, the court, holding that the Atomic Energy Commission’s rules violated NEPA by failing to consider environmental issues, stated in pertinent part:

In Section 101(b), imposing an explicit duty on federal officials, [NEPA] provides that “it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy,” to avoid environmental degradation, preserve “historic, cultural, and natural” resources, and promote “the widest range of beneficial uses of the environment without * * * undesirable and unintended consequences.” ...

NEPA, first of all, makes environmental protection a part of the mandate of every federal agency and department. ... Perhaps the greatest importance of NEPA is to require the Atomic Energy Commission and other agencies to *consider* environmental issues just as they consider other matters within their mandates.

...NEPA requires that agencies consider the environmental impact of their actions “to the fullest extent possible.” The Act is addressed to agencies as a whole, not only to their professional staffs. Compliance to the “*fullest*” possible extent would seem to demand that environmental issues be considered at every important stage in the decision[-] making process concerning a particular action—at every stage where an overall balancing of environmental and nonenvironmental factors is appropriate and where alterations might be made in the proposed action to minimize environmental costs.

The sweep of NEPA is extraordinarily broad, compelling consideration of any and all types of environmental impact of federal action. ...

We believe the [Atomic Energy] Commission’s rule is in fundamental conflict with the basic purpose of the Act. NEPA mandates a case-by-case balancing judgment on the part of federal agencies. In each individual case, the particular economic and technical benefits of planned action must be assessed and then weighed against the environmental costs; alternatives must be considered which would affect the balance of values. ...

Calvert Cliffs, 449 F.2d at 1112, 1115, 1118, 1122 – 3.

b. Safety Issues.

- i. National Transportation Safety Board’s (“NTSB”) Safety Recommendation (R-17-001) to PHMSA.

On December 5, 2019, in response to the NPRM, the NTSB made the following comment:

Given the potential hazards of LNG when released, as described in the Exponent, Inc. quantitative risk analysis report and the NPRM regulatory analysis as *including fireballs, flash fire, and explosions from ground-level vapor clouds that may vigorously expand far beyond the point of release to an ignition source, cryogenic material thermal exposure hazards, and asphyxiation hazards for a colorless and odorless gas that lack sufficient warning properties*, the NTSB urges PHMSA to implement appropriate train crew separation distance requirements, as recommended by Safety Recommendations R-17-1 and -2.12 *Crew separation from potential sources of LNG release is particularly necessary since the product is not odorized, potentially leaving train crews unaware of leaks and hazardous flammable gas accumulations unless provided with and properly trained on the operation of specialized detection equipment*. PHMSA acknowledges in the NPRM that, although rare, derailments involving DOT-113 tank cars can result in large quantities of hazardous materials being released and the *consequences of such an event could be more severe than releases from cargo tank motor vehicles*. Recent history with unit train shipments of ethanol and crude oil demonstrate how unprepared federal regulators were to address the spate of fiery flammable liquids accidents that occurred between 2009 and 2015 until regulations for [High Hazard Flammable Liquid Trains or] HHFT were published.

(Emphasis supplied.) The NTSB’s comment may be found on the NTSB’s website at: https://ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-17-001.

- III. The PHSA’s proposed rulemaking is premature and requires further analysis of safety and environmental issues before the PHSA promulgates rules allowing LNG rail-transport.

The PHSA’s proposed rulemaking completely fails to achieve its primary safety goals set forth in its NPRM for promulgating HMRs for LNG rail-transport.

First, regarding its goal of helping ensure that LNG are packaged and handled safely and securely during transportation, the PHSA fails to address the issue of crew separation from potential sources of LNG release in that LNG is not odorized, potentially leaving train crews unaware of leaks and hazardous flammable gas accumulations unless provided with and properly trained on the operation of specialized detection equipment, as noted by the NTSB.

Second, the PHSA fails to address specifically how to provide effective communication to transportation workers and emergency responders of the hazards of LNG. Despite this being listed as a primary goal, the NPRM contains nothing on this issue.

Third, the PHSA also fails to address how to minimize the consequences of an accident or incident. As noted by the NTSB, derailments involving DOT-113C120W tank cars can result in large quantities of hazardous materials being released and the “consequences of such an event could be more severe than releases from cargo tank motor vehicles,” contradicting the AAR’s self-serving, baseless opinion that rail is safer than LNG highway-transport by motor vehicles. The risks, as noted by the NTSB are severe, including fireballs, flash fire, and explosions from ground-level vapor clouds that may vigorously expand far beyond the point of release to an ignition source, cryogenic material thermal exposure hazards, and asphyxiation hazards for a colorless and odorless gas that lack sufficient warning properties. Given the severity of the risk, the PHSA should thoroughly analyze the transport of LNG by rail, including sufficiency of the safety features of the DOT-113C120W tank cars that are based on a design from about fifty years ago. For all these reasons, the PHSA’s proposed rulemaking is premature and requires further analysis of safety and environmental issues before the PHSA promulgates rules allowing LNG rail-transport.

IV. The PHSA is in violation of NEPA because the PHSA fails to consider the environmental consequences of allowing LNG rail-transport.

NEPA requires government to use all practicable means, consistent with other essential considerations of national policy, to avoid environmental degradation, preserve historic, cultural, and natural resources, and promote the widest range of beneficial uses of the environment without undesirable and unintended consequences. Calvert Cliffs, supra. County respectfully urges the PHSA to require an Environmental Impact Statement or Environmental Assessment to come into compliance with NEPA’s mandate.

In short, the NPRM appears to be a rush to judgment, an attempt to skirt compelling safety issues and ignore NEPA’s requirements, all because of an unexplained, urgent market demand to transport LNG by rail even though our national highway system has been handling LNG transport for decades with no discernable market shortage. For all these reasons, the County opposes the current proposed rulemaking at this time due to the lack of thorough safety and environmental analysis.

Sincerely,



Don G. Donaldson, PE, CFM
Deputy County Administrator

Martin County Board of County Commissioners