Office of Management and Budget

Executive Order 12866 Meeting

RE: Department of Transportation, Pipeline and Hazardous Materials Safety Administration: *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains*, RIN 2137-AE91, docket PHMSA-2012-0082 (HM-251)

Bridger, LLC

March 19, 2015, 3:00 PM

- Bridger, LLC is a midstream logistics provider to the crude oil industry using 1,300 CPC-1232 tank cars in unit train service to transport crude oil from the Bakken formation of the Williston Basin to refineries on the United States East Coast and West Coast, and from the Rockies to the Gulf Coast. Bridger CPC-1232 rail tank cars have additional safety features such as stainless steel fittings and an epoxy liner to prevent corrosion and maintain structural integrity.
- Bridger will take delivery of an additional 300 tank cars through the third quarter of 2015 under prior commitments.
- Bridger invested $200,000,000 in a good-faith commitment to purchase CPC-1232 tank cars; retrofitting could cost more than an additional $90,000,000 based on incomplete estimates.
- Bridger provided extensive public comments: docket PHMSA-2012-0082-1930. To summarize, the proposed rule does not prevent accidents, is supported by inadequate analysis, proposes untested – never built – specifications, does not provide clear retrofitting requirements, underestimates costs, and does not provide for realistic deadlines. Bridger recommended, among other things, that DOT should take heed to the public comments and propose a tank car consistent with the API/AAR recommendations, allow the CPC-1232s to remain in service for their useful lives, and provide sufficient notice and analysis regarding retrofitting.

BRIDGER SUPPORTS RAIL TANK CAR SAFETY

- Bridger supports getting the rule right the first time – not estimates and assumptions that will cause uncertainty and unjustified great cost.
- Bridger recommends that OMB separate and prioritize PHMSA and FRA regulation:
    1. Focus on the causes of rail accidents rather than the consequences in one segment – track maintenance and staffing issues are the leading causes of derailments.
    2. Develop the next generation of tank car, including engineering and costing. Bridger supports the API/AAR tank car specifications in PHMSA-2012-0082-3368. (These specifications were the result of coordination between these organizations at the direct request of the Secretary of Transportation).
    3. Utilize the CPC-1232 tank cars ordered before August 1, 2014 for their full depreciation cycle. In the alternative, Bridger recommends that PHMSA issue a supplemental proposed rule for retrofitting CPC-1232 tank cars based on specific costings for the approved DOT-117.
    4. Finalize a reasonable schedule for retiring or retrofitting DOT-111 tank cars manufactured before October 1, 2011 in crude oil service based on facts. Bridger supports prioritizing removing or

retrofitting the older DOT-111 tank cars from crude oil service based on the schedule proposed by API/AAR:

a) Legacy DOT-111 (not built to the CPC-1232 standards) Non-Jacketed (NJ) cars by December 2020.

b) Legacy DOT-111 Jacketed cars by March 2025.

UNDERESTIMATED EXISTING FLEET OF TANK CARS

- PHMSA substantially underestimated the population of tank cars in service in the proposed rule. Even the most conservative fleet estimates by Brattle indicate a delta from the PHMSA proposed rule that cannot be justified. Most recently, Cambridge Systematics, critiquing other studies, placed an even higher estimate.

FLEET POPULATION ESTIMATES				
	NPRM (Aug. 2014)	Brattle – RSI (Nov. 2014)	Cambridge (Dec. 2015)	**Δ1**
DOT-111 Unjacketed in Crude Oil Service	22,800	23,090	23,090	**290**
DOT-111 Jacketed in Crude Oil Service	5,500	7,016	7,016	**1,516**
Subtotal DOT-111 Tank Cars	**27,300**	**30,106**	**30,106**	**2,806**
CPC-1232 Unjacketed in Crude Oil Service	9,400	11,364	21,993	**1,936**
CPC-1232 Jacketed in Crude Oil Service	4,850	7,712	35,408	**2,872**
Subtotal CPC-1232 Tank Cars	**13,250**	**19,076**	**57,401**	**5,826**
Total Tank Cars in Crude Oil Service	**40,550**	**49,182**	**87,507**	**8,682 or 21.4%**

- Greenbrier Company has publicly stated as recently as a February 3, 2015, Congressional hearing on tank car issues that it anticipates that total deliveries will increase to over 20,900 units this year.[1]
- API estimated last year that an additional 32,000 CPC-1232 tank cars will be built by the end of 2015.[2]

UNDERESTIMATED COST OF RETROFITTING

- PHMSA has substantially understated the costs of retrofitting the existing tank car fleet and the risks associated with that process.
- Alltranstek study on the record estimated that retrofitting an unjacketed CPC-1232 to meet PHMSA specifications are substantial.[3]

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[1] See Written Statement of Greg Saxton, Senior Vice President and Chief Engineer, The Greenbrier Companies, before the Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, *How the Changing Energy Markets Will Affect U.S. Transportation*, 114th Cong., 1st Sess. (Feb 3, 2015).

[2] American Petroleum Institute, *Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation (RRR)*, PHMSA-2012-0082-3418 (Sept. 30, 2014), at 3.

Retrofitting Cost Estimates for CPC-1232 Tank Cars			
PHMSA Option	NPRM Estimate	Alltranstek Estimate	Δ
Option 1	$32,850	$64,900	$32,050 or 97.6%
Option 2	$28,350	$56,900	$28,550 or 100.7%
Option 3	$26,190	$45,900	$19,710 or 75.3%

- Despite numerous opportunities and requests, retrofitters have been unwilling to commit to the costs of the specific requirements proposed by PHMSA.
- Either retrofitters do not know or it is not in their interest to provide a detailed estimate or cost commitment – we believe because the estimate would be substantially higher than any of the previous public cost estimates.
- Whatever DOT-117 tank car specification is ultimately selected and whatever retrofit requirements are adopted will increase the weight of railcars used to transport crude oil. Because railroads are rated and maintained to carry up to a specified weight limit per railcar, the volume for the DOT-117 tank car specification and the volume capacity for any retrofitted unjacketed CPC-1232 tank car will be reduced below that of the current unjacketed CPC-1232 tank car. These costs (and consequences) have not been adequately addressed.

UNDERESTIMATED RETROFITTING CAPACITY & CYCLE TIME

- Failure of the retrofitting capacity and cycle time would result in the transfer of crude oil transport to trucks – substantially less efficient fuel / mile ratios and substantially higher negative environmental impact, including the social cost of carbon.
- ICF assumed that the actual retrofitting time for an unjacketed CPC-1232 tank car under PHMSA options 1, 2, and 3 would be 130, 126, and 126 days out of service, respectively, more than double to PHMSA's estimate of 56 days.[4]

Retrofitting Timeline for Tank Cars			
PHMSA Option	PHMSA Assumption	ICF Assumption	Δ
Option 1	56 days	130 days	64 days or 114.3%
Option 2	56	126	70 days or 125%
Option 3	56	126	70 days or 125%

- Some industry analysis suggests that, based on current railcar repair shop capacity and announced retrofit shop expansions, retrofitting could be accomplished on approximately 2,883 rail tank cars in

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[3] Alltranstek, LLC, *Economic Impact on the North American Tank Car Fleet and Supply with the Implementation of the Anticipated New Tank Car Regulations* (Sept. 30, 2014), in American Fuel & Petrochemical Manufacturers, Comments, PHMSA-2012-0082-3274 (Sept. 30, 2014), at Exh. 2.

[4] ICF International, *The Economic Impacts of Changes to the Specifications for the North American Rail Tank Car Fleet*, prepared for the American Petroleum Institute (Dec. 9, 2014), prepared for the American Petroleum Institute, PHMSA-2012-0082-3418 (Sept. 30, 2014) at 23.

2015, increasing to approximately 3,711 tank cars in 2018.[5] Cambridge has estimated higher capacity, but the basis for that estimate is only summarized.

- No industry analysis supports PHMSA's NPRM estimate that 22,062 tank cars could be retrofitted annually in 2016 through 2018.
- Retrofitting estimates appear to be on a per-car basis but that understates the retrofitting time because trains (not cars) are operated on a per-turn basis. Breaking unit train into blocks may be possible and economically feasible, but down-time must be determined on the basis of those blocks not cars.
- The individual estimates for specific retrofitting actions do not appear to include any estimate for the total time or cost of transiting rail cars out of service to and from a Class C shop compliant with AAR M-1002, and M-1003 standards.
- Individual retrofitting companies have asserted only their own cycle times and their commitments to capital. No estimates have been provided of the costs and timing for rezoning, environmental impact analysis, or construction permitting for new or enlarged facilities, capitalized equipment installation, employing technically capable personnel for the retrofitting tasks, or safety margins.
- Class C shop qualified and certified welders require extensive training. No evidence has been provided on the record that a pool of qualified welders exists. Apprenticeship alone requires three to four years according to the ironworkers union and no employment data is in the record.

INCORRECT NPRM BASELINE ANALYSIS

- DOT Specification 111 (49 C.F.R. part 111) is the existing regulatory baseline. As OMB has made clear for more than two decades, for review of an existing regulation, a baseline assuming "no change" in the regulatory program generally provides an appropriate basis for evaluating regulatory alternatives. PHMSA used the CPC-1232 tank car specifications as its baseline. The appropriate baseline is DOT-111, not CPC-1232.
- Inclusion of accidents in Gainford, Alberta, and Lac-Mégantic, Quebec, Canada, as avoided costs / benefits was inappropriate for regulation of United States tank cars to the extent that PHMSA did not analyze comparative Canadian rail miles or tank cars data and Lac-Mégantic involved DOT-111 cars. PHMSA has separately addressed the Lac-Mégantic unattended train accident. PHMSA may not cherry-pick data points.
- PHMSA addressed the impacts of selected accidents in the proposed rule, but then ignored the NTSB-determined causes of those accidents, predominantly rail maintenance and human issues.
- PHMSA's baseline assumptions about the volatility of Bakken crude oil is no longer relevant because the North Dakota Industrial Commission has imposed conditioning requirements on the producers, prior to transport, to remove much of the butane, propane, and other volatile liquids, reducing vapor pressure below 13.7 psi, similar to winter blend gasoline with 10% ethanol at 13.5 psi.[6]
- Benefits are ascribed to avoidance of possible estimated accidents, but costs are not driven to the same level of analysis. Benefits and costs are not analytically considered in parity or even close to

[5] *Id.* at 24.

[6] Industrial Commission of the State of North Dakota, *In the Matter of a Hearing Called on a Motion of the Commission to Consider Amending the Bakken, Bakken/Three Forks, Three Forks, and/or Sanish Pool Field Rules to Establish Oil Conditioning Standards and/or Impose such Provisions as Deemed Appropriate to Improve the Transportation Safety and Marketability of Crude Oil*, Case N. 23084, Order No. 25417 (Dec. 9, 2014, eff. April 1, 2015) available at http://www.dmr.nd.gov/oilgas/Approved-or25417.pdf (last visited Dec. 16, 2014).

parity. Asymmetrical analysis, disproportionally favoring theoretical benefits and failing to address conspicuous expected costs is arbitrary and capricious.

- With the tank car requirements, PHMSA is attempting to regulate an effect of specific results of a type of rail accident rather than reduce the cause of those or the larger universe of accidents – many causes can and should be addressed elsewhere to substantially mitigate the potential effects of all rail car accidents.
- PHMSA has proposed retrofitting requirements that are no more than consequence mitigation regulations rather than risk avoidance regulations. The real problem is accident avoidance and the leading causes of accidents are operating errors and track maintenance issues that have nothing to do with the structure of tank cars.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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