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April 14, 2016

VIA ELECTRONIC & HAND DELIVERY

Members of the Planning Commission
San Luis Obispo County Planning Commission
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Attention: Ramona Hedges, Planning Commission Secretary

Re: Phillips 66 Rail Spur Extension Project

Dear Commissioners:

On behalf of Phillips 66, we offer evidence and other information regarding several issues raised during the public meetings. This letter will respond briefly to comments related to the following:

- Commissioner Topping's question regarding geographic spheres.
- Federal enforcement of regulations regarding rail transportation of crude oil.
- Tourism in San Luis Obispo County.
- The increase in rail traffic outside of San Luis Obispo County.
- The EIR's alternatives analysis.

Geographic Spheres

At the March 11, 2016 hearing, Commission Topping asked whether there is a legal framework that allows the decision-maker to create a hierarchy or to prioritize issues based on geographic spheres, e.g., progressing outward with the refinery site, immediate surrounding area; Nipomo/South County, rest of San Luis Obispo County, neighboring counties, rest of California, and beyond. (See hearing video at approximately 4:30:00 to 4:34:00.) Attachment 1 to this letter is a copy of a CEQA decision from the California Court of Appeal dealing with just this sort of question for a proposed marine terminal project that would cause an increase in rail traffic across Southern California. The decision is not published in the official reporter of the Court of Appeal and so it is not binding on other courts. But it reveals how courts think about issues such as geographic scope.

First, it is helpful to explain a few background principles. CEQA requires an EIR to describe the existing physical environment “*in the vicinity of*” the project as it exists prior to environmental review, and then to discuss significant impacts that the proposed project will cause *in the area that is affected by* the project. (CEQA Guidelines § 15125, § 15126.2(a).¹ The analysis of impacts must include both direct and indirect impacts. “Direct or primary effects ... are caused by the project and occur at the same time and place.... Indirect or secondary effects ... are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable.” CEQA Guidelines § 15358. The potential environmental effects of increased mainline rail traffic are considered indirect effects of the proposed project rather than direct impacts. The added rail traffic is not part of the project definition, because Phillips 66 will not build it, operate it or control it; but UPRR mainline rail trips delivering crude to the Rail Spur Extension are treated as indirect effects of the Project. Indirect effects are often less foreseeable and more speculative, particularly with increasing separation (time or distance) from a project site, which affects the level of analysis expected by CEQA.

The *City of Riverside v. City of Los Angeles* decision arose out of a proposal to construct a container terminal in the Port of Los Angeles, including a new wharf, additional cranes, expansion and development of 142 acres of terminal backlands, and construction of additional terminal infrastructure. The project would increase the amount of container cargo passing through the Port of Los Angeles, the majority of which is shipped by rail to markets beyond California. The EIR examined impacts of additional rail cargo, including additional unit trains, on rail crossings near the Port project and as far as the downtown Los Angeles rail yards, 20 miles from the project site. During the public comment period, the City of Riverside insisted that the EIR must include an analysis of the impacts of added train traffic to rail and road traffic in Riverside County. In responses to comments in the final EIR, the Port added a discussion of delays at rail crossings in Riverside County, but the City and County argued that this was not adequate, and sued to challenge the EIR.

The court rejected Riverside’s claims and found the EIR “did not define the area affected by the project too narrowly.” The court observed that CEQA does not define “vicinity”, but that figures in the EIR showing the “Project Site and Vicinity” were limited in scope to the Port of Los Angeles and the area immediately around it. The court concluded that “neither the City nor the County of Riverside is in the ‘vicinity’ of the project.” Accordingly, the Port did not abuse its discretion by limiting the EIR’s analysis to impacts only as far as the downtown Los Angeles rail yards and omitting analysis of rail crossings in Riverside. (See Attachment 1, pages 4-6.)

¹ CEQA also requires an EIR to “define the geographic scope of the area affected by the cumulative effect [of the project together with other closely related projects] and provide a reasonable explanation for the geographic limitation used.” CEQA Guidelines § 15130(b)(3). This provision did not come into play in the *City of Riverside v. City of Los Angeles* decision.

The Final EIR for the Rail Spur Extension Project contains much more information regarding impacts beyond the Phillips 66 site than the EIR found adequate by the court in *City of Riverside v. City of Los Angeles*. As the added mainline rail traffic moves farther from the Refinery site, the indirect Project impacts associated with mainline rail traffic become more diffuse and it becomes increasingly speculative where or when they might occur, or how substantial they may be. For this reason, the EIR includes the greatest amount of detail for indirect impacts within San Luis Obispo County and neighboring counties, reaching as far as the two main UPRR rail yards in Roseville and Colton, California, but uses less quantitative and more qualitative analysis for indirect effects beyond the Roseville and Colton yards, and beyond the California border. This progressive approach is acceptable under CEQA.

Federal Railroad Standards and Enforcement

A speaker on March 11, 2016 mentioned a recent report by the U.S. Department of Transportation, Office of Inspector General evaluating the Federal Railroad Administration's enforcement of hazardous materials regulations. The comment left the impression that the FRA's enforcement program is inadequate, but this was not in fact the conclusion of the report.

The Inspector General's audit report dated February 24, 2016, is Attachment 2 to this letter. The Inspector General's report described an enforcement program that focused on the regional level, in which inspectors and hazardous materials specialists within each of the FRA's eight regions established priorities based primarily on data regarding trends and compliance data from that region. The Inspector General concluded that there is a need to evaluate risk and establish priorities at the national level to enable the FRA to more readily determine whether its enforcement resources are appropriately distributed among the regions. The report also concluded that all the individual regional databases as well as data from the Pipeline and Hazardous Materials Safety Administration should be more easily accessible to all FRA inspectors in all FRA regions. Finally, the report encouraged the FRA to utilize the full range of its civil enforcement authority as well as options for criminal enforcement where appropriate to better tailor penalties to specific violations found by the inspectors. According to the report, this last change would provide more effective deterrence.

The Inspector General's report was provided in draft form to the FRA prior to public release, and the FRA's response, dated January 29, 2016, is included as an appendix to the report. In short, the FRA concurred with the recommendations of the Inspector General's report. According to its response, the FRA had already initiated efforts addressing some of the issues identified by the Inspector General, and others would be completed in the near future. The FRA estimated that two of the Inspector General's recommendations would be addressed by August 15, 2016, and the remainder by March 15, 2017. The Inspector

General found the FRA's actions and completion dates appropriate, and "consider all recommendations resolved" albeit open until the completion dates.

All FRA completion dates will occur before the construction completion date for the Phillips 66 Rail Spur Extension Project. This means that all issues identified in the Inspector General report will have been addressed before any unit train enters the mainline rails destined for the Santa Maria Refinery.

It is also important to note that the Inspector General's report generally found a robust program of training and inspections. The report states: "FRA provides support to inspectors with guidance and training," including classroom training plus a full year of on-the-job training for new inspectors, and annual training for all inspectors on inspection standards and regulatory changes. (Report, pp. 6-7.) Inspectors also are provided detailed compliance manuals, and have access to hazardous materials specialists. (Id.) Under the FRA's existing program,

The [FRA's] 54 hazardous materials inspectors, along with State inspectors, in FRA's 8 regions examine railroads' and shippers' compliance with the [Hazardous Materials Regulations] during the inspections of trains, facilities and accidents. During the fiscal years 2013 and 2014, FRA inspectors inspected 695,765 items such as tank cars and shipper facilities. FRA also has specialists on its tank car quality assurance team that focus on inspections of tank car manufacturing and repair facilities.

(Report, p. 3.) The FRA's existing inspection and enforcement programs resulted in a 38 percent decrease in the rate of non-accident releases of hazardous materials from 2011 to 2014, even while the tonnage of hazardous materials shipped by rail increased almost 75 percent. (Appendix to Inspector General's report, p. 1.) The FRA's Fiscal Year 2015 Enforcement Report (referenced in the appendix to the Inspector General's report) provides additional information regarding the success of the FRA's inspection and enforcement programs. The main body of the 2015 Enforcement Report is as Attachment 3 to this letter, and the complete report with appendices may be accessed here: <https://www.fra.dot.gov/Elib/Document/15583>.

As noted in the Inspector General's report, states also may elect to have a role in enforcing the federal hazardous materials regulations. In California, the California Public Utilities Commission is approved to carry out this inspection and enforcement responsibility. In its most recent report to the California Legislature regarding rail safety, the CPUC summarized:

The CPUC Crude Oil Reconnaissance Team (CORT) actively monitors and inspects crude oil rail line rehabilitation projects, including new crude oil facilities, track construction or rehabilitation, bridge and grade crossing

upgrades and all railroad transportation systems associated with the transportation of crude oil. The focus is to ensure that all crude oil facilities and the routes to those facilities comply with federal and state safety laws, in addition to mitigating risks that are not defined in regulations. During 2014-15, the team monitored upgrades to 29 miles of antiquated track in the Bakersfield area to ensure effective improvement competencies, and successfully pursued improvements to public grade crossings to more effectively alert motorists and pedestrians of oncoming trains carrying crude oil.

Another proactive risk-mitigation measure includes targeted observations of the state's railroad bridges. The CPUC Railroad Bridge Evaluation Program (RBEP) was established and began the training of two new railroad bridge inspectors, as well as incorporating engineering staff from the Risk Assessment Program, in the Fall of 2014. During 2014-15, CPUC railroad safety inspectors performed 51 bridge observations, identified 22 general order defects, and created 7 Risk Management Status Reports to seek remediation to improve the safety of the state's railroad bridges.

Annual Railroad Safety Report to the California State Legislature, California Public Utilities Commission Safety and Enforcement Division, Office of Rail Safety, Railroad Operations and Safety Branch, dated November 30, 2015, p. 2. (The main body of the report is Attachment 4 to this letter.) The *Annual Railroad Safety Report* continued:

The CPUC employs 43 FRA-certified railroad safety inspectors to perform safety inspections and investigations pursuant to the State Participation Program with the FRA. The federally certified inspectors promote and enforce rail safety rules and regulations by performing inspections and accident investigations. The CPUC's rail safety responsibilities include:

- Inspecting railroads for compliance with state and federal railroad safety laws.
- Investigating railroad accidents and safety-related complaints.
- Recommending railroad safety improvements to the Commission and federal government.
- Ensuring efficient enforcement of railroad safety requirements.

Id., p. 4. In the 2014-2015 fiscal year, CPUC hazardous materials inspectors completed 682 reports evaluating the compliance status of 28,977 units, and CPUC Motive Power and Equipment inspectors completed 905 reports evaluating 78,301 units. *Id.*, p. 17. "In addition to the individual inspections, the inspectors also perform overarching risk assessment and risk management to identify and address public safety risks that may not be a violation of a federal or state law." *Id.*, p. 16. In accordance with California Public Utilities Code Section 309.7, fees paid by the railroad corporations are the sole funding

source for the PUC's railroad safety program, including \$7.6 million in 2014 alone. *Id.*, p. 3.

Tourism in San Luis Obispo County

Several commenters noted the contribution of tourism to the County's economy, and expressed concern that tourism could be adversely affected by approval of the Rail Spur Extension Project. A report commissioned by the Economic Vitality Corporation does not bear out this concern. The report was prepared in 2008 with the sponsorship of San Luis Obispo County, among others. The report reviews the San Luis Obispo County tourism industry compared to neighboring Santa Barbara and Monterey Counties, and recommends steps that San Luis Obispo County should consider to increase tourism. Attachment 5 is an excerpt from the report that summarizes the County's strengths, weaknesses, opportunities and threats with respect to tourism. (The complete report may be found at [http://www.sloevc.org/files/SLO%20County%20Tourism%20Report_2008%20\(v_2\).pdf](http://www.sloevc.org/files/SLO%20County%20Tourism%20Report_2008%20(v_2).pdf).) Existing train traffic, including the three crude oil unit trains per week that currently pass through the County, is not mentioned as an impediment to expansion of tourism. Conversely, the report links rising gasoline prices to a fall in tourism.

No commenters have recounted instances in which visitors to the County have expressed disappointment or a reluctance to return due to current rail traffic of any type. To the contrary, one of the County's attractions is the San Luis Obispo Railroad Museum (<http://slorm.com>), which celebrates and introduces tourists to the significant contributions that railroads have made, and continue to make, to the County's development and transportation needs. The County museum's website explains its goal of "creat[ing] a regional museum serving the nearly 300,000 residents and eight million tourists who visit San Luis Obispo County each year." Over the years, both UPRR and Phillips 66 have contributed to and sponsored events held by the museum.

The Increase in Rail Traffic Outside of San Luis Obispo County

Several commenters from outside of San Luis Obispo County commented that the emissions from locomotives passing through their communities on the way to San Luis Obispo would emit unacceptable amounts of pollutants. One commenter even stated that the project-related rail traffic would cause her to sell her home and relocate. Current levels of rail traffic call into question the credibility of these statements. The project would result in a maximum of three additional trains visiting the Santa Maria Refinery per week (six one way trips per week). The speakers raising this issue stated that they are from the communities of Davis, Berkeley and San Jose. Given the number of different routes that might be used, it is unlikely that all of the Project-related train trips would pass through the communities mentioned by the speakers. However, even if 100% of the rail traffic associated with the Project passed through the listed communities, it is highly unlikely that the speakers would discern a change, due to the current levels of train traffic along these

main lines. According to the 2013 California State Rail Plan, existing rail traffic through these communities is:

City	Combined Trains <i>Per Day</i> Freight (2009 data) and Passenger (2012 data)
Davis	51-75
Berkeley	51-75
San Jose	26-50 (from East Bay) 76-100 (from the Peninsula)

See pages 179 of the 2013 California State Rail Plan. The 2013 draft version of the Rail Plan is cited as a reference in the Final EIR for the Rail Spur Extension Project at p. 4.12-45. The 2013 Final Rail Plan is the most recent plan adopted by Caltrans, which is now working on the 2018 Plan. Excerpts of the 2013 Final California State Rail Plan are Attachment 6 to this letter, and the complete document can be found at http://californiastaterailplan.dot.ca.gov/docs/Final_Copy_2013_CSRP.pdf.

The EIR's Alternatives Analysis

One commenter stated that the EIR should have evaluated an alternative consisting of construction of a pipeline from rail unloading facilities in Kern County to the Phillips 66 Santa Maria pump station or the pipeline that connects the pump station to the Refinery. The commenter noted that Chevron received approvals in 2008 for a pipeline connecting its San Ardo oil field to a tie-in with its existing transportation network in Coalinga, CA. The Final EIR for the Phillips 66 Rail Spur Extension Project describes such a pipeline scenario at page 5-9 to 5-10, but the alternative did not make it through the screening process because Phillips 66 does not own property or have rights of way through corridor, so property acquisition and permitting uncertainty make this alternative too speculative.

CEQA requires that an EIR consider a reasonable range of feasible alternatives that would reduce environmental impacts. CEQA does not require analysis of every possible alternative, or every alternative suggested by the public. The Final EIR for the Phillips 66 project meets CEQA's requirements. It includes full analysis of three alternatives, and discusses additional alternatives that were considered but rejected because they were considered infeasible or speculative, or would not reduce or avoid the significant impacts associated with the project as proposed.

An alternative that includes a pipeline between Kern County and the Santa Maria pump station or Santa Maria Refinery would not meet CEQA's criteria for alternatives that must be evaluated. In addition to the reasons described in the Rail Spur Extension EIR, such a hypothetical project would not reduce or avoid the significant impacts associated with the mainline rail traffic transporting crude oil to the Refinery. As with the No Project

Alternative, all the Class I impacts identified in the Rail Spur EIR for the mainline rail operations would still occur for a project that includes a Kern-Santa Maria pipeline; these impacts would just be pushed outside of San Luis Obispo County, and in some cases (e.g., impacts to agricultural resources), the impacts could be even greater.

In addition, a project that included a Kern-Santa Maria pipeline would have additional impacts, including impacts to agricultural resources, biological resources, and other environmental values because the pipeline would be installed through undisturbed habitat and agricultural lands, whereas the Rail Spur Extension Project as proposed involves construction only within the existing Refinery site. The Chevron pipeline mentioned by the commenter illustrates this point quite well. For a pipeline of only 57 miles, the EIR for the Chevron project determined that it would temporarily affect up to 695 acres of currently existing vegetation (both native plant communities and agricultural lands) within the 100-foot-wide pipeline corridor, as well as additional lands (as much as 246 acres) needed for construction staging and work areas. The Chevron Draft EIR states:

A number of special-status plant and animal species would be temporarily impacted through the temporary loss of habitat; mortality of some protected species could result from onsite construction activities. On-site biological surveys, in concert with data base consultation resulted in the determination that 72 special-status plant species and 90 special-status wildlife species could potentially occur in the Project region. In addition, sensitive habitats and plant communities (e.g., wetlands, native oak woodlands) would be affected throughout the 10- to 15-month construction period. Some of these impacts would be considered permanent (e.g., the loss of mature oak trees), though most habitats would be restored after the construction phase.

Chevron Draft EIR at page 3.5-1 (The EIRs for the Chevron pipeline project is SCH No. 2006051012 and it can be found at:

<http://www.co.fresno.ca.us/DepartmentPage.aspx?id=12761> and

<http://www.co.fresno.ca.us/DepartmentPage.aspx?id=12384>.) These impacts are much greater than the impacts to biological resources associated with the construction of the proposed Project. In addition, the Chevron EIR documents that that construction of the pipeline will result in permanent, significant and unavoidable impacts to agriculture, including the permanent loss of prime farmland. Impacts from a Kern-Santa Maria pipeline would likely be greater because it would be much longer. Therefore, this alternative would not meet the CEQA test because it would not reduce or avoid Project impacts found to be significant.

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We look forward to responding to any additional questions that the Commission may have as the hearings resume on April 15, 2016.

Very truly yours,

ALSTON & BIRD LLP



Jocelyn Thompson

JNT:
Attachments

cc: Ryan Hostetter (via Email)
Whitney McDonald (via Email)

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ATTACHMENT 1

Not Reported in Cal.Rptr.3d, 2011 WL 3527504 (Cal.App. 4 Dist.)

Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

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Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 3, California.

CITY OF RIVERSIDE, Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al., Defendants and Respondents.

No. G043651.

(Super.Ct.No. 30–2009–00123216).

Aug. 11, 2011.

Appeal from a judgment of the Superior Court of Orange County, [Ronald L. Bauer](#), Judge. Affirmed. Chatten–Brown & [Carstens](#), [Jan Chatten–Brown](#), [Douglas P. Carstens](#), Michelle N. Black, Arthur Pugsley; [Gregory Priamos](#), City Attorney, Kristi Smith and [Anthony Beaumon](#), Deputy City Attorneys, for Plaintiff and Appellant.

[Carmen A. Trutanich](#), City Attorney, [Thomas A. Russell](#), Assistant City Attorney, [Christopher B. Bobo](#), Deputy City Attorney; Meyers, Nave, Riback, Silver & Wilson, [Amrit S. Kulkarni](#), [Julia L. Bond](#) and [Peter S. Hayes](#), for Defendants and Respondents.

OPINION

[FYBEL](#), J.

INTRODUCTION

*1 The **Port of Los Angeles** prepared an environmental impact statement/environmental impact report (EIR) for a project involving the construction and operation of a container terminal in the West Basin of the **Port of Los Angeles**. The Board of Harbor Commissioners of the City of Los Angeles approved the final EIR. The City of Riverside (the

City) sought a writ of mandate from the trial court, challenging the EIR. The trial court denied the petition for a writ of mandate, and the City appeals. (We will refer to respondents the City of Los Angeles, the Los Angeles City Council, the Los Angeles Harbor Department, the Board of Harbor Commissioners, and the **Port of Los Angeles** collectively as the Port, for ease of reference.)

Having independently reviewed the administrative record, we conclude the Port did not abuse its discretion in certifying the final EIR, and we therefore affirm the trial court's judgment.

STATEMENT OF FACTS

The project involves the construction of a new wharf, additional cranes, the expansion and development of 142 acres of terminal backlands, and the construction of terminal infrastructure at the **Port of Los Angeles**. In 1997, the Board of Harbor Commissioners certified a program EIR for the West Basin Transportation Improvements Program at the **Port of Los Angeles**. (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 272.) In March 2001, the City of Los Angeles entered into a lease with China Shipping Holding Co., covering construction of the project as well as later terminal operations. (*Id.* at pp. 277–278.) The city council determined that the 1997 EIR covered the project, and that no additional documentation pursuant to the California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) was needed. (*Natural Resources Defense Council, Inc. v. City of Los Angeles, supra*, at p. 278.) The Natural Resources Defense Council, Inc., among others, petitioned for a writ of mandate, alleging the City of Los Angeles violated CEQA by entering into the lease without completing an adequate EIR. (*Id.* at p. 279.) The trial court denied the petition. (*Ibid.*) On appeal, the court concluded the **Port of Los Angeles** had failed to prepare a proper EIR, and the environmental review had been improperly segmented. (*Id.* at pp. 284–285.) The Port was ordered to prepare a proper

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EIR. (*Id.* at pp. 285–286.)

Phase I of the project has been completed. The present matter involves the EIR for phases II and III of the project. The Port released a draft EIR for public comment in August 2006. Numerous comments were received. Based on the comments received, the Port thoroughly revised and expanded the draft EIR for a second round of public review and comment in April 2008 (the recirculated draft EIR).

The City and the Riverside County Transportation Commission (RCTC) submitted comments on the recirculated draft EIR, asserting it had not adequately analyzed impacts to rail and road traffic in the City and Riverside County. The RCTC identified 12 at-grade rail crossings it claimed would be seriously affected by the project. The Port investigated existing conditions at those rail crossings.

*2 In the final EIR, the Port responded to the comments to the recirculated draft EIR, including those by the City and the RCTC. The final EIR found that project-related rail activity would not result in significant traffic delays at rail crossings in the City or in Riverside County.

The Board of Harbor Commissioners held a hearing on the recirculated draft EIR on December 18, 2008. At the end of the hearing, the board unanimously certified the final EIR and approved the project. In its findings, the board concluded that, apart from two rail crossings near the **Port of Los Angeles** itself, the project would not cause significant rail crossing delay impacts, or contribute to significant cumulative rail crossing impacts. Specifically responding to comments from the City and the RCTC, the final EIR concluded: “The comments from the City of Riverside and RCTC both suggest that the findings in the Recirculated Draft EIS/EIR are not correct and that the proposed Project would cause significant impacts within Riverside from truck and rail traffic in addition to the two local intersections identified in the Recirculated Draft EIS/EIR. Characterizing congestion in Riverside County

as caused by the Ports is incorrect and unsubstantiated. Rather, congestion in Riverside County is predominantly a result of land use planning and growth policies and decisions of the jurisdictions within the county.”

PROCEDURAL HISTORY

The City filed a petition for a writ of mandate, and complaint for declaratory and injunctive relief, on February 18, 2009. (The case was originally filed in Los Angeles Superior Court, but was transferred to Orange County Superior Court pursuant to a stipulated order.)

The trial court issued a minute order denying the petition for a writ of mandate. The court entered judgment in favor of the Port on April 8, 2010. The City timely appealed.

DISCUSSION

I.

STANDARD OF REVIEW

The parties initially disagree on the standard of review this court must apply. The appropriate standard of review was set forth by the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426–427: “In reviewing an agency’s compliance with CEQA in the course of its legislative or quasi-legislative actions, the courts’ inquiry ‘shall extend only to whether there was a prejudicial abuse of discretion.’ [Citation.] Such an abuse is established ‘if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.’ [Citations.] [¶] An appellate court’s review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court’s: The appellate court reviews the agency’s action, not the trial court’s decision; in that sense appellate judicial review under CEQA is de novo. [Citations.]” (Fns.omitted.) In other words, on appeal, we independently review the administrative record to determine whether the Port prejudicially abused its discretion.

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*3 “ “ “ ‘Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” ‘ ‘ [Citation.] ‘ “In determining whether substantial evidence supports a finding, the court may not reconsider or re-evaluate the evidence presented to the administrative agency. [Citation.] All conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency’s findings and decision. [Citation.] [¶] In applying that standard, rather than the less deferential independent judgment test, ‘the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.’ “ ‘ [Citations.]’ (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 522–523.)

Our role as a reviewing court is to consider the sufficiency of the EIR as an informational document. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) “A court may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. [Citation.] A court’s task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that ‘The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.’ [Citation.]” (*Id.* at p. 393.)

II.

EXHAUSTION OF REMEDIES

The Port argues that many of the arguments

raised by the City on appeal were neither raised in the administrative proceeding, nor preserved in the trial court.

Public Resources Code section 21177, subdivision (a) provides: “An action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.”

The purpose of the exhaustion of administrative remedies doctrine is to give the public agency the opportunity to receive and respond to specific factual and legal issues. (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197–1198. “[T]he exact issue raised in the lawsuit must have been presented to the administrative agency so that it will have had an opportunity to act and render the litigation unnecessary.” (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894; see *Citizens for Responsible Equitable Environmental Development v. City of San Diego*, *supra*, 196 Cal.App.4th at p. 527 [“general, unelaborated objections [are] insufficient to satisfy the exhaustion doctrine”]; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535 [“ ‘exact issue’ “ ‘ must have been presented to administrative agency in order to exhaust administrative remedies in CEQA case]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 791 [arguments against plan on same general topic do not save specific statutory argument that was not raised at administrative proceeding level].) If the exhaustion of administrative remedies doctrine applies, a court does not have the discretion to refuse to apply it. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1215–1216.)

*4 The City bears the burden of demonstrating that the issues raised in its appellate briefs were

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first raised at the administrative proceeding level. (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at p. 536.)

An exception to the exhaustion of administrative remedies doctrine applies when the agency fails to provide sufficient opportunity to the public to raise objections to the project. **Public Resources Code section 21177, subdivision (e)** provides: “This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.” As will be explained *post*, the City cannot establish any lack of notice by the Port, and the City does not claim any lack of a public hearing or lack of an opportunity to provide written comments.

Additionally, the City cannot argue on appeal issues that were not raised in the trial court. (*A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1804.) This rule, too, is subject to exceptions. An appellate court may consider issues that are pure questions of law, such as whether the EIR was adequate as a matter of law, or whether the issue is one of public interest. (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 713–714.)

III.

THE PORT'S RESPONSE TO COMMENTS BY THE CITY AND THE RCTC WAS TIMELY.

The City argues the Port failed to comply with the requirements of **Public Resources Code section 21092.5, subdivision (a)**, which provides, in part: “At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency .” (See also **Cal.Code Regs., tit. 14, § 15088, subd. (b.)**) The City claims it received the Port's responses to its comments on December 9, 2008, while the EIR was certified fewer than 10 days later, on December 18.

But the administrative record contains a cover letter dated December 5, 2008, under which the response to comments document was sent to all commenting agencies. Additionally, at the final hearing, the director of environmental management of the **Port of Los Angeles** testified that the Port both mailed and e-mailed the response to comments to the Riverside City Attorney's Office on December 5. The City concedes, in its reply brief on appeal, that the Port's response was mailed 13 days before the hearing. The City argues, without any authority, that the Port failed to meet its obligation because the City did not receive the response until four days later.

We conclude the Port met its obligation to provide a written response to comments at least 10 days prior to certifying the EIR by mailing and e-mailing the response 13 calendar days before the hearing. The City has failed to establish a lack of compliance with the applicable notice requirements.

IV.

THE RECIRCULATED DRAFT EIR DID NOT DEFINE THE AREA AFFECTED BY THE PROJECT TOO NARROWLY.

*5 The recirculated draft EIR identified two at-grade rail crossings near the **Port of Los Angeles**, which would experience significant, unavoidable impacts from the project. The recirculated draft EIR determined there would be no other negative impacts from the project due to rail-related issues: “[R]ail-related impacts due to the proposed Project are limited to the at-grade crossings that are located south of the downtown rail yards, and are focused on the at-grade crossings on local lines in and near the Port.”

The recirculated draft EIR concluded the project would not cause significant rail-related impacts outside the general **Port of Los Angeles** area. “The Project will not cause significant rail-related impacts on lines that lead north or east of the downtown rail yards. Rail trips are not controlled by the Port. Currently, the unit trains built at the on-dock

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and near dock facilities can be picked up by [Burlington Northern Santa Fe Railway] and/or [Union Pacific]. Both rail companies use the Alameda Corridor to travel to the downtown rail yards. To the east of the downtown rail yards, some of the trains are broken down, reconfigured and otherwise modified at the location of the downtown rail yards from that point to the east. Other trains remain unit trains through the downtown rail yard; there are approximately nine major routes with a number of subroutes that the trains can take to leave the state. The rail operators, and not the Port, make the choice of what routes the trains will take, the day they will move and the time of day the trains will move. Furthermore, the rail mainline tracks were designed and built to accommodate the anticipated rail activity in the region. Rail volumes on the mainline are controlled and limited by the capacity of the mainline itself, thus by definition the project's trains could not traverse the mainline unless it still has remaining capacity. The number of trains generated by the project would not cause the mainline rail tracks to exceed the regional capacity. Once the regional mainline rail track capacity would be exceeded due to increases in regional rail activity, separate environmental studies on the mainline expansion would be undertaken by the rail companies, not by each shipper or carrier generating rail volumes."

The City and the RCTC made numerous comments regarding the recirculated draft EIR, all of which were tied to the effect of increased rail traffic. The Port responded to those comments in the final EIR. The City, however, argues that the Port erred in its response to those comments. The City's arguments in this regard are lengthy and detailed.

Although the City does not make this specific argument in its appellate briefs, a theme running through the entirety of its arguments is that the Port erred by failing to consider the rail-related impacts on the City and Riverside County in the recirculated draft EIR. (This argument was raised specific-

ally in the trial court.) An EIR must include the proper boundaries for a project when determining the environmental impact it might have. "An EIR is required to discuss significant impacts that the proposed project will cause in the area that is affected by the project. [Citation.] This area cannot be so narrowly defined that it necessarily eliminates a portion of the affected environmental setting." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216.)

*6 The area considered by the recirculated draft EIR was not too narrowly defined. The recirculated draft EIR considered rail-related impacts in the areas immediately adjacent to the project site, and as far away as the Los Angeles rail yards, 20 miles from the project site. This case is distinguishable from the cases cited by the City. In *Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 124 Cal.App.4th at page 1216, the appellate court concluded the EIR's for two retail shopping centers, which were located 3.6 miles apart and shared four arterial roadways, were insufficient for failing to consider the other center when examining the cumulative impacts of each. In *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 724, the appellate court concluded an EIR that described the project site as surrounded by farmland was deficient for failing to consider that the project site was adjacent to the San Joaquin River, a wildlife preserve was nearby, and wetlands might be located on the project site.

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Cal.Code Regs., tit. 14, § 15125, subd. (a).) The California Code of Regulations does not

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define “vicinity” and no published case appears to have considered the issue. “Vicinity” has been defined as “1: the quality or state of being near: nearness, propinquity, proximity ... 3: a surrounding area or district: locality, neighborhood...” (Webster's 3d New Internat. Dict. (2002) p. 2550, capitalization omitted.) Another definition for “vicinity” is: “A place near to a place designated, but not adjoining or abutting on it.” (Ballentine's Law Dict. (3d ed.1969) p. 1342.)

The recirculated draft EIR and final EIR included several depictions of the “Project Site and Vicinity,” which were limited in scope to the **Port of Los Angeles** and the area immediately around it. No commenter appears to have questioned or criticized the EIR's use of the term “vicinity.”

We conclude neither the City nor the County of Riverside is in the “vicinity” of the project. The Port did not abuse its discretion by failing to include in the recirculated draft EIR an analysis of rail-related impacts on the City and County of Riverside. Nevertheless, as explained in section VI *post*, in the final EIR, the Port did consider the potential impact of the project in the City and County of Riverside in its response to the comments of the City and the RCTC.

V.

THE CITY FAILED TO EXHAUST ITS REMEDIES REGARDING CHALLENGES TO THE METHODOLOGY USED BY THE PORT IN THE RECIRCULATED DRAFT EIR TO ANALYZE RAIL-RELATED IMPACTS.

*7 The recirculated draft EIR identified the level of significance for traffic delays at railroad crossings as follows: “An increase in rail activity could cause delays to motorists at the affected at-grade crossings where additional project trains would cross and/or where the project would result in additional vehicular traffic flow. The project is considered to have a significant impact at the affected at-grade crossings if the average vehicle control delay caused by the project at the crossing would exceed the Highway Capacity Manual

(HCM) threshold for level of service E at a signalized intersection, which is 55 seconds of average vehicle delay.”

In its respondent's brief on appeal, the Port explains its methodology of analyzing rail crossing delays as follows: “The AVD [(average vehicle delay)] methodology, and 55-second AVD threshold of significance, work as follows: First, the Port collects data on gate blockage time per passing train (in minutes); average ‘arrival rate’ of vehicles at a crossing (in minutes per road lane); frequency of passing trains at a crossing (per hour); and number of road lanes at a crossing.... Using those data, and a formula set out in the EIR, the Port calculates the ‘total traffic delay’—i.e., the aggregate amount of delay, experienced by the *entire body of vehicles as a whole*, at a given crossing in a given hour, due to the passage of trains.... Then, the Port averages ‘total traffic delay’ over the number of vehicles using that crossing in a given hour (whether delayed by a train or not), to identify ‘average vehicle delay,’ i.e., *how much delay is experienced, on average, by each individual vehicle which uses the crossing in that hour*.... Finally, the Port compares ‘average vehicle delay,’ expressed in seconds, to a standard, drawn from the HCM, under which a crossing is determined to operate at an unacceptable LOS [(level of service)] if average vehicle delay, among all vehicles using a given crossing in the peak traffic hour, is equal to or greater than 55 seconds.... [¶] The Port's methodology therefore (1) yields information on how much delay an individual vehicle will experience, on average, at a given rail crossing in a given hour and (2) allows for comparison to a recognized standard for determining the significance of a project's impacts on the operational LOS of a roadway intersection.”

The RCTC attached to its comment letter a technical review of the recirculated draft EIR's analysis of potential environmental impacts in Riverside County. The technical review analyzed the impact of rail-related traffic delays, as well as in-

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creased emission of pollutants and traffic delays caused by an increased number of trucks transporting goods from the **Port of Los Angeles**. The technical review noted that the recirculated draft EIR did not identify any potential impacts in Riverside County, but made its own finding that an anticipated impact of the project would be “additional freight rail traffic carrying containers through Riverside County (particularly the impacts caused by the trains passing through at-grade rail crossings, where traffic is delayed waiting for the trains).” It concluded that the effect of the additional cargo containers carried through Riverside County by train due to the increased traffic from the project would result in an increased delay of 36.3 vehicle hours per day. The technical review also identified 12 crossings in Riverside County “where the additional container traffic would increase the existing delay by at least one vehicle-hour of delay per day.”

*8 The City raises numerous challenges to the average vehicle delay methodology in the EIR. These challenges, however, are barred by the City's failure to exhaust the issue. The City admits this issue was not raised in its comments on the recirculated draft EIR, but argues it did not realize the Port's methodology was an issue until the trial court hearing on the petition for a writ of mandate. Having thoroughly reviewed the administrative record and the appellate record, we conclude the Port fully and accurately explained its methodology in the recirculated draft EIR. The confusion resulting from a mistaken description of the EIR's methodology in the Port's trial brief does not mean the recirculated draft EIR misrepresented the methodology, so as to relieve the City of its failure to exhaust the issue in the administrative proceedings.

VI.

DID THE PORT PROVIDE ADEQUATE RESPONSES TO THE COMMENTS RAISED BY THE CITY AND THE RCTC?

The City argues that the Port failed to respond to many of the comments raised by the City and the

RCTC regarding rail-related environmental impacts from the project, and failed to provide analysis specifically requested by the City. The failure to respond to public comments on a draft EIR can constitute an abuse of discretion by the lead agency. “The Port [of Oakland]'s response fell far short of the ‘good faith reasoned analysis’ mandated by CEQA for responding to significant conflicting information generated by the public. [Citations.] Much information of vital interest to the decision makers and to the public pertaining to toxic air contamination was simply omitted. In other instances, the information provided was either incomplete or misleading. The dispute in this regard goes beyond a disagreement of qualified experts over the reasoned conclusions as to what the data reveals. The EIR failed to acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR's analysis of this subject. The conclusory and evasive nature of the response to comments is pervasive, with the EIR failing to support its many conclusory statements by scientific or objective data. These violations of CEQA constitute an abuse of discretion.” (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1371.)

The Port notes that in responding to the comments of the City and the RCTC, the Port conducted a field investigation and analysis of existing conditions at the rail crossings identified by the RCTC. Based on this analysis, the Port concluded there would not be any significant impact to rail crossings in the City and County of Riverside as a result of the project.

In determining whether the Port responded adequately to the comments, we consider whether substantial evidence in the record supports the response. An agency must provide a good faith, reasoned response to public comments on a draft EIR. “The written response shall describe the disposition of significant environmental issues raised.... In particular, the major environmental issues raised when the lead agency's position is at

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variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.” (Cal.Code Regs., tit. 14, § 15088, subd. (c).) The response need not be exhaustive as long as it adequately addresses the issues raised in the comments. (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 683.) A lead agency is “not required to exhaust all suggested testing before EIR certification [citation], particularly since there was expert opinion indicating that further investigation was not necessary. ‘Just as an agency has the discretion for good reason to approve a project which will admittedly have an adverse environmental impact, it has discretion to reject a proposal for additional testing or experimentation.’ [Citation.]” (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 102.)

A.

The final EIR did not fail to disclose the basis of train projections, as requested by the City's comments.

*9 The recirculated draft EIR projected 817 annual rail round trips attributable to the project by 2030. The City's comment letter complained that the basis for this estimate was not included: “The data and calculations underlying the 817 estimated rail round-trips were not included in the [recirculated draft] EIR or its appendices. There is a passing citation to the ‘Rail Master Plan and actual Yang Ming rail yard projections’ on [the recirculated draft] EIR page 2–2, but those projections are never revealed. There is no way to verify the timeliness, accuracy, applicability, or even the existence of the data. Those data must be included and analyzed in the [recirculated draft] EIR discussions and analysis, or at the very least, as an appendix.” The Port's response to this comment reads: “The count of 817 rail round trips required for the projected Project is based on the projected terminal TEU [FN1] throughput and the percentage of total

throughput that would be transported via rail. Please see Table E12.–13 in Appendix E of the Recirculated Draft EIS/EIR.” FN2

FN1. TEU stands for 20-foot equivalent unit, which is the typical means for expressing the amount of cargo. The City's opening appellate brief includes the following discussion of the TEU's that are anticipated from the project (parenthetical references are the City's citations to the administrative record): “With 10 cranes and the expansion of terminal backlands from 11 to 142 acres (6:2869–2870), by 2030 the increased cargo capacity allowed by Phases II and III would accommodate delivery of 838,338 containers per year. (1:6–9; 6:2892.) Cargo is typically expressed in terms of twenty-foot-equivalent units (TEUs), and each container contains approximately two TEUs. The current Project will make possible more than a threefold increase in container throughput over Phase 1 of the Project, and more than a tenfold increase over levels prior to Phase I. (8:3784.) [¶] The EIR estimates by 2030 the Project would generate 817 annual ‘roundtrip’ rail movements, or 1,634 actual trips in and out of the port. (1:34; 6:2870.) [The Port] estimates that nearly 40 percent of TEUs arriving from overseas at the China Shipping terminal travel by near-dock and on-dock rail to further destinations. (6:2870.) Furthermore, the 40 percent of TEUs identified as traveling by rail does not appear to include the large percentage of TEUs trucked to railyards to be transferred to rail and ultimately through Riverside. (6:2870 [train trips described are only from on-dock and near-dock. It is unclear whether the term ‘local delivery’ includes the delivery of TEUs by truck to the Vernon or East Los Angeles rail yards].)”

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FN2. The Port's response contains a typographical error, where it references table E12.–13; the correct reference is to table E1.2–13. While the error might have caused some confusion, the City's December 17, 2008 letter to the Port, regarding the responses to the comments, shows it was able to identify the table to which the Port was referring in its response.

It is probably self-evident that correct assumptions regarding the estimated increase in rail traffic generated by the project are necessary. Without a reasonable, good faith analysis, the EIR is not proper. And without a realistic estimate of what impact the project might have on the environment, a reasonable, good faith analysis is not possible. Did the Port, in its response to the City's comments or in the EIR itself, provide the evidence from which we can conclude the estimates of increased rail traffic are realistic?

The City contends that the Port's "failure to disclose the assumptions upon which the projections were based is a fatal flaw in the EIR." Having reviewed the recirculated draft EIR, it appears the Port provided an estimate of the TEU's generated annually by the project (figures that the City does not challenge), as well as an estimate of the TEU's that would be distributed to rail yards. Those estimates form the basis for the estimate of the increased number of train trips. Reference to the EIR itself may constitute a satisfactory response to a comment. (*Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 378.)

The City argues the estimate of the percentage of TEU's that would be transported by rail in the EIR is contradicted by two other studies included in the EIR—the EIR prepared for the West Basin Transportation Improvements Program and the Ports of Long Beach/Los Angeles Transportation Study. The final EIR for the West Basin Transportation Improvements Program estimates, "[a]pproximately 50 percent of all containers

passing through the West Basin terminals are expected to be transported by rail. This assumption is consistent with the *Alameda Corridor Environmental Impact Statement* (Federal Highway Administration, Federal Railroad Administration, and California Department of Transportation 1996) and the Deep Draft Navigation Improvements Project (COE, LAHD 1992)." Although the 50 percent estimate in the West Basin Transportation Improvement Program EIR is more than the 36.5 percent figure used in the EIR for this project, the West Basin program was vastly different in size, and that EIR was prepared 10 years before the EIR in this case. An earlier, different EIR's use of different estimates of rail transportation of containered material does not make the EIR for this project inaccurate or incomplete.

***10** Similarly, the Ports of Long Beach/Los Angeles Transportation Study estimates that by 2010, "50 percent of all containers that move through the Ports will be transported by rail to inland destinations via on-dock and off-dock railyards." The purposes of this study, performed in 2001, were to identify potential problems in the transportation system throughout the **Port of Los Angeles** and Port of Long Beach, and develop an implementation plan for addressing any deficiencies in the system. The study was not intended as an environmental review document, and dealt with a much larger area than does the EIR for this project. Its applicability to the present issue is limited, at best.

Moreover, as the Port notes, the Port's additional analysis regarding traffic delays due to increased rail traffic that was performed in the City and County of Riverside in response to the comments raised by the City and the RCTC did not use the rail estimates included in the recirculated draft EIR; the analysis used the RCTC's technical review's estimate that four additional trains per day attributable to the project would pass through Riverside and its environs. In its response to the comments, the Port accepted the technical review's assumptions. The

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Port's reliance on one set of assumptions rather than that contained in other documents does not invalidate the EIR, as long as the assumptions and conclusions on which the Port relied are supported by substantial evidence. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal.3d at pp. 392–393.)

The City also argues that the EIR's estimate of rail trips does not account for the EIR's inclusion of an incentive program to promote rail use. Its citation to the administrative record for this factual statement is actually a reference to the initial draft EIR; the City does not cite to any spot in the recirculated draft EIR or the final EIR that includes a reference to an incentive program for the **Port** of **Los Angeles** tenants to use rail rather than trucks. We do not find the argument compelling.

Finally, the City argues that the EIR is not clear about whether rail trips from other nonproject areas of the **Port** of **Los Angeles** are included in the estimate of rail trips generated by the project. (The Port does not specifically address this argument.) We discern no such lack of clarity. The recirculated draft EIR provides estimates of the increase in container traffic, and the attendant increase in rail-related traffic related to the project.

B.

The final EIR did not fail to address impacts to emergency services.

The City argues the Port failed to adequately respond to its comment that increased rail traffic due to the project would adversely impact the provision of emergency services in the City and County of Riverside. The comment letter stated: “Police, fire and EMT officials reported 491 delays at Riverside's at-grade crossings between 2002 and 2007. Responder delays averaged 3 minutes and were as long as 21 minutes. ¶ In the first half of 2007, Riverside experienced 82 rail-delayed fire trucks and ambulances, for a total of 256 minutes. Each of those minutes can represent life or death. **Heart attack** survival rates can drop from 7% to 10% for each minute of delay. Brain damage can

occur in 3 to 4 minutes. From December 1, 2006 to April 24, 2007, rail delays affected 270 police vehicles, for a total of 1,327 minutes (22.12 hours). Again, those minutes can mean life or death.”

*11 The reference to emergency vehicle delays is one of several examples in the City's comment letter of how the project and the increased number of trains attributable to the project will adversely impact the City and County of Riverside. (After stating that “[r]epeated rail-scheduling conflicts result in serious delays in Riverside, and elsewhere,” the comment letter reads, “For example,” and then lists several bullet points that describe specific problems caused by rail-related delays.) Although the City does not specifically make this point, considering its comment letter in toto, the City was arguing the increase in rail traffic from the project would exacerbate problems with emergency service delays. We therefore reject the Port's argument that this issue was not fully raised or developed by the City.

The problem is that there is no evidence supporting any one of the factual claims made in the City's comment letter. The City apparently provided the Port with a copy of an August 2006 report by the Federal Railroad Administration on the impact of blocked highway and rail grade crossings on emergency response services. That report includes the unassailable finding that “[b]locked crossings ... can be a particularly serious problem for emergency responders.” The report does not include any data or analysis specific to the City or County of Riverside (although, interestingly, it uses the improvements to the Alameda corridor, which are discussed in the EIR, as a case study for dealing with problems of grade crossing delays to emergency responders).

The Port's response to this comment cross-referenced its response to other comments, which in turn cross-referred to other responses. As with the City's comment, it appears that the Port's response to this specific comment was subsumed by its general response to the overall complaint by the City

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and the RCTC—that the project would result in more rail traffic, causing greater traffic delays in the City and County of Riverside. (We can find no prohibition on such cross-referencing of comments or responses to comments.)

The Port's analysis determined that the increase in rail traffic due to the project would not have a significant impact on traffic delayed at at-grade rail crossings in the City and County of Riverside. As there was substantial evidence supporting this finding, then it must be true that there would not be a significant impact on other environmental concerns, such as delays experienced by emergency responders, which the City claimed was directly related to the increase in rail-related delays. The City does not provide any authority for its contention that the increase in delays to emergency responders must be studied and analyzed separately from the analysis of the rail crossing delays.

C.

The final EIR did not fail to discuss air pollution and other impacts from vehicles stopped by trains.

The City argues the Port failed to adequately respond to the City's comment regarding the environmental impact of increased air pollution resulting from cars stopped at rail crossings: “[I]dling vehicles stopped at at-grade crossings contribute 45 tons of air pollutants annually. By 2020, idling vehicles stopped at at-grade crossings will generate 208 tons of air pollutants annually: a staggering 450 percent increase in just 12 years. The Riverside County Department of Health indicates that City of Riverside children, 5–14 years of age, suffer more asthma-related hospitalizations than any other group.” As with the preceding argument regarding emergency services, the City's comment letter raises the concern that increased vehicular traffic delays due to the increase in rail traffic from the project will exacerbate air pollution problems. And we again observe that the Port's response to this specific comment was subsumed by its general response to the overall comment that the project would have a significant adverse impact on vehicu-

lar traffic delays in the City and County of Riverside.

*12 The Port's analysis determined that the increase in rail traffic due to the project would not have a significant impact on vehicular traffic delayed at at-grade rail crossings in the City and County of Riverside. As there was substantial evidence supporting this finding, then it must be true that there would not be a significant impact on other environmental concerns, such as air pollution, which the City claimed were directly related to the increase in rail-related delays.

D.

The City failed to exhaust the issue of failure to report actual train count data.

The City criticizes the Port for failing to obtain actual train count data from the Union Pacific and Burlington Northern Santa Fe railroads. This argument was neither raised in the administrative proceedings, nor in the trial court, and has therefore been forfeited.

E.

The Port did not err in omitting passenger trains from its analysis.

The City next argues the Port understated rail-related traffic delays by omitting passenger trains from its analysis. The Port excluded passenger trains when collecting data on existing conditions in the City and County of Riverside, because passenger trains do not block grade crossings as long as freight trains do. Therefore, the Port contends, including passenger trains in the analysis for this case would have undercounted rail-related delays caused by the project. Additionally, the Port noted that its expert concluded there was no appreciable difference in terms of the significance of environmental impacts between the RCTC's data (which included passenger trains) and the Port's data (which did not). We find no abuse of discretion in the Port's exclusion of passenger trains from its analysis.

F.

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The City failed to exhaust the issue of failure to include gate downtimes when no train is present.

The City argues the Port erred in omitting from its analysis the delays resulting from closed gates at crossings when no train is present. The City failed to raise this issue in the administrative proceedings, or in the trial court. The issue has been forfeited.

VII.

SUBSTANTIAL EVIDENCE SUPPORTS THE PORT'S FINDING THAT THE PROJECT WILL HAVE NO SIGNIFICANT IMPACT ON THE CITY OR COUNTY OF RIVERSIDE.

The City argues there is no substantial evidence to support the Port's findings that (1) the project-specific impact of increased train-induced delays in the City and County of Riverside would not be significant, and (2) the cumulative impact of new train traffic generated by overall port development would not have significant adverse impacts on the City and County of Riverside.

“Challenges to an EIR based on a dispute about the scope of the analysis, the validity of the methodology used, or the accuracy of data it relied on involve factual issues; in those instances, the question for the court is whether the agency's reasons for studying the impact as it did are supported by substantial evidence. [Citations.] [¶] A reviewing court will resolve any disputes regarding the adequacy of the EIR's analysis in favor of the lead agency if there is any substantial evidence in the record supporting the EIR's approach. [Citations.]” (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed.2011) § 11.35, pp. 564–565 (rel.1/11).)

*13 “An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR

inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” (Cal.Code Regs., tit. 14, § 15151.)

The lead agency is responsible for determining whether an environmental impact of a proposed project is significant. (Cal.Code Regs., tit. 14, § 15064, subd. (b).)

The City contends that the Port relied on incomplete or insufficient train counts and included nondelayed vehicles in its delay calculations in concluding the impact on the City and County of Riverside would not be significant. The City cites *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 879–880, in which the appellate court affirmed the judgment following the trial court's order granting a petition for a writ of mandate setting aside the certification of a final EIR for an open-air human waste composting facility. The trial court found that the final EIR's finding that the alternative of an enclosed facility was not economically and technically feasible was not supported by substantial evidence, and that the final EIR failed to include a required water supply assessment. (*Ibid.*) As discussed in more detail *ante*, we conclude the Port did not abuse its discretion in basing its analysis on the selected criteria.

The City also argues the Port was required to mitigate the impacts of the project by contributing its fair share to grade separation projects in the City and County of Riverside. CEQA requires that significant environmental impacts from a project be mitigated when feasible. (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 369.) The City points to a statement by the Board of Harbor Commissioners in the findings of fact in the final EIR, which the City claims, proves the Port was required to undertake mitigation of rail-related delays in the City and County of Riverside due to the cumulative significant impacts of the project. The findings read, in part: “The only at-grade crossings potentially affected by the pro-

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posed Project are at Avalon Boulevard and Henry Ford Avenue. The grade crossing at Fries Avenue would be eliminated as part of the South Wilmington Grade Separation project. Impacts from the proposed Project along with other cumulative projects on the regional rail corridors north of the proposed Project site would not be significant since the Alameda Corridor project has been completed. The completion of the corridor has eliminated the regional at-grade rail/highway crossings between the Port and the downtown rail yards; therefore, there would be no change in vehicular delay at any of those crossings due to proposed Project-related rail activity (they are now all grade separated). Significant cumulative impacts would occur at Avalon Boulevard and Henry Ford Avenue crossings. Cumulatively, there would also be a significant impact on the at-grade rail crossings east of downtown Los Angeles. *This cumulative impact would be due to the overall growth in rail activity that would occur to serve the added cargo throughput in the Southern California region and the nation.*^{FN3} (Italics added.)

FN3. The City quotes only the italicized portion of the final EIR's finding.

*14 The Port discounts this statement as a simple typographical error; the statement does conflict with other findings within the same section of the final EIR: "The Project will not cause significant rail related impacts on lines that lead north or east of the downtown rail yards"; "[S]ignificant vehicle delay impacts at the at-grade crossings in Riverside County (and City of Riverside) are not anticipated. Therefore, no mitigation for such impacts is required."

So we are left with the situation of a final EIR that contains conflicting findings on the key issue before us. Neither party addresses how this court should evaluate such conflicting factual findings. Because of the overall rules for considering challenges to EIR's under CEQA, we consider whether substantial evidence supports the different findings. As explained *ante*, we have determined that sub-

stantial evidence supports the Port's findings that the project would not cause significant rail-related delays in the City and County of Riverside.

If the Port correctly determined that there were no significant adverse impacts on the City and County of Riverside due to the project, then the Port had no obligation to consider, much less contribute to, their mitigation.

The City candidly admits that long before the recirculated draft EIR was published for comment, the County of Riverside had analyzed the problems within its community due to delays at at-grade rail crossings, had developed a plan for correcting those problems, and had begun trying to secure funding for its plan.

The Port does not have a "fair share" of Riverside County's mitigation plan, and therefore cannot be faulted for failing to contribute its fair share.

Ultimately, our role as a reviewing court is not to decide whether the Port acted wisely in approving the project. We only determine whether the EIR contained sufficient information about the project and the potential environmental impacts that would arise from the project, so as to allow for an informed decision. (*Eureka Citizens for Responsible Government v. City of Eureka, supra*, 147 Cal.App.4th at p. 378.) We conclude that the EIR was sufficient in this respect, and that the City has failed to meet its burden to show otherwise.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

WE CONCUR: MOORE, Acting P.J., and IKOLA, J.

Cal.App. 4 Dist., 2011.

City of Riverside v. City of Los Angeles

Not Reported in Cal.Rptr.3d, 2011 WL 3527504 (Cal.App. 4 Dist.)

END OF DOCUMENT

ATTACHMENT 2

Office of Inspector General

Audit Report

FRA'S OVERSIGHT OF HAZARDOUS MATERIALS SHIPMENTS LACKS COMPREHENSIVE RISK EVALUATION AND FOCUS ON DETERRENCE

Federal Railroad Administration

Report Number: ST-2016-020

Date Issued: February 24, 2016





U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Memorandum

Subject: **ACTION**: FRA's Oversight of
Hazardous Materials Shipments Lacks
Comprehensive Risk Evaluation and Focus on
Deterrence
Federal Railroad Administration
Report Number ST-2016-020

Date: February 24, 2016

From: Mitchell Behm 
Assistant Inspector General for Surface
Transportation Audits

Reply to
Attn. of: JA-30

To: Federal Railroad Administrator

In July 2013, a train carrying crude oil derailed in Lac-Mégantic, Quebec, Canada. While the accident was not caused by the oil, the fatalities and damage resulting from this incident highlight the importance of oversight of transportation of hazardous materials by rail. Significant increases in rail transport of crude oil—from 9,500 carloads in 2008 to 407,761 carloads in 2013—and recent incidents in Alabama, North Dakota, and Virginia also underscore the importance of mitigating the risk of a hazardous material release in the event of a train accident. Due to the public safety risks that transporting crude oil and other hazardous materials pose, we conducted this audit to assess the Federal Railroad Administration's (FRA) enforcement of hazardous materials regulations using inspections and other tools. Specifically, we determined whether FRA (1) uses appropriate risk factors to allocate hazardous materials inspection resources; (2) provides sufficient guidance, tools, and training to hazardous materials inspectors; and (3) pursues civil and criminal penalties for violations of hazardous materials regulations.

We conducted our work in accordance with generally accepted Government auditing standards. We reviewed documentation pertaining to FRA's hazardous materials oversight activities, risk factors, and data. At three FRA regional offices, we observed hazardous materials inspections and facility audits. We conducted interviews with two other regional offices, FRA headquarters officials, and representatives from the Association of American Railroads and the American

Short Line and Regional Railroad Association. See exhibit A for a full description of our scope and methodology.

RESULTS IN BRIEF

FRA has not conducted a comprehensive evaluation of risks associated with hazardous materials transportation that appropriately addresses national level risk. Neither the National Inspection Plan nor the hazardous materials staffing process—two nationwide tools provided to regional specialists—produces a complete evaluation of risk. For example, both models assess how much hazardous material is routed through a region, but not the proximity of those routes to population centers. Regional specialists supplement guidance provided to them by FRA Headquarters with additional information they consider important—such as non-accident release trends, knowledge of local operations, and National Safety Program Plan projects—to identify risk-prone operations or locations for inspection. However, because it focuses on regional planning, the Agency has no overall understanding of the national risk environment. As a result, FRA cannot be sure that the regions consider all appropriate risk factors when allocating hazardous materials inspection resources.

FRA provides written guidance and robust training to support inspectors responsible for enforcing hazardous materials regulations. However, inspectors do not have ready access to inspection data from other regions because pulling this information from FRA's system is complicated. Inspectors also frequently do not have accurate information on special permits from PHMSA because the related information in PHMSA's Web-based portal is outdated and incomplete. These limitations make tracking leaks or recurring compliance problems time consuming and limit the pre-inspection preparation inspectors can do.

FRA pursues limited civil penalties for violations of hazardous materials regulations and, despite departmental requirements in several DOT Orders, does not refer cases to our office for criminal investigation. According to FRA's Office of Chief Counsel staff attorneys, they base penalties on penalty guidelines¹ that primarily target average violations, but hazardous materials inspectors write violations for only serious incidents of non-compliance. Our analysis of a stratified random sample of violations from a five year period showed no deviation from the penalty guidelines and identified 17 cases that warranted referral to our office for criminal investigation. Additionally, our review revealed that Office of Chief Counsel policies and procedures focus on processing penalties in a timely manner

¹ 49 CFR § 209, Appendix B, Civil Penalty Assessment Guidelines.

and avoiding litigation. As a result, penalties have little deterrent effect, and criminal penalties are not being pursued.

We are making recommendations to improve the risk assessments associated with allocating hazardous materials inspection resources, and address concerns about FRA's use of civil penalties and lack of criminal case referrals to our office.

BACKGROUND

FRA is responsible for enforcing regulations promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA)—the Hazardous Materials Regulations (HMR)—pertaining to safe transport by rail of hazardous materials such as ethanol, crude oil, and toxic or poisonous inhalation hazard (TIH/PIH) materials.² The inspectors that conduct these regulatory activities work in FRA's hazardous materials discipline, one of the Agency's five³ inspection disciplines. The 54 hazardous materials inspectors,⁴ along with State inspectors, in FRA's 8 regions examine railroads' and shippers' compliance with the HMR during inspections of trains, facilities, and accidents. During fiscal years 2013 and 2014, FRA inspectors inspected 695,765 items such as tank cars and shipper facilities. FRA also has specialists on its tank car quality assurance team that focus on inspections of tank car manufacturing and repair facilities.

Within FRA's Office of Railroad Safety, regional hazardous materials specialists are responsible for determining how to prioritize hazardous materials inspections in order to reduce non-accident releases of hazardous materials. See exhibit C for the Office of Railroad Safety's organizational chart. The specialists use tools and information from the Risk Reduction Program Division and the Hazardous Materials Division such as the hazardous materials staffing process and the National Inspection Plan. They also use the National Safety Program Plan.

- The hazardous materials staffing allocation process is designed to identify the number of hazardous materials inspectors each region receives annually. FRA's Risk Reduction Program Division makes this determination by running a series of calculations designed to compare risk measured in terms of the volume of hazardous materials, such as crude oil or ethanol, transported by region, the distance these materials travel in each region, and what percentage

² 49 CFR § 171-174 and § 178-180.

³ FRA's five inspection disciplines are: track and structures, operating practices, motive power and equipment, signal and train control, and hazardous materials. Inspectors in these specializations focus on enforcing regulations specific to their areas.

⁴ As of August 2015.

of the traffic is TIH/PIH.⁵ Regions determined to be at greater risk are supposed to be allocated more inspectors.⁶

- The National Inspection Plan specifies annual goals for the percentage of effort⁷ each regional inspection point should receive. The definition of a regional inspection point varies by context. In some circumstances an inspection point refers to a place—rail yard, chemical plant, etc.—visited for inspections regardless of the number of entities operating at that location, while in other circumstances a regional inspection point refers to every entity inspected at each location. The Risk Reduction Program Division generates baseline goals based on the number of inspection points in each region and the percentage of TIH/PIH traffic attributable to each inspection point. Once a baseline plan is produced, regional hazardous materials specialists work with their regional administrators to make adjustments to their plans based on additional factors such as recent accidents in the area, repeat violators, and new facilities.
- The National Safety Program Plan is an annual strategic plan that contains projects that Headquarters and regional staff develop to address specific safety concerns identified over the past year and achieve performance goals such as reducing non-accident related hazardous materials releases. For example, in fiscal year 2014, the National Safety Program Plan called for regions to conduct en-route inspections of trains carrying crude oil to assess whether tank cars are in compliance with regulations.

Hazardous materials specialists set inspection priorities based in part on these tools. Regional inspectors then perform inspections with oversight from their regional specialists. The inspectors can exercise considerable professional judgment in determining when, where, and what to inspect within their assigned areas and whether or not a problem warrants a violation report or other corrective actions which include, but are not limited to, the following: compliance orders, legal injunctions, railworthiness directives,⁸ emergency orders, or pursuing enforcement action against an individual. For minor problems, inspectors may issue defect notices or give verbal warnings.

⁵ FRA considers PIH/TIH materials to be a type of hazardous material that poses a more immediate risk than other types because releasing clouds of these materials can harm populations miles away from the release.

⁶ FRA leadership may make further adjustments to these allocations based on factors such as territory size and traffic patterns. Allocation plans may differ from actual allocations because the plans are implemented as positions become vacant.

⁷ The National Inspection Plan does not specify how many inspections each regional inspection point should receive, but specifies the percentage of each region's overall inspections that should be devoted to a particular inspection point.

⁸ FRA issues railworthiness directives that describe unsafe operating conditions, tank car defects, and tank car design defects, and require inspection or correction of the conditions and defects.

Inspectors submit violation reports to FRA's Office of Chief Counsel. The Office of Chief Counsel reviews the reports and either accepts the violations or declines to pursue them. For violations it accepts, the Office assesses civil penalties using penalty guidelines that FRA has developed in an appendix⁹ to its railroad safety enforcement regulations and that align with the HMR. The Office conducts a settlement conference when the respondent is a major railroad. This conference generally entails a discussion of all pending violations involving the respondent and results in FRA's assessing a final penalty. Many penalties with other respondents such as shippers and small railroads are settled through informal discussions throughout the year. The Office of Chief Counsel does not have authority to investigate criminal cases, but under DOT Order 8000.8, is required to refer cases of suspected criminal activity to OIG for investigation.

FRA HAS NOT CONDUCTED A COMPREHENSIVE EVALUATION OF RISK FOR HAZARDOUS MATERIALS OVERSIGHT

FRA has not comprehensively evaluated risks associated with hazardous materials transportation for regional hazardous materials specialists to consider when prioritizing inspections. As a result, the Agency has no overall, national understanding of the risk environment and cannot be sure that the regions consider all appropriate risk factors.

GAO's *Standards for Internal Control in the Federal Government*¹⁰ (Green Book) defines the minimum level of quality acceptable for internal control for Federal agencies. According to the Green Book, agencies need to comprehensively identify risks associated with achieving program objectives.¹¹ However, FRA's approach to risk assessment is focused on region-specific assessments conducted by regional specialists because of FRA officials' perception that each region faces different risks. The few nationwide tools that FRA provides are not based on a comprehensive identification and prioritization of risks, leaving open the possibility that FRA's resource allocation does not take into account important risk factors that appear at the national level or are the responsibility of FRA's other safety disciplines, such as operating practices at rail yards. For example, two of the tools provided to regional specialists, the hazardous materials staffing process and National Inspection Plan, do not take into account risk factors such as

⁹ 49 CFR § 209, Appendix B, Civil Penalty Assessment Guidelines.

¹⁰ GAO, *Standards for Internal Control in the Federal Government*, November 1999. This audit is based on information collected and analyzed in fiscal year 2015, during which time the November 1999, edition of the Green Book was in effect.

¹¹ Requirements for program managers to understand and manage risk will become more demanding when the Green Book's 2014, edition becomes effective in fiscal year 2016. The new edition requires that, in addition to comprehensively identifying risks, each agency consider the correlations among risks.

the condition of transportation infrastructure, the shippers' compliance histories, or the proximity of transportation routes to population centers.

The regional specialists supplement the resource allocation goals in the Plan with additional information they consider important for identifying risk-prone operations or locations for inspection—such as non-accident release trends, knowledge of local operations, and National Safety Program Plan projects. This approach gives specialists flexibility to tailor inspections to problem areas specific to their regions but does not reflect the comprehensive understanding of risk that the Green Book requires. Regional specialists are focused on risks that affect shipments in their own regions but may not know what specific risks those shipments are subject to once they cross into other regions. For example, they may not know whether carriers in other regions check for seals that have become loose from wear and tear.

Faced with challenges in identifying risks associated with rail transport of hazardous materials, FRA's Hazardous Materials Division is developing a new tool for shipper risk assessments. This tool will employ an algorithm based on relevant and available data, including the date of a shipper's last inspection, its compliance history (the number of identified defects and violations), its incident history (how often packages have been involved in non-accident releases or other incidents), and emerging issues identified by regional managers and specialists. However, the algorithm is limited to these risk factors and will not account for other risk factors including the routes a shipper's package travels or the class of hazardous materials. Therefore, this new tool will not provide a process that comprehensively identifies risks or determines which risks are the most important to factor into prioritization decisions.

FRA PROVIDES GUIDANCE AND TRAINING, BUT INSPECTORS HAVE LIMITED ACCESS TO SOME DATA

FRA provides support to inspectors with guidance and training. However, the inspectors do not have access to some information that would facilitate their work, including inspection data from other FRA regions and complete information from PHMSA.

FRA Provides Guidance and Training to Inspectors

FRA provides guidance for inspectors and regular training. The Agency provides compliance manuals on safety inspection and investigation activities. Inspectors also receive feedback from their regional hazardous materials specialists and annual training on inspection standards and updates.

The Agency maintains general and hazardous materials-specific compliance manuals that establish procedures and standards for inspections. The general manual describes the basic principles and responsibilities for each inspection discipline, and various safety oversight and enforcement tools they may use, including emergency orders, safety advisories, and civil penalties. The hazardous materials discipline compliance manual provides detailed guidance on inspection and investigation procedures. It includes clarifications of the HMR and guidance from the Association of American Railroads (AAR) to help inspectors interpret and apply the regulations during inspections.

FRA also provides annual training to ensure inspectors continue to meet standards and keep up with the latest regulatory changes. Inspectors are required¹² to attend training every year to address problem areas identified by regional specialists and inspectors in the field. For example, the required course in fiscal year 2013 covered tank car valve and fitting analysis and interpretation of various AAR tank car records. In fiscal year 2014, the course discussed recent hazardous materials regulatory changes and root-cause analysis investigations. The technical specialist for the hazardous materials discipline from FRA's Railroad Safety Technical Training Standards Division informed us that he regularly works with regional specialists to identify the topics that should be addressed in the next year's training.

Each new inspector receives classroom training and participates in a year-long on-the-job training program with an experienced inspector that is tailored to his or her railroad experience level. Classroom training covers topics for hazardous materials inspections, such as the HMR, types of inspections and procedures, and the reporting process. New hires with limited or no railroad experience must attend additional classes on general railroad operations and hazardous materials transport. In the on-the-job program, each new inspector practices various inspection and investigation activities under the supervision of an experienced inspector. This training follows standards set in the FRA's compliance manuals, which inspectors are required to master before conducting independent inspections.

In responses to our questions regarding their oversight of and training for inspectors, regional hazmat specialists described several approaches. One of the specialists informed us that he routinely reviews inspectors' inspection reports and audits their performance. One Deputy Regional Administrator also noted that the regional hazardous materials specialists evaluate performance and provide

¹² In fiscal year 2013, 46 Federal hazardous materials inspectors attended the annual training. In fiscal year 2014, 52 inspectors attended. FRA provided the total number of inspectors employed by the Agency, but the timeframes for these employment records and the training rosters were different. Consequently, we could not compare them without significant work beyond the scope of this audit.

feedback by joining inspectors on inspections. Two specialists stated they also communicate with inspectors through regular conference calls when changes to regulations, processes, or standards occur. Two of the inspectors informed us that this support helps clarify standards and expectations and provides useful feedback.

Inspectors Have Limited Access to Inspection Data from Other Regions and Accurate Data on PHMSA's Special Permits

FRA inspectors do not have ready access to inspection data from other regions, and inspectors cannot access accurate data on PHMSA's special permits.

While the Agency provides each inspector access to his or her region's inspection data and nationwide statistics through FRA's secure site, one specialist and three inspectors informed us that FRA does not provide inspectors access to inspection information from other regions stored in its database. The three inspectors stated that it would be helpful to have access to this database to track problem tank cars and other issues from other regions. Instead, inspectors from different regions must call or e-mail each other to ask about problem shippers and non-compliant tank cars from outside their assigned regions. An FRA official stated that inspectors actually do have access to the database on FRA's secure site but do not know how to retrieve information from it. We also experienced difficulties with retrieving data on nationwide inspection reports from the secure site. The official in charge of the system acknowledged that the best way to obtain the data is to work with FRA's data query expert, not to try to retrieve the information ourselves. The three inspectors stressed that it is important for inspectors to have access to all inspection data in order to trace root causes of problems and identify patterns of noncompliance since trains carrying hazardous materials travel across regions.

Two hazardous materials specialists also informed us that special permit data for companies in PHMSA's database is often outdated or incorrect.¹³ PHMSA issues special permits that waive or modify compliance with regulatory requirements when shippers demonstrate need and that their activities will be consistent with hazardous materials standards. PHMSA stores special permits and other certifications in its Hazmat Portal database. We have previously reported that it is difficult to accurately identify companies and their operating locations in this database. This problem was also identified by the specialists we interviewed. One of the specialists explained that inspectors have to know the exact certificate number or facility code to find a permit in the database. Instead, FRA inspectors

¹³ We reported on this issue in 2014 (*PHMSA Has Addressed Most Weaknesses We Identified in Its Special Permit and Approval Processes*, OIG Report Number MH-2014-064, July 17, 2014). OIG reports are available at <https://www.oig.dot.gov/>.

rely on hard copies of permits at shipper and loading facilities for accurate information. As a result of these limitations, inspectors are limited in the document review they can do to prepare for an inspection and tracing problems to their origins is time consuming.

FRA ISSUES FEW VIOLATIONS, PURSUES LOW CIVIL PENALTIES, AND DOES NOT REFER POSSIBLY CRIMINAL VIOLATIONS TO THE OFFICE OF INSPECTOR GENERAL

Inspectors submit violation reports to the Office of Chief Counsel only for serious problems. The Office of Chief Counsel, however, does not address the violations' severity, but imposes uniform penalties that FRA's regulations state are intended to be starting points. As a result, penalties and their deterrent effects are limited. The Office also does not refer to our office violations that may warrant criminal investigation.

Inspectors Report Violations Only for Serious Problems

Six inspectors and specialists we spoke with said they request civil penalties only for serious problems, such as loose tank car closures or repeated infractions. For less serious issues, such as a missing signature or an error in training record paperwork, FRA's manual states inspectors may write a defect and give a verbal warning or request corrective action. We analyzed regional hazardous materials inspection data from fiscal years 2013 and 2014 and found that of the 33,864 infractions¹⁴ inspectors identified, they forwarded 1,355 to the Office of Chief Counsel as violations.¹⁵ That means that for every 100 infractions identified, only 4 were recommended for civil penalties.

Inspectors may be dissuaded from writing violations by the time consuming process for reporting and justifying violations, concerns that the Office of Chief Counsel may reject their reports, and the lack of knowledge about outcomes of their work (see figure 1).

¹⁴ This number includes both defects and violations.

¹⁵ According to FRA's compliance manual, an inspector recommends a violation when he or she determines that the best method of gaining compliance with the applicable regulation is levying a civil penalty.

Figure 1. FRA Inspectors' Process for Recommending Civil Penalties (Simplified)



Source: OIG analysis of data in FRA's Railroad Inspection Reporting System, FRA regulations, and FRA procedures

Before writing reports on violations, inspectors must consider seven factors.¹⁶ FRA's Hazardous Materials Compliance Manual states that because of the time required to properly document violations and prepare violation reports, inspectors should carefully choose which violations most need enforcement actions due to seriousness, frequency, and other factors. The Manual also tells inspectors which enforcement tool to use based on perceived seriousness.¹⁷

Another factor that may discourage inspectors from submitting violation reports is the possibility that the Office of Chief Counsel will not agree with a violation and decline to proceed with it. The Office of Chief Counsel declines violations for which inspectors have not included sufficient evidence to show how the HMR was violated. FRA's manual is not clear on how much detail inspectors should provide to support violations whose penalties should exceed the guidelines but are not maximum, aggravated, or extraordinary.¹⁸ As a result, an inspector may not clearly communicate the severity of the violation he or she is recommending.

Furthermore, the Office of Chief Counsel does not routinely inform inspectors of the outcomes of violations, such as penalties collected and notifications when violations are closed, and inspectors cannot access this information directly. One inspector noted that the Office of Chief Counsel has effectively "numbed" a large portion of inspectors into not writing violations and stated that some inspectors have preconceived notions that violations will not get through the process.

¹⁶ In general terms, the factors are (1) inherent seriousness of the condition or action; (2) the kind and degree of potential safety hazard the condition or action poses; (3) any actual harm to persons or property already caused; (4) the offending person's—a railroad or individual—level of current compliance with regulations; (5) the person's recent history of compliance, especially at the specific location or division of the railroad involved; (6) whether a remedy other than a civil penalty—ranging from a warning to an emergency order—is more appropriate; and (7) such other factors as the immediate circumstances make relevant.

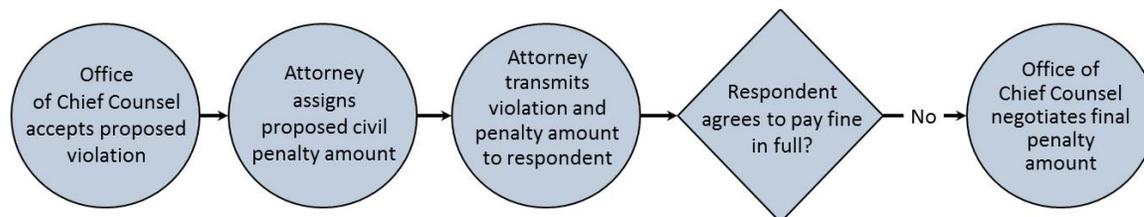
¹⁷ Enforcement tools include violation reports, emergency orders, compliance orders, rail worthiness directives, or "extraordinary" civil penalties.

¹⁸ Extraordinary penalties may be a maximum penalty, a multiple-day penalty, or a total fine of \$100,000 or more for a related set of violations. To recommend an extraordinary penalty, inspectors must prepare and submit additional memoranda explaining the rationale for the recommendation to the Office of Chief Counsel that must be approved by several FRA officials.

FRA's Office of Chief Counsel Does Not Adjust Penalties Based on Violation Seriousness

The Office of Chief Counsel is responsible for assessing initial penalties and either assessing final penalties or settling penalties for hazmat violations (see figure 2).

Figure 2. Process for Assessing Civil Penalties (Simplified)



Source: OIG analysis of FRA regulations and procedures

However, our review determined that the Office of Chief Counsel does not adjust penalties based on the seriousness of violations. Policies and procedures focus on processing penalties in a timely manner and avoiding litigation rather than adjusting penalties—as the law governing transportation of hazardous materials¹⁹ requires—to account for the severity and circumstances of individual violations reported by inspectors. This law establishes the basis for FRA's authority to set civil penalties for violations of hazardous materials regulations and requires the Department, when determining penalty amounts, to consider the following assessment factors: the nature, circumstance, extent, and gravity of each violation; the degree of the violator's culpability, history of prior offenses, and ability to pay a fine; the effect on the violator's ability to continue in business; and other factors. For average violations involving hazardous materials with medium levels of hazard and violators with average compliance histories, guidelines in an appendix to FRA's regulations²⁰ set penalties in specific dollar amounts ranging up to \$15,000. Moreover, the regulations emphasize that penalties should reflect case circumstances, including the respondent's violation history. The regulations allow FRA to assess a fine of up to \$75,000 for a serious violation and up to \$175,000 if the violation results in death, serious illness, severe injury, or substantial destruction of property.

None of the penalties in our statistical sample of 72 violations²¹ of the HMR approved by the Office of Chief Counsel in fiscal years 2010 through 2014 exceeded guidelines despite the flexibility to apply higher penalties. For example:

¹⁹ 49 USC § 5123.

²⁰ 49 CFR § 209, Appendix B, Civil Penalty Assessment Guidelines.

²¹ One of these violations did not have an assessed penalty at the time of our analysis. As a result, we evaluated the 71 remaining penalty assessments.

- In one case, two workers were hospitalized after exposure to a leak of sulfuric acid. The inspector found that a tank car cover was not positioned to seal properly, and that the gasket around the cover was damaged. The Office of Chief Counsel assessed a penalty of \$15,000, matching the regulation's guideline amount for leaks that allow product, fumes or vapors to contact human beings. The Office could potentially have assessed a much higher penalty due to the bodily injuries the workers suffered.
- Two companies received \$5,000 fines for offering an unsafe tank car for transportation. However, one company had a much worse compliance history than the other with 25 violations versus 2 violations over the same 5-year period.

The Office of Chief Counsel's enforcement procedures direct staff attorneys to be careful when departing from the penalty guidelines and direct FRA attorneys to ordinarily assess the amounts listed in the guidelines. While Office procedures instruct attorneys to review cases for aggravating or mitigating factors that could affect penalty levels, the Office has no procedures requiring staff attorneys to document how they weigh the penalty assessment factors. The Office confirmed that it rarely varies from the guidelines, and highlighted that having the penalty schedule in its database makes it easy to determine which penalty to apply, describing penalties as "pre-loaded." Consequently, FRA is not using the guidelines as starting points for penalty amounts based on violations' specific circumstances; instead, it is treating them as standards and requiring justifications for deviations. For example, a 2009 Office of Chief Counsel memorandum requires staff to explain the basis for recommended penalties above guideline amounts.

FRA's process further limits the Office's use of flexibility granted in the regulations by bundling a respondent's violations and leading attorneys to assess penalties that are not responsive to the violation's particular circumstances. Specifically, over the past 5 years, FRA proposed civil penalties for 1,777 violations and settled 1,408 of these violations²² for approximately \$5.4 million—an average penalty of \$3,800 per violation and 22 percent less than the total assessed amount. FRA's regulations provide flexibility to respond to the individual circumstances of each violation by assessing the penalty between the guidelines' figures (ranging from \$500 to \$15,000, depending on violation type) and the regulatory maximum of \$75,000. While the specific circumstances of all of these violations may not have warranted maximum penalties, FRA settled for

²² The 369 violations FRA did not close or settle had either not yet been sent to the respondents or were sent and are awaiting action by the respondents.

5.1 percent of the roughly \$105.6 million dollars in penalties it could have levied (a calculation that does not take into account further penalties—ranging up to \$175,000—that can be assessed for violations resulting in injury, illness, death or significant property damage). This gap between the penalties for which FRA settled and the possible penalty amounts shows the flexibility FRA is not using to respond to the violations' particular circumstances. Inspectors expressed concerns over the deterrent impact of the current penalty levels, with one noting that respondents “just smile and cut the check.”

By applying the same penalty to all violations of a regulation, FRA is distancing its enforcement actions from the context of the behaviors they are meant to rectify, thus weakening penalties' deterrent effect. Furthermore, by bundling violations, FRA's settlement process removes penalty enforcement from the context of each violation and low penalties diminish the potential deterrent effect of the penalties set in the guidelines and the regulatory maximums.

FRA Does Not Refer Violations to OIG for Criminal Investigation

The Office of Chief Counsel does not refer violations to our office for investigation. Several DOT Orders outline the Operating Administrations' responsibility to report any issues that appear to present circumstances that may warrant criminal investigations.

FRA processes hundreds of hazardous materials violation reports each year, but neither FRA nor our office has any record of referrals for criminal investigation. In our sample of 72 of 1,812 violations reported during fiscal years 2010 and 2014, plus 3 additional cases, we identified several possible criminal violations of the HMR. Seventeen reports warranted referral because they showed potentially criminal activities such as repeat or egregious offenses, falsifications, bodily harm, or environmental impact. For example:

- A company produced valves that had not been put through a required design approval process and caused leaks on tank cars carrying hazardous materials. The Office of Chief Counsel pursued civil penalties and, in March 2015, released a rail worthiness directive on valve replacement but did not refer the case to our office for criminal investigation.
- Another company released overweight tank cars for use several times without rectifying the weight problems and after they were certified as underweight. These circumstances indicate possible false statements by a repeat violator, but the Office did not refer the case to our office for criminal investigation.

- Another company may have made a false statement when it did not include in a bill of lading the radioactive containers located on a flat rail car in the train, but the Office again did not refer the matter to our office.

Based on our sample, we project²³ that 20.2 percent, or 227 out of 1,126 violation reports, may have warranted referral to our office for criminal investigation.

The Office's enforcement procedures direct attorneys to refer cases to our office when they have reason to believe that a criminal penalty should be considered. However, some attorneys we interviewed did not know what the procedures require them to do. They informed us that they do not go out of their way to refer cases to OIG because it is their job to pursue civil penalties and it is not their responsibility to be familiar with the criminal statutes that interest criminal enforcement agencies. They further explained that the Office has made no referrals in recent years because there is no formal process to do so. The attorneys also told us that they would informally refer cases and that inspectors, in consultation with the Office, also informally refer cases to regional OIG staff. However, several inspectors stated that it is their understanding that referrals for criminal investigation have to go through the Office of Chief Counsel. FRA's guidance instructs inspectors to notify the Office of Chief Counsel and directs the Office to contact our office promptly. Opportunities for criminal enforcement are limited when there are no referrals to our office from the Office of Chief Counsel.

CONCLUSION

Shippers continue to rely on rail as an important method for transporting hazardous materials throughout the United States. Effective oversight of this risk prone area requires thorough, timely inspections as well as the application of deterrent penalties when violations occur. FRA has the authority and tools it needs to address violations, but its planning and resource allocation processes and penalty process are not part of a comprehensive, risk based approach to identifying and correcting problems and preventing future ones.

RECOMMENDATIONS

We recommend that the Federal Railroad Administrator:

1. Require the Office of Railroad Safety to periodically perform a comprehensive hazardous materials transportation risk assessment that identifies and assesses

²³ This projection has a precision of +/-82 at the 90-percent confidence level.

- the relationship among the regional and national risks associated with achieving program objectives.
2. Issue guidance to regions that provides detailed information on the tools available to guide resource allocation decisions and the data feeding each tool and sets expectations for how regions should incorporate these tools, including the comprehensive risk assessment conducted by the Office of Safety, into resource allocation decisions.
 3. Develop new FRA secure site reports or other tools that meet hazardous materials inspectors' needs for access to inspection data from other regions and provide training on their use.
 4. Update guidance to inspectors on writing violation reports to include detailed information on how and when to recommend a penalty that differs from the guidelines and what to include in the violation report to support the recommendation.
 5. Strengthen Office of Chief Counsel procedures for processing penalties at the penalty assessment stage to require attorneys to document their considerations of the penalty assessment factors in 49 USC § 5123 for every violation of hazardous materials regulations.
 6. Require the Office of Chief Counsel to provide to regional hazardous materials specialists an annual report or regular access to information on penalty amounts for each violation in closed cases.
 7. Amend Agency policy and procedures to require all staff, including inspectors, to directly report to OIG all suspected criminal violations and instances of fraud, waste, and abuse.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FRA with our draft report on January 6, 2016, and received its response, which is included as an appendix to this report, on January 29, 2016. FRA concurred with all of our recommendations and proposed appropriate actions and completion dates. Accordingly, we consider all recommendations resolved but open pending appropriate action.

We appreciate the courtesies and cooperation of FRA's representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-1995, or Wendy Harris, Program Director, at (202) 366-2794.

#

cc: DOT Audit Liaison, M-1
FRA Audit Liaison, ROA-03

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work between October 2014 and January 2016, in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit objectives focused on reviewing FRA activities and programs engaged in enforcement of the HMR. Our audit did not ascertain the quality of hazardous materials inspections or whether regulations were cited appropriately in violation reports.

To conduct our work, we reviewed laws, regulations, policies, procedures, and guidance pertaining to FRA's oversight and enforcement of the HMR. We also mapped FRA's processes for allocating hazardous materials inspectors and administering the National Inspection Plan goals. OIG's Senior Statistician reviewed FRA's algorithm for developing the National Inspection Plan's baseline goals for the hazardous materials discipline.

We interviewed officials from five divisions within the Office of Railroad Safety (the Hazardous Materials Division, Risk Reduction Program Division, Railroad Safety Information Management Division, Railroad Safety Program Management Division, and the Railroad Safety Technical Training Standards Division) and five of FRA's eight regions—Regions 1, 4, 5, 6, and 8. We conducted interviews by telephone with officials in Regions 1 and 6 because data analysis revealed significant variations in inspection activity in these regions. We visited Regions 5 and 8 to conduct in-depth interviews with inspection staff and to observe inspection activities first hand because these regions, which include Texas and North Dakota respectively, are important oil producing regions. We visited Region 4, which includes Chicago, because Bakken oil bound for east coast refineries passes through the city. We spoke with officials collecting rail shipping data at the Surface Transportation Board and rail industry stakeholders representing both large and small companies. We also interviewed staff attorneys from the Safety Law Division of the Office of Chief Counsel and the Deputy Assistant Chief Counsel for Safety.

As part of determining how FRA prioritizes hazardous materials inspections, we analyzed hazardous materials inspection goals, adjustments to goals, and actual inspection percentages in fiscal years 2013 and 2014. We also analyzed inspection data from all inspection reports that inspectors wrote during those 2 years to further understand field inspectors' activities and inspection approach. For this

analysis, we limited the scope to Regions 1 through 8 because we wanted to compare only regular hazardous materials inspections, not the special facility audits and other types of activities conducted only by headquarters staff. However, to capture as many hazardous materials violations as possible for our violations analysis, we included violations that were reported by headquarters staff. As part of our civil violation analysis, we worked with our Senior Statistician to select a random, stratified sample of 72 out of 1,812 hazardous materials violations from 1,126 violation reports accepted by Office of Chief Counsel between fiscal years 2010, and 2014. We reviewed and analyzed violation reports from this sample and additional reports identified with our investigative staff to determine which reports warranted referral to our office. Our sample design allowed us to project the number of violation reports that warranted referral with a precision of plus or minus 82 reports at the 90 percent confidence level.

EXHIBIT B. ENTITIES VISITED OR CONTACTED

FRA's Hazardous Materials Division

FRA's Risk Reduction Program Division

FRA's Railroad Safety Information Management Division

FRA's Railroad Safety Program Management Division

FRA's Railroad Safety Technical Training Standards Division

FRA's Office of Chief Counsel Safety Law Division

FRA Region 1

FRA Region 4

FRA Region 5

FRA Region 6

FRA Region 8

FRA's Tank Car Quality Assurance Team

U.S. Department of Transportation's Surface Transportation Board

Association of American Railroads

American Short Line & Regional Railroad Association

EXHIBIT C. ORGANIZATIONAL CHART OF FRA'S OFFICE OF RAILROAD SAFETY

OFFICE OF RAILROAD SAFETY

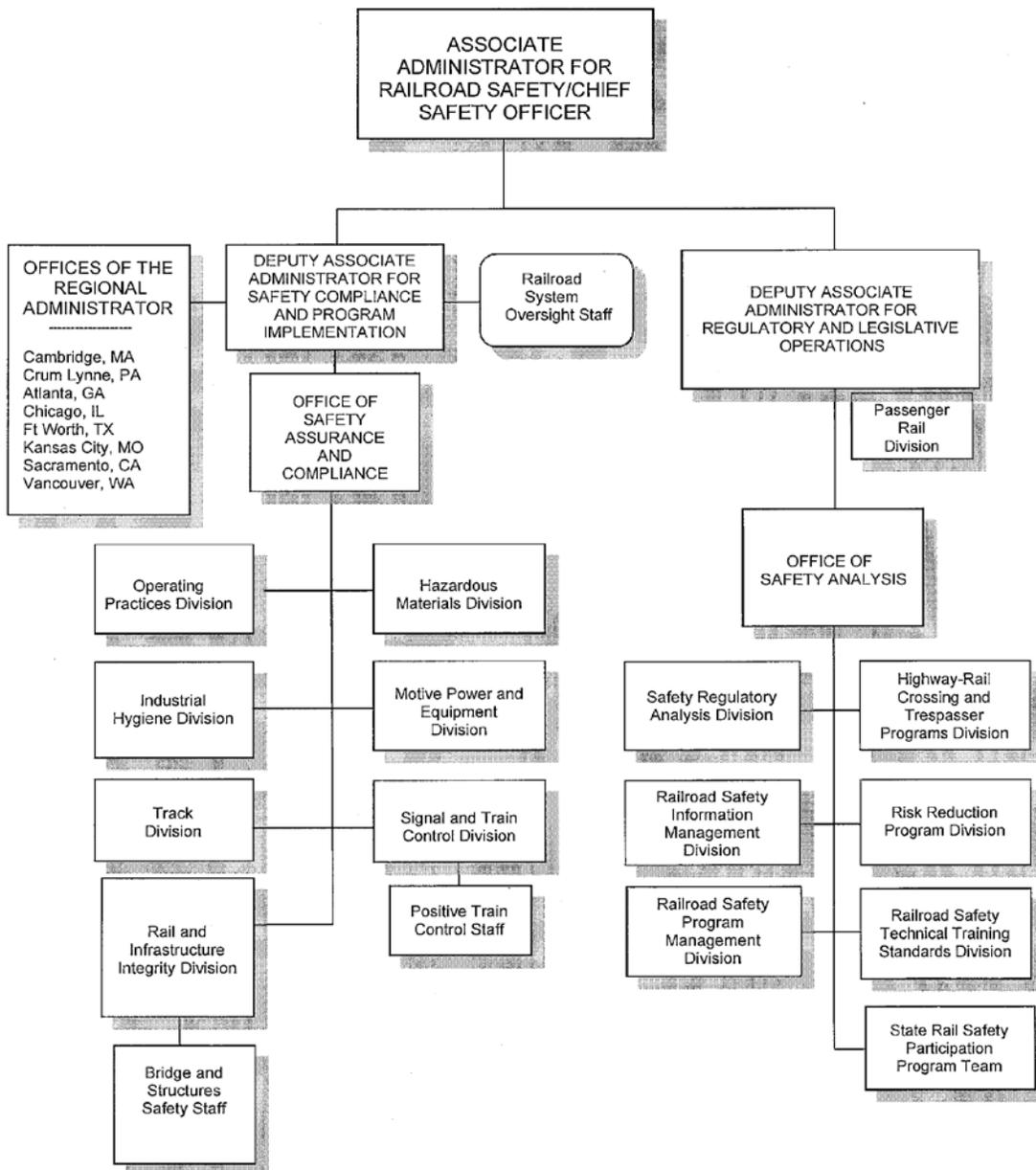


Exhibit C. Organizational Chart of FRA's Office of Railroad Safety

EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT

<u>Name</u>	<u>Title</u>
Wendy M. Harris	Program Director
Regan M. Goldstein	Project Manager
Michael English	Senior Analyst
Dawn Fratin	Senior Analyst
Addison Lee	Auditor
Nicholas Coates	Senior Counsel
Charles Dionne	Senior Special Agent
Susan Neill	Writer-Editor
Petra Swartzlander	Senior Statistician
Makesi Ormond	Statistician
William Savage	IT Specialist

APPENDIX. AGENCY COMMENTS



**U.S. Department
of Transportation**

**Federal Railroad
Administration**

Memorandum

Date: January 29, 2016

Subject: INFORMATION: Management Comments – Office of Inspector General (OIG)
Draft Report on FRA’s Oversight of Hazardous Materials Shipments

From: Sarah Feinberg
Administrator

To: Mitchell L. Behm
Assistant Inspector General for Surface Transportation Audits

SARAH E. FEINBERG

Digitally signed by SARAH E. FEINBERG
DN: c=US, o=U.S. Government, ou=DOT
Headquarters, ou=OSTHQ, cn=SARAH E. FEINBERG
Date: 2016.01.29 15:06:04 -0500

The Federal Railroad Administration (FRA) manages a broad, comprehensive, and extensive safety program to reduce accidents, casualties, loss of property, and threats to the environment. Part of FRA’s safety program is enforcing the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) regulations for hazardous materials transported by rail. Our proactive efforts to promote the safe rail transportation of hazardous material has reduced the rate of non-accident releases of hazardous material by almost 38 percent—from 1.08 in fiscal year (FY) 2011 to 0.67 in FY 2014.¹ These results are especially noteworthy because the tonnage of hazardous material shipped by rail increased almost 75 percent during the same time period.

While this is encouraging and noteworthy progress, more can and should be done to continue to keep the transportation of hazardous materials by rail safe. That is why we are pursuing new technologies, such as Positive Train Control and electronically controlled pneumatic brakes, and urging railroads and shippers to build stronger safety cultures.

¹ Per 200 million hazardous national ton-miles based on FRA analysis of safety data.

FRA reviewed OIG's draft report and provides the following comments on its findings and recommendations:

- We carry out a comprehensive safety inspection and enforcement program, utilizing a range of enforcement tools, from civil penalties to compliance and emergency orders. These tools, often used in combination with each other, have proven effective in improving safety outcomes—133 fewer deaths (15 percent) and 612 fewer injuries (7 percent) over the last 10 years. Congress has recognized FRA's approach and provided FY 2016 appropriations for additional inspectors and safety staff.
- FRA's Office of Chief Counsel assesses millions of dollars of civil penalties each year. In FY 2015, FRA assessed or settled violations for \$15.1 million, compared to \$13.5 million in FY 2014 (a 12 percent increase). The penalty guidelines we use reflect the relative severity of the violations routinely presented for enforcement and enable us to achieve our enforcement mission efficiently.
- As noted in our recent Fiscal Year 2015 Enforcement Report,² we have taken significant steps to increase penalty amounts paid by regulated entities as part of a renewed focus on enforcement to increase the consequences of violations that negatively impact safety. In FY 2015, FRA closed civil penalty cases for approximately 75 percent of initial assessments—the highest settlement percentage in the history of FRA's enforcement program.
- We are currently assessing our new workload and related resource requirements, arising from the enactment of the Fixing America's Surface Transportation Act. FRA will address the hazardous material provisions we are responsible for while taking into account ongoing activities and OIG recommendations.

Several of OIG's recommendations augment efforts FRA already initiated. For example, we developed and implemented secure reports that provide inspectors and specialists access to data from other FRA regions. Based on our review of the draft report, we concur with OIG's recommendations as written. Our target action dates for completing the recommendations are as follows: recommendations 3 and 7 by August 15, 2016, and recommendations 1, 2, 4, 5, and 6 by March 15, 2017.

We appreciate the opportunity to comment on OIG's draft report and related issues. Please contact Rosalyn G. Millman, FRA Planning and Performance Officer, at (202) 384-6193 or Rosalyn.Millman@dot.gov, with any questions regarding these comments or requests for additional assistance.

² <https://www.fra.dot.gov/Elib/Document/15583>

ATTACHMENT 3

**Federal
Railroad
Administration**

**Fiscal Year 2015
Enforcement Report**

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Federal Railroad Administration Fiscal Year 2015 Enforcement Report

I. INTRODUCTION

For several decades, the Federal Railroad Administration (FRA) has compiled an annual civil penalty report summarizing the civil penalty claims for violations of Federal railroad safety and hazardous materials (hazmat) statutes, regulations, and orders FRA has closed.¹ As authorized by law, FRA negotiates settlements with railroads and other entities subject to its safety jurisdiction to resolve claims for civil penalties imposed for failures to comply with specific requirements that promote and ensure the safety of the Nation's freight and passenger railroad operations.² Also, as authorized by law, FRA issues orders assessing civil penalties for violations of the hazardous materials statutes, regulations, and orders.³

In April 2010, FRA posted an expanded enforcement report pursuant to 49 U.S.C. § 20120 on FRA's Web site (<http://www.fra.dot.gov>) to include more information.⁴ FRA intends to make this additional safety enforcement information available each year by December 31 for the preceding fiscal year (FY), October 1 through September 30.

In 2015, as part of a renewed effort to increase consequences of violations which negatively impact safety, FRA took significant steps to increase penalty amounts paid by railroads. This FY 2015 report includes the following:

- A summary of rail safety and hazmat compliance inspections and audits by FRA or State inspectors and enforcement actions recommended by FRA;
- A summary of FRA civil penalty enforcement actions sorted by type of alleged violation and type of respondent, including railroads, hazmat shippers, contractors, and individuals;
- A discussion of the relationship between inspections and enforcement actions, and the number and rate of reportable accidents and incidents and railroad safety;
- An analysis of locomotive engineer certification cases brought before FRA; and
- A list of civil penalty cases closed by FRA (at Appendix A to this report).

¹ See primarily title 49 of the United States Code, chapters 201-213 and 51, respectively (49 U.S.C. ch. 201-213 and 51, respectively); title 49 of the Code of Federal Regulations (C.F.R.), subtitle B, chapter II (parts 209-244, 272) and chapter I, subchapter A, Hazardous Materials and Oil Transportation, and subchapter C, Hazardous Materials Regulations; 49 U.S.C. § 103; and 49 C.F.R. § 1.89.

² 49 U.S.C. ch. 213, and 31 U.S.C. § 3711.

³ 49 U.S.C. ch. 51; 49 C.F.R. § 1.89; 49 C.F.R. part 209.

⁴ This is consistent with Sections 303 and 307 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law No. 110-432, Division A (122 Stat. 4848), enacted October 16, 2008 (codified at 49 U.S.C. §§ 20120 and 103, note, respectively).

**II. SUMMARY OF INSPECTIONS AND AUDITS PERFORMED,
AND ENFORCEMENT ACTIONS RECOMMENDED
IN FY 2015**

**A. RAILROAD SAFETY AND HAZMAT COMPLIANCE INSPECTIONS AND
AUDITS**

1. All Railroads and Other Entities (e.g., Hazmat Shippers) Except Individuals

Number of Inspection Reports:	63,885
Defects:	266,586
Units:	3,056,969
Number of Observations:	268,388
Number of Reports with a Recommended Violation:	3,816
Number of Recommended Violation Defects:	10,991
Number of Inspection Days:	49,315

2. Railroads Only

Number of Inspection Reports:	58,489
Defects:	252,475
Units:	2,990,658
Number of Observations:	251,986
Number of Reports with a Recommended Violation:	3,123
Number of Recommended Violation Defects:	9,568
Number of Inspection Days:	46,616

**B. SUMMARY OF RAILROAD SAFETY VIOLATIONS CITED BY INSPECTORS,
BY REGULATORY OVERSIGHT DISCIPLINE OR SUBDISCIPLINE**

1. Accident/Incident Reporting

Violation Type	Number of Recommended Violations
Accident Reporting	76

2. Grade Crossing Signal System Safety

Violation Type	Number of Recommended Violations
Grade Crossing Signal Safety	330

3. Hazardous Materials

Violation Type	Number of Recommended Violations
Hazardous Materials	1,670

4. Industrial Hygiene

Violation Type	Number of Recommended Violations
Occupational Noise Exposure	1

5. Motive Power and Equipment

Violation Type	Number of Recommended Violations
Freight Car Safety Standards	376
Locomotive Safety Standards	500
Passenger Equipment Safety Standards	39
Rear End Marking Devices	2
Safety Appliance Statutes and Regulations	1,329
Safety Glazing Standards	13
Steam Locomotive Inspection and Maintenance	2
All	2,261

6. Railroad Operating Practices

Violation Type	Number of Recommended Violations
Alcohol and Drug Use	217
Conductor Qualifications	35
Engineer Qualifications	227
FRA Emergency Order(s)	2
Hours of Service Laws and Regulations	1,899
Railroad Communications	10
Railroad Operating Practices	557
Railroad Operating Rules	32
Railroad Safety Enforcement Procedures	88
Train Horn/Quiet Zone	9
All	3,076

7. Signal and Train Control

Violation Type	Number of Recommended Violations
Signal Inspection Regulations	285

8. Track

Violation Type	Number of Recommended Violations
Bridge Worker Safety Standards	5
Roadway Worker Protection	148
Track Safety Standards	3,200
All	3,353

**C. FRA AND STATE INSPECTIONS OF RAILROADS,
SORTED BY RAILROAD TYPE**

1. Class I Railroads

Number of Inspection Reports:	42,607
Defects:	186,875
Units:	2,380,590
Number of Observations:	187,976
Number of Reports with a Recommended Violation:	2,447
Number of Recommended Violation Defects:	8,018
Number of Inspection Days: ⁵	34,708

⁵ The total number of inspection days for Class I Railroads in II.C.1 of this report is less than the sum of all the individual Class I railroads' inspection days cited in II.D.1-8 of this report because FRA inspectors may visit more than one Class I railroad in a day. The same is true for the total number of inspection days for railroads FRA believes are Class II and Class III railroads. See note six for an explanation.

2. Probable Class II Railroads⁶

Number of Inspection Reports:	2,042
Defects:	9,910
Units:	151,351
Number of Observations:	8,758
Number of Reports with a Recommended Violation:	88
Number of Recommended Violation Defects:	151
Number of Inspection Days:	1,784

3. Probable Class III Railroads

Number of Inspection Reports:	13,840
Defects:	55,690
Units:	458,717
Number of Observations:	55,252
Number of Reports with a Recommended Violation:	588
Number of Recommended Violation Defects:	1,399
Number of Inspection Days:	11,842

⁶ FRA has identified seven of the eight Class I railroads based on information they filed with the Surface Transportation Board (STB) for calendar year 2014—the latest year available—regarding their annual operating revenues. See STB Web site (<http://www.stb.dot.gov>) under “All Economic Data” and then “Annual Report Financial Data.” STB requires such filings only from Class I railroads. See 49 C.F.R. § 1241.11 and Ex Parte No. 393 (Sub-No. 2), decided Oct. 28, 1988, 1988 WL 224990 (I.C.C.). Therefore, FRA identified the eighth Class I railroad, Amtrak based on FRA research of other data. Generally, Class II and III railroads are not required to report their annual operating revenues to STB. As a result, FRA identified railroads that are probably Class II and Class III railroads based on its research of railroad revenues, which does not cover commuter railroads. FRA concludes that the following railroads are probably Class II railroads: Alaska Railroad Corp.; Buffalo & Pittsburgh Railroad, Inc.; Florida East Coast Railway Co.; Iowa Interstate Railroad, Ltd.; Montana Rail Link; Paducah & Louisville Railway Co.; Portland & Western Railroad, Inc.; Springfield Terminal Railway Co. and other regional railroads (including Boston & Maine Corp., Maine Central Railroad Co., Pan Am Southern LLC, and Portland Terminal Co.) (all held by Pan Am Railways, Inc.); Rapid City, Pierre & Eastern Railroad, Inc.; Wheeling & Lake Erie Railway Co.; and Wisconsin & Southern Railroad Co. Note that switching and terminal railroads are, by definition, Class III railroads, without regard to their annual operating revenues. 49 C.F.R. § 1201.1-1(d).

**D. INSPECTIONS AND RECOMMENDED ENFORCEMENT ACTIONS,
SORTED BY CLASS I RAILROAD**

1. BNSF Railway Company

Number of Inspection Reports:	9,046
Defects:	42,132
Units:	503,381
Number of Observations:	39,073
Number of Reports with a Recommended Violation:	660
Number of Recommended Violation Defects:	2,794
Number of Inspection Days:	7,622

2. Canadian National Railway/Grand Trunk Corporation

Number of Inspection Reports:	2,321
Defects:	11,588
Units:	133,673
Number of Observations:	10,033
Number of Reports with a Recommended Violation:	179
Number of Recommended Violation Defects:	1,110
Number of Inspection Days:	1,995

3. Canadian Pacific Railway/Soo Line Railroad Company

Number of Inspection Reports:	1,508
Defects:	8,478
Units:	136,555
Number of Observations:	7,146
Number of Reports with a Recommended Violation:	104
Number of Recommended Violation Defects:	201
Number of Inspection Days:	1,268

4. CSX Transportation, Inc.

Number of Inspection Reports:	9,118
Defects:	41,296
Units:	502,442
Number of Observations:	41,459
Number of Reports with a Recommended Violation:	307
Number of Recommended Violation Defects:	719
Number of Inspection Days:	7,823

5. The Kansas City Southern Railway Company

Number of Inspection Reports:	1,032
Defects:	3,710
Units:	56,786
Number of Observations:	4,702
Number of Reports with a Recommended Violation:	41
Number of Recommended Violation Defects:	84
Number of Inspection Days:	895

6. National Railroad Passenger Corporation (Amtrak)

Number of Inspection Reports:	1,569
Defects:	2,324
Units:	19,869
Number of Observations:	6,046
Number of Reports with a Recommended Violation:	57
Number of Recommended Violation Defects:	213
Number of Inspection Days:	1,303

7. Norfolk Southern Railway Company

Number of Inspection Reports:	6,701
Defects:	29,545
Units:	422,891
Number of Observations:	30,728
Number of Reports with a Recommended Violation:	280
Number of Recommended Violation Defects:	426
Number of Inspection Days:	5,828

8. Union Pacific Railroad Company

Number of Inspection Reports:	11,312
Defects:	47,802
Units:	604,993
Number of Observations:	48,789
Number of Reports with a Recommended Violation:	819
Number of Recommended Violation Defects:	2,471
Number of Inspection Days:	9,454

III. SUMMARIES OF CIVIL PENALTY INITIAL ASSESSMENTS, SETTLEMENTS, AND FINAL ASSESSMENTS IN FY 2015

A. IN GENERAL⁷

Summary 1

Summary 1 provides a broad overview of penalties FRA initially assessed during FY 2015, the initial penalty assessment for cases closed during FY 2015, and the amount of the settlement or the final assessment of civil penalty. FRA has transitioned to a paperless enforcement system for most of the major railroads and under that system, to enhance the readability of the cases on the computer screen, a case includes only one violation report, and not multiple reports as in the past.

Summary 1, below, provides the following:

- The number of violations for which FRA assessed a civil penalty in FY 2015 (through demand letters or, in hazmat cases, notices of probable violation);
- The number of violation reports that FRA declined to enforce in FY 2015 after legal review;
- The initial amount of civil penalties assessed for violations in FY 2015 (the amount of the civil penalty specified in FRA's demand letter or, for hazmat cases, a notice of probable violation that was transmitted to a respondent (railroad, hazmat shipper, or individual that received the penalty assessment)) regardless of whether FRA closed the cases during FY 2015;
- The civil penalties FRA initially assessed (the "potential collectible amount" or "POCA" listed in Appendix A) in all cases FRA settled or otherwise closed during FY 2015 (because FRA issued an order assessing a civil penalty in a hazmat case or the respondent paid the civil penalty in full without settling with FRA); and
- The total amount of civil penalties assessed or settled during FY 2015.⁸

⁷ The totals in this section exclude civil penalties against individuals. Those are addressed in section IV.A. of this report.

⁸ In this report, FRA rounded settlement amounts to the nearest whole dollar.

Summary 2

To provide more transparency, Summary 2, below, shows initial assessment information only for those cases closed during FY 2015. **All numbers in Summary 2 reflect the initial assessments that resulted in FY 2015 settlements or final assessments even though the initial assessments may have occurred in a prior fiscal year.** This summary shows (1) the difference between the initial amount of civil penalties assessed and the settlement or final assessment amount, and (2) the difference between the revised assessment amount (or what Attachment A describes as the “provable collectible amount” or “PRCA”) and the final assessment or settlement amount. The revised assessment amount is the amount FRA calculated it could legally collect after evaluating the facts of the violation.

Caveat: The number of violation reports in a single case ranges from one to five or more, depending on a number of factors, and a single violation report may allege one or more violations. Therefore, the number of cases with civil penalties initially assessed or settled or finally assessed during a specific period cannot be used for a realistic comparison. However, this report provides the information, as required by the statute, in Assessment and Summary 2. The number of violations provides a better opportunity for standardized review and comparison than does the number of cases.

B. SUMMARY 1—BRIEF SUMMARY, WITH FOCUS ON INITIAL ASSESSMENTS TRANSMITTED

Total number of cases with civil penalties initially assessed in FY 2015:	4,165
Total number of violations with civil penalties initially assessed in FY 2015:	6,485
Total number of violation reports declined during legal review in FY 2015:	126
Total initial amount of civil penalties assessed (POCA) for violations in cases transmitted in FY 2015:	\$22,418,995
Total initial amount of civil penalties assessed (POCA) for violations in cases finally assessed or settled in FY 2015:	\$21,266,498
Total final civil penalty assessment or settlement in FY 2015:	\$15,088,270

C. BREAKDOWN OF INITIAL ASSESSMENTS IN SUMMARY 1

1. For Each Class I Railroad Individually in FY 2015

AMTRAK

Number of cases with civil penalties initially assessed:	66
Number of violations with civil penalties initially assessed:	70
Number of violation reports declined during legal review:	19
Initial amount of civil penalty assessed:	\$260,000

BNSF RAILWAY COMPANY

Number of cases with civil penalties initially assessed:	755
Number of violations with civil penalties initially assessed:	1,139
Number of violation reports declined during legal review:	8
Initial amount of civil penalty assessed:	\$3,830,998

CANADIAN NATIONAL RAILWAY/GRAND TRUNK CORPORATION

Number of cases with civil penalties initially assessed:	220
Number of violations with civil penalties initially assessed:	471
Number of violation reports declined during legal review:	4
Initial amount of civil penalty assessed:	\$1,122,500

CANADIAN PACIFIC RAILWAY/SOO LINE RAILROAD COMPANY

Number of cases with civil penalties initially assessed:	110
Number of violations with civil penalties initially assessed:	174
Number of violation reports declined during legal review:	5
Initial amount of civil penalty assessed:	\$639,000

CSX TRANSPORTATION, INC.

Number of cases with civil penalties initially assessed:	388
Number of violations with civil penalties initially assessed:	451
Number of violation reports declined during legal review:	20
Initial amount of civil penalty assessed:	\$1,584,000

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Number of cases with civil penalties initially assessed:	39
Number of violations with civil penalties initially assessed:	49
Number of violation reports declined during legal review:	4
Initial amount of civil penalty assessed:	\$171,000

NORFOLK SOUTHERN RAILWAY COMPANY

Number of cases with civil penalties initially assessed:	311
Number of violations with civil penalties initially assessed:	341
Number of violation reports declined during legal review:	13
Initial amount of civil penalty assessed:	\$1,284,000

UNION PACIFIC RAILROAD COMPANY

Number of cases with civil penalties initially assessed:	1,057
Number of violations with civil penalties initially assessed:	1,481
Number of violation reports declined during legal review:	8
Initial amount of civil penalty assessed:	\$4,522,000

2. For Probable Class II Railroads in the Aggregate in FY 2015

Number of cases with civil penalties initially assessed:	96
Number of violations with civil penalties initially assessed:	175
Number of violation reports declined during legal review:	1
Initial amount of civil penalty assessed:	\$601,500

3. For Probable Class III Railroads in the Aggregate in FY 2015⁹

Number of cases with civil penalties initially assessed:	538
Number of violations with civil penalties initially assessed:	1,081
Number of violation reports declined during legal review:	24
Initial amount of civil penalty assessed:	\$3,403,998

4. For Hazmat Shippers in the Aggregate in FY 2015

Number of cases with civil penalties initially assessed:	524
Number of violations with civil penalties initially assessed:	944
Number of violation reports declined during legal review:	15
Initial amount of civil penalty assessed:	\$4,534,499

5. For Contractors in the Aggregate in FY 2015

Number of cases with civil penalties initially assessed:	61
Number of violations with civil penalties initially assessed:	109
Number of violation reports declined during legal review:	5
Initial amount of civil penalty assessed:	\$465,500

⁹ This category may be over-inclusive as STB jurisdiction may not extend to some of the commuter railroads that FRA has listed as Class III railroads. Regardless, the “Total final civil penalty assessment or settlement in FY 2015” amount remains correct as FRA includes data from enforcement actions against regulated entities that are otherwise not subject to STB jurisdiction.

D. SUMMARY 2—MORE DETAILED SUMMARY OF SETTLEMENTS AND FINAL ASSESSMENTS OF CIVIL PENALTIES IN FY 2015

Total number of cases closed in FY 2015:	4,080
Total number of violations in cases closed in FY 2015:	6,348
Total initial amount of civil penalty assessed for cases closed (POCA):	\$21,266,498
Total final amount of civil penalty assessed or settlement for cases closed:	\$15,088,270
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$1,291,500
Amount of revised assessment after terminations (PRCA):	\$19,974,998
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$6,178,228
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$4,886,728

**E. BREAKDOWN OF SETTLEMENTS AND FINAL ASSESSMENTS
IN SUMMARY 2**

1. For Each Class I Railroad Individually in FY 2015

AMTRAK

Number of cases closed:	55
Number of violations in cases closed:	74
Initial amount of civil penalty assessed for cases closed (POCA):	\$244,000
Final amount of civil penalty assessed or settlement for cases closed:	\$156,650
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$39,000
Amount of revised assessment after terminations (PRCA):	\$205,000
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$87,350
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$48,350

BNSF RAILWAY COMPANY

Number of cases closed:	721
Number of violations in cases closed:	1,129
Initial amount of civil penalty assessed for cases closed (POCA):	\$3,747,999
Final amount of civil penalty assessed or settlement for cases closed:	\$2,850,000
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$111,500
Amount of revised assessment after terminations (PRCA):	\$3,636,499
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$897,999
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$786,499

CANADIAN NATIONAL RAILWAY/GRAND TRUNK CORPORATION

Number of cases closed:	127
Number of violations in cases closed:	653
Initial amount of civil penalty assessed for cases closed (POCA):	\$990,500
Final amount of civil penalty assessed or settlement for cases closed:	\$682,000
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$0
Amount of revised assessment after terminations (PRCA):	\$990,500
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$308,500
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$308,500

CANADIAN PACIFIC RAILWAY/SOO LINE RAILROAD COMPANY

Number of cases closed:	150
Number of violations in cases closed:	241
Initial amount of civil penalty assessed for cases closed (POCA):	\$899,500
Final amount of civil penalty assessed or settlement for cases closed:	\$551,400
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$250,500
Amount of revised assessment after terminations (PRCA):	\$649,000
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$348,100
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$97,600

CSX TRANSPORTATION, INC.

Number of cases closed:	423
Number of violations in cases closed:	473
Initial amount of civil penalty assessed for cases closed (POCA):	\$1,690,500
Final amount of civil penalty assessed or settlement for cases closed:	\$1,202,865
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$95,000
Amount of revised assessment after terminations (PRCA):	\$1,595,500
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$487,635
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$392,635

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Number of cases closed:	71
Number of violations in cases closed:	89
Initial amount of civil penalty assessed for cases closed (POCA):	\$332,500
Final amount of civil penalty assessed or settlement for cases closed:	\$213,485
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$18,000
Amount of revised assessment after terminations (PRCA):	\$314,500
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$119,015
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$101,015

NORFOLK SOUTHERN RAILWAY COMPANY

Number of cases closed:	316
Number of violations in cases closed:	375
Initial amount of civil penalty assessed for cases closed (POCA):	\$1,332,500
Final amount of civil penalty assessed or settlement for cases closed:	\$940,175
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$104,000
Amount of revised assessment after terminations (PRCA):	\$1,228,500
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$392,325
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$288,325

UNION PACIFIC RAILROAD COMPANY

Number of cases closed:	1,195
Number of violations in cases closed:	1,473
Initial amount of civil penalty assessed for cases closed (POCA):	\$4,859,000
Final amount of civil penalty assessed or settlement for cases closed:	\$3,589,000
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$137,000
Amount of revised assessment after terminations (PRCA):	\$4,722,000
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$1,270,000
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$1,133,000

2. For Probable Class II Railroads in the Aggregate in FY 2015

Number of cases closed:	51
Number of violations in cases closed:	90
Initial amount of civil penalty assessed for cases closed (POCA):	\$280,000
Final amount of civil penalty assessed or settlement for cases closed:	\$220,025
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$2,000
Amount of revised assessment after terminations (PRCA):	\$278,000
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$59,975
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$57,975

3. For Probable Class III Railroads in the Aggregate in FY 2015

Number of cases closed:	465
Number of violations in cases closed:	817
Initial amount of civil penalty assessed for cases closed (POCA):	\$2,639,999
Final amount of civil penalty assessed or settlement for cases closed:	\$1,658,140
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$211,000
Amount of revised assessment after terminations (PRCA):	\$2,428,999
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$981,859
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$770,859

4. For Hazmat Shippers in the Aggregate in FY 2015

Number of cases closed:	469
Number of violations in cases closed:	883
Initial amount of civil penalty assessed for cases closed (POCA):	\$4,040,000
Final amount of civil penalty assessed or settlement for cases closed:	\$2,861,680
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$321,500
Amount of revised assessment after terminations (PRCA):	\$3,718,500
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$1,178,320
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$856,820

5. For Contractors in the Aggregate in FY 2015

Number of cases closed:	37
Number of violations in cases closed:	51
Initial amount of civil penalty assessed for cases closed (POCA):	\$210,000
Final amount of civil penalty assessed or settlement for cases closed:	\$162,850
Amount terminated (generally due to legal defenses presented during settlement negotiations):	\$2,000
Amount of revised assessment after terminations (PRCA):	\$208,000
Difference between initial civil penalty assessment (POCA) and final assessment or settlement amount for cases closed:	\$47,150
Difference between revised assessment (PRCA) and final assessment or settlement amount for cases closed:	\$45,150

IV. ENFORCEMENT ACTIONS AGAINST INDIVIDUALS IN FY 2015

A. CIVIL PENALTY CASES AGAINST INDIVIDUALS IN THE AGGREGATE

Total number of civil penalty cases initially assessed in FY 2015:	1
Total number of violations with civil penalties initially assessed in FY 2015:	1
Total initial amount of civil penalty assessed in FY 2015:	\$9,500
Number of civil penalty cases closed in FY 2015:	0
Total number of violations in cases closed in FY 2015:	0
Total initial amount of civil penalty assessed for cases closed in FY 2015:	\$9,500
Total final amount of civil penalty assessed (or settlement) for cases closed in FY 2015:	\$0
Amount terminated (generally due to legal defenses presented during settlement negotiations) for cases closed in FY 2015:	\$0
Amount of revised assessment (PRCA) after terminations:	\$0
Difference between revised civil penalty assessment (PRCA) and final civil penalty assessment for cases closed in FY 2015:	\$0
Difference between initial amount of civil penalty assessed (POCA) and final settlement amount for a violation in a case closed in FY 2015:	\$0

B. OTHER ENFORCEMENT ACTIONS AGAINST INDIVIDUALS IN THE AGGREGATE

Number of notices of proposed disqualification issued and served in FY 2015:	0
Number of proposed disqualification cases closed in FY 2015:	0 ¹⁰
Number of warning letters issued by Office of Chief Counsel in FY 2015:	0
Number of warning letters issued by regional offices of FRA Office of Railroad Safety (regional warning letters) in FY 2015:	26

V. DISCUSSION OF RAILROAD SAFETY—THE RELATIONSHIP OF INSPECTIONS, ENFORCEMENT, AND ACCIDENTS OR INCIDENTS

A July 15, 2009, statutorily mandated report commissioned by FRA entitled, “The Federal Railroad Administration’s Use of Civil Penalties in the Federal Railroad Safety Program,” addresses FRA’s approach to achieving industry compliance with the Federal railroad safety laws and the hazmat safety laws and their implementing regulations and the role of civil penalties in that process. FRA submitted a copy of that report, with the agency’s comments, to Congress on July 16, 2009, in response to a Congressional mandate that FRA hire an independent consultant to evaluate FRA’s use of penalties as an enforcement mechanism. The independent consultant’s report concludes on page 13 that—

[t]he fair and professional conduct of an agency’s regulatory function requires the informed exercise of discretion beginning with the FRA inspector on the ground and continuing with FRA’s regional discipline specialist, the regional administrator, and headquarters officials in FRA’s Office of Railroad Safety and Office of Chief Counsel. This use of discretion helps ensure that the agency’s exercise of enforcement power is calibrated to achieve an effect that is proportional to the specific circumstances of a given violation. The final element of the agency’s discretion in the civil penalty context is the exercise of the power to compromise authorized and guided by law, directed by the Executive, and strongly encouraged the Judiciary.

FRA’s exercise of the statutory authority to compromise civil penalty assessments serves the purpose of encouraging compliance by ensuring that the enforcement process is proportional in those cases [in which FRA assesses penalties]. [Using] the enforcement hand, seen (as in the case of civil penalty assessments) or unseen

¹⁰ But see footnote 15 below.

(as during FRA inspectors' daily interactions with railroad personnel regarding safety issues), as consistently as possible across the railroad industry . . . results in a rational, effective safety program.

As the independent consultant noted in that report, FRA has long sought to determine whether enforcement actions measurably correlate with the imposition of civil penalties and with specific safety performance improvements. Previously, FRA found that the available data permits some measurement of safety improvements in a functional area covered by an entire rule or an entire safety program. However, FRA cannot determine from the data whether detectable safety improvements are directly attributable to discrete civil penalties. Accordingly, FRA relies heavily upon the knowledge and expertise of its field inspectors who are most familiar with the unique attributes of specific railroad operations, geographic territories, facilities, and safety practices. Subjectively, their nuanced perceptions and judgments indicate that issuing of civil penalties does yield observable improvements in safety practices and compliance with the law. It is important to note that civil penalties are by no means FRA's only enforcement tool.

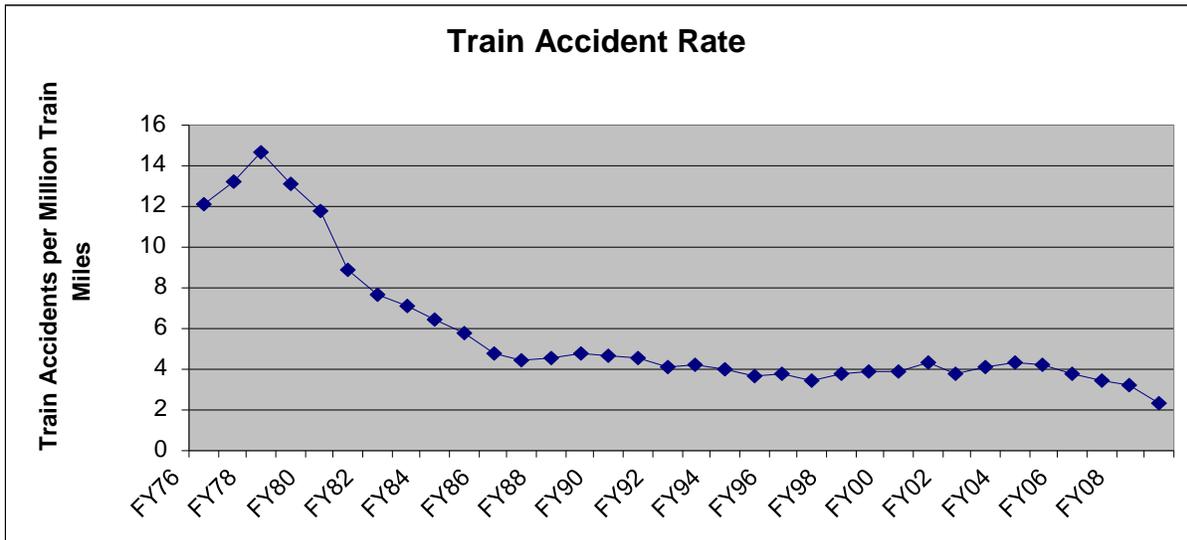
Thus, while FRA cannot precisely quantify the impact of civil penalties, it carefully monitors railroad reactions and responses to enforcement activity, and then adjusts the intensity and duration of focused oversight as necessary. FRA compiles and analyzes a vast amount of data derived from reports the regulated railroads prepare and then file with FRA. However, the report to Congress found that the data FRA uses to identify and track safety trends is typically developed separately from regulatory provisions that ameliorate the conditions leading to particular accident causes that have civil penalties associated with them. Results of this research have found no meaningful correlation between specific accident cause codes and use of a civil penalty to enforce a specific regulatory provision, making statistically valid and reliable comparisons exceedingly difficult and statistically suspect or grossly inaccurate.

In addition, examining FRA's civil penalty enforcement in a vacuum, not considering the numerous other factors influencing positive safety outcomes, such as railroad management and individual rail worker behavior and activity, is not possible. One must consider FRA's regulatory regime as a whole instead of as its component parts. Specific regulatory provisions can, at times, complement one another to minimize or prevent conditions that contribute to an accident. However, the complexity of the regulatory scheme may conceal the magnitude of any one regulatory provision's contribution to the positive safety outcome.

As stated in the independent consultant's report on page 41—

[o]ne fruitful way to take a holistic view of the effects of the safety program is to look at accident rates over the long term. Rates, which are normalized by million train miles traveled, more reliably indicate the true state of railroad safety than do raw accident numbers. As FRA began to promulgate the first versions of major rules such as track safety standards and power brakes in the 1970's, the adverse trend in railroad safety was slowed and then sharply reversed. There are few sharp lines of demarcation because railroads and shippers often began to modify their behavior during the rulemaking process; a new safety rule typically takes effect a considerable time after it is issued; and enforcement can occur only after

the effective date of the rule. Nevertheless, each subject FRA regulates shows a response pattern generally similar to the graph shown below for train accident rates, which reflects the strongly positive effects of FRA's railroad safety program, including civil penalty enforcement, even though the data shown do not permit one to draw statistically valid conclusions about the precise effects of civil penalties, or other measures, in isolation. This dramatic improvement in railroad safety over the past 30 years suggests that FRA would be well advised to continue in the future to pursue the various measures and strategies that have guided its safety program in the past. As the results of this study suggest, it is the cumulative impact of these measures, one supporting and amplifying the other, that makes the difference.



VI. SUMMARY AND ANALYSIS OF OPERATING CREW CERTIFICATION CASES¹¹

A. LOCOMOTIVE ENGINEER AND OPERATING CREW REVIEW BOARD (LERB/OCRB)

Petitions for relief filed with the LERB/OCRB in FY 2015: 70
[32 Conductor + 38 Locomotive Engineer]

Decisions issued by the LERB/OCRB in FY 2015: 54
[23 Conductor + 31 Locomotive Engineer]

Average length of time for decision in FY 2015: 244 days from the date petition filed¹²
(172 days from the date of the railroad's response to the appeal to the date that a decision was issued¹³)

B. ADMINISTRATIVE HEARINGS

Number of pending cases before the Administrative Hearing Officer (AHO) as of October 1, 2014: 6

Number of requests for review by the AHO received during FY 2015: 4

Number of cases closed by the AHO during FY 2015:¹⁴ 7

Number of pending AHO cases as of October 1, 2015: 3

Average length of time for decision or other disposition: 8 months

C. APPEALS TO THE ADMINISTRATOR

Appeals to the Administrator from the AHO decisions filed in FY 2015: 1

¹¹ FRA's Locomotive Engineer Review Board (LERB) reviews petitions for initial review of railroad decisions denying or revoking locomotive engineer certifications (49 C.F.R. part 240), while the Operating Crew Review Board (OCRB) reviews petitions for initial review of railroad decisions denying or revoking conductor certifications (49 C.F.R. part 242). Since both Boards share the same board members, FRA intends to merge the two review boards so that both crew members will have their petitions reviewed solely by the OCRB.

¹² This excludes any delay issuing an interim order caused where one or more of the parties initially provided incomplete information.

¹³ See note 12.

¹⁴ This number of cases the AHO closed includes cases closed by decision, stipulation, or dismissal.

Number of Appeals Pending during FY 2015: (as of October 1, 2014, there were 0 cases pending)	1
Decisions issued by the Administrator during FY 2015:	0
Average length of time for decision issued in FY 2015: (from close of record to decision)	N/A (calendar days)

VII. SUMMARY AND ANALYSIS OF ADMINISTRATIVE HEARING CASES RELATED TO HAZMAT VIOLATIONS OR ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

Number of hearings requested in FY 2015:	0
Number of hearing-request cases completed in FY 2015:	0 ¹⁵

VIII. NUMBER OF CASES REFERRED TO THE ATTORNEY GENERAL FOR CIVIL OR CRIMINAL ENFORCEMENT

Number of cases referred to the Attorney General for civil enforcement in FY 2015:	0
Number of cases referred to the Attorney General for criminal enforcement in FY 2015:	0

IX. NUMBER AND SUBJECT MATTER OF COMPLIANCE ORDERS, EMERGENCY ORDERS, OR PRECURSOR AGREEMENTS

Emergency Order No. 30 (EO 30)

On April 17, 2015, FRA issued EO 30 to require trains transporting large amounts of Class 3 flammable liquid to adhere to a 40 miles per hour maximum authorized operating speed limit in high-threat urban areas (highly populated) as defined in 49 C.F.R. § 1580.3. 80 Fed. Reg. 23321 (April 27, 2015). FRA determined that public safety compelled it to issue EO 30 based on railroad accidents involving trains transporting crude oil and ethanol and the increasing reliance on railroads to transport voluminous amounts of those hazardous materials in recent years. EO 30 applies to any train with: (1) 20 or more loaded tank cars in a continuous block, or 35 or more loaded tank cars, of Class 3 flammable liquid; and (2) at least one DOT Specification 111 (DOT-111) tank car (including those built consistent with Association of American Railroads Casualty Prevention Circular 1232) loaded with a Class 3 flammable liquid.

¹⁵ This number of hearing request cases completed in FY 2015 reflects a disqualification case, FRA No. DISQUAL 2010-1, which the AHO decided in FY 2014, but was subsequently appealed in FY 2014, and remanded on a single issue in FY 2015. On January 8, 2015, the AHO decided the case in favor of FRA. The individual against whom the case was brought appealed that decision, and the case is currently pending before the Administrator.

Emergency Order No. 31 (EO 31)

On May 21, 2015, FRA issued EO 31 to require that Amtrak take actions to control passenger train speed at certain locations on main line track in the Northeast Corridor (as described by 49 U.S.C. 24905(c)(1)(A)). 80 Fed. Reg. 30534 (May 28, 2015). Under EO 31, Amtrak had to immediately implement code changes to its Automatic Train Control (ATC) System to enforce the passenger train speed limit ahead of the curve at Frankford Junction in Philadelphia, Pennsylvania, where a fatal accident occurred on May 12, 2015. Further, Amtrak also had to identify each main track curve on the Northeast Corridor where there is a significant reduction (more than 20 miles per hour) from the maximum authorized approach speed to those curves for passenger trains. Then, Amtrak had to develop and comply with an FRA-approved action plan to modify its existing ATC System or other signal systems (or take alternative operational actions) to enforce passenger train speed limits at the identified curves. Finally, Amtrak had to install additional wayside passenger train speed limit signs at appropriate locations on its Northeast Corridor right-of-way.

Southwestern Railroad, Inc. Compliance Agreement

On September 10, 2015, Southwestern Railroad, Inc. (SWRR) entered into a three-year Compliance Agreement (Agreement) with FRA designed to ensure, enhance, track, and document SWRR's compliance with Federal railroad safety laws, regulations, and orders. The Agreement requires strict and timely documentation of compliance with the Agreement in seven major program areas, including a robust training program for all employees, supervisors, and management in those areas. The seven areas the Agreement focuses on are: (1) Track Safety Standards and Railroad Workplace Safety; (2) Bridge Safety Standards; (3) Motive Power and Equipment; (4) Operating Practices; (5) Grade Crossing Signal System Safety; (6) Control of Alcohol and Drug Use; and (7) Accident/Incident Reporting.

ATTACHMENT 4



**ANNUAL RAILROAD SAFETY REPORT
TO THE
CALIFORNIA STATE LEGISLATURE**



**Pursuant to Public Utilities Code
Sections 309.7, 765.6, and 7711**

**November 30, 2015
for
2014-15**

**CALIFORNIA PUBLIC UTILITIES COMMISSION
SAFETY AND ENFORCEMENT DIVISION
OFFICE OF RAIL SAFETY
Railroad Operations and Safety Branch**

CALIFORNIA PUBLIC UTILITIES COMMISSION

Michael Picker, President
Mike Florio, Commissioner
Carla Peterman, Commissioner
Catherine Sandoval, Commissioner
Liane M. Randolph, Commissioner
Tim Sullivan, Executive Director

SAFETY AND ENFORCEMENT DIVISION

Elizaveta Malashenko, Director

OFFICE OF RAIL SAFETY

Roger Clugston, Deputy Director

This report complies with California Public Utilities Code sections 309.7, 765.6, and 7711.

- Public Utilities Code section 309.7 requires the California Public Utilities Commission (CPUC) to report on activities of the division responsible for consumer protection and safety (currently, the Safety and Enforcement Division) and document expenditures of the funds derived by fees paid by the railroad corporations.
- Public Utilities Code section 765.6 requires the CPUC to report on the actions the CPUC has taken to ensure the safe operations of railroads in this state. In addition, Section 765.6 requires the CPUC to report annually on the impact on competition, if any, of the regulatory fees assessed railroad corporations for the support of the CPUC's activities.
- Public Utilities Code section 7711 requires the CPUC to report to the Legislature on sites on railroad lines in the state it finds to be hazardous. It also requires the CPUC to include a list of all railroad derailment accident sites in the state on where accidents have occurred within at least the previous five years, describe the nature and probable causes of the accidents, and indicate whether the accidents occurred at or near sites that the Commission¹ has determined to be hazardous.

Note to readers:

Public Utilities Code section 765.6 requires the CPUC to chronicle the operations of the CPUC Railroad Operations and Safety Branch during the previous fiscal year.

Public Utilities Code section 7711 requires the CPUC to report include a list of all railroad derailment accident sites, which are documented by calendar year.

¹ In this report, "Commission" refers to the five-member commission authorized by the California State Constitution, Article XII, Section 1. "CPUC" refers to the staff of the Commission, under the auspices of the executive director, appointed by the Commission pursuant to Public Utilities Code section 308.

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Annual Railroad Safety Activity Report Fiscal Year 2014-2015

Pursuant to California Public Utilities Code sections 309.7, 765.6, and 7711

Executive Summary

The CPUC railroad safety program's mission is to ensure the safe operation of freight, passenger, and commuter railroads in California. The CPUC performs these railroad safety responsibilities through its Safety and Enforcement Division, Office of Rail Safety, Railroad Operations and Safety Branch (ROSB). The ROSB mission is to ensure that California communities and railroad employees are protected from unsafe practices on freight and passenger railroads by promoting and enforcing rail safety rules, regulations and inspection efforts; and by carrying out proactive assessments of potential risks before they create dangerous conditions.

Safety culture improvement and proactive risk management are paramount to the CPUC culture and mission. CPUC railroad safety inspectors cite deficiencies of federal, state, and CPUC General Orders and Public Utility Codes. (See Appendix A for a list of state railroad safety laws and regulations.) In addition to those specific violations, CPUC railroad safety inspectors as well as all staff look beyond the regulations toward more comprehensive overall proactive safety oversight. During 2014-15, CPUC railroad safety inspectors cited 17 new Risk Management Status Reports (RMSR) which identify potential or perceived risks and seek remediation of those risks, for which there are no regulations.

The CPUC Crude Oil Reconnaissance Team (CORT) actively monitors and inspects crude oil rail line rehabilitation projects, including new crude oil facilities, track construction or rehabilitation, bridge and grade crossing upgrades and all railroad transportation systems associated with the transportation of crude oil. The focus is to ensure that all crude oil facilities and the routes to those facilities comply with federal and state safety laws, in addition to mitigating risks that are not defined in regulations. During 2014-15, the team monitored upgrades to 29 miles of antiquated track in the Bakersfield area to ensure effective improvement competencies, and successfully pursued improvements to public grade crossings to more effectively alert motorists and pedestrians of oncoming trains carrying crude oil.

Another proactive risk-mitigation measure includes targeted observations of the state's railroad bridges. The CPUC Railroad Bridge Evaluation Program (RBEP) was established and began the training of two new railroad bridge inspectors, as well as incorporating engineering staff from the Risk Assessment Program, in the Fall of 2014. During 2014-15, CPUC railroad safety inspectors performed 51 bridge observations, identified 22 general order defects, and created 7 Risk Management Status Reports to seek remediation to improve the safety of the state's railroad bridges.

Additional proactive safety activities performed by the CPUC railroad safety program inspectors and staff, described in detail later in this report, include:

-
-
- Conducted Operation Lifesaver presentations to prevent injuries and fatalities on railroad tracks.
 - Collected and analyzed near-miss incidents.
 - Monitored the installation of and evaluated the effectiveness of positive train control (PTC).
 - Developed close monitoring procedures for the safe planning and construction of high-speed rail (HSR).

The CPUC employs 45 railroad safety employees (including six current vacancies). Forty three employees possess expertise in specific disciplines: hazardous materials; motive power and equipment; railroad operations; signal and train control; track; and bridges.² The inspectors also identify and address additional public safety risks associated with railroad systems.

During the 2014-15 fiscal year, CPUC railroad safety inspectors conducted the following activities:

- Performed 3,392 inspections and follow up inspections to monitor the railroads compliance and remedial actions.
- Cited 9,678 federal regulation non-compliant defects.
- Completed 257 CPUC General Order reports that identified 563 defects.
- Cited 4 violations of state regulations.
- Recommended civil penalties for 233 violations of federal regulations.
- Resolved 26 informal safety complaints.

The CPUC Office of Rail Safety foresees challenges ahead. The most significant challenge, consistent with the 2013 and 2014 annual reports, is the absence of consistent reporting of accidents and/or incidents by the railroads. Additional challenges continue to be the pay disparity between the state railroad safety inspectors and their federal counterparts. The much higher pay scales for federal inspectors with the same jobs as state inspectors have caused challenging recruitment and low retention rates. The resultant vacancies and time spent on training affect productivity and ultimately railroad safety. The CPUC has identified this issue annually over the past eleven years.

The CPUC can assess penalties depending on the violation. For violations of federal railroad

² The FRA certifies the inspectors as an expert in each of the disciplines except for bridges. The CPUC proactively identified bridges as a risk to public safety and employs two track-certified inspectors who focus on bridges.

safety regulations, CPUC railroad safety inspectors make recommendations to the Federal Railroad Administration (FRA) for the assessment of penalties. Any penalties collected are deposited into the U.S. Treasury. For violations of California state laws and CPUC general orders, CPUC Resolution ROSB-002 provides the Director or Deputy Director of the Safety and Enforcement Division the authority to issue citations to railroad carriers for violation of certain general orders and a Public Utilities Code section. A railroad issued such a citation under ROSB-002 may accept the fine imposed or contest it through a process of appeal. During 2014-15, the CPUC has four pending citations that have not yet been finalized.

Last year, the state Legislature appropriated \$7.6 million for the operations of the CPUC railroad safety program from a dedicated account within the CPUC Public Transportation Reimbursement Account. Public Utilities Code section 309.7 requires the activities of the CPUC that relate to safe operation of common carriers by railroad, other than those relating to grade crossing protection, to be supported by the fees paid by railroad corporations. The fees paid by the railroad corporations are the sole funding source for the CPUC railroad safety program and do not fund any other state programs. Union Pacific Railroad (UPRR) and BNSF Railway (BNSF) have experienced record profits over the past few years. The railroad user fees assessed in 2014 on UPRR and BNSF represented just over one fourth of one percent of revenues (0.0025), and were unlikely to have had any effect on competition.

Public Utilities Code section 7711 requires the CPUC to report to the Legislature on sites on railroad lines in the state it finds to be hazardous. The sites were formally identified in 1997 through a formal decision of the Commission.³ Within the previous five calendar years, California experienced 318 derailments. Of that amount, 54 derailments, or 17 percent, occurred at or near local safety hazard sites.



Derailed photo taken in Tehachapi Pass on May 5, 2015. This derailment occurred in Local Safety Hazard Site #19, UPRR Mojave subdivision, at railroad station Caliente. The cause was a broken coupler (rail car connection device).

³ Commission Decision: D.97-09-045.

I. Introduction

The CPUC railroad safety program is one of the most comprehensive railroad safety programs in the nation. The Constitution of California declares that the Public Utilities Code is the highest law in the state, that the Legislature has unlimited authority to regulate public utilities under the Public Utilities Code, and that the Constitution's provisions override any conflicting provision of state law which addresses the regulation of public utilities.

Federal law, Title 49 of the Code of Federal Regulations (49 CFR), Part 212, establishes the State Safety Participation Program with the FRA. The purpose of the state-federal partnership is to provide an enhanced investigative and surveillance capability by having the state agencies assume responsibility for compliance investigations and other surveillance activities as a federal partner.

California State laws complement the federal State Safety Participation Program and provide even greater protection to railroad employees and the public. State laws require the CPUC to perform inspections, surveillance, and investigations of the railroads, and advise the Commission on all matters relating to rail safety. Applicable CPUC general orders and public utility codes provide greater specificity in order to implement the State laws. A summary of California Public Utilities Codes and CPUC General Orders are provided in Appendix A.

The CPUC employs 43 FRA-certified railroad safety inspectors to perform safety inspections and investigations pursuant to the State Participation Program with the FRA.⁴ The federally-certified inspectors promote and enforce rail safety rules and regulations by performing inspections and accident investigations. The CPUC's rail safety responsibilities include:

- Inspecting railroads for compliance with state and federal railroad safety laws.
- Investigating railroad accidents and safety-related complaints.
- Recommending railroad safety improvements to the Commission and federal government.
- Ensuring efficient enforcement of railroad safety requirements.

Public Utilities Code Section 7711 requires the CPUC to report to the Legislature on sites on railroad lines in the state it finds to be hazardous. It also requires the CPUC to include a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years, describe the nature and probable causes of the accidents, and indicate whether the accidents occurred at or near sites that the Commission has determined to be hazardous. This statute was promulgated in 1991 following a freight train derailment near Dunsmuir, California, which resulted in a hazardous materials leak consisting of 19,000 gallons of metam sodium, a concentrated herbicide, into the Sacramento River. That same month,

⁴ The 2014 Annual Report to the Legislature identifies the requirements for federal certification.

another train derailed near Seacliff and released liquid hydrazine. Other rail accidents increased public and legislative concerns, including those involving derailments, runaway trains, and injuries and fatalities.

The CPUC strives to achieve a goal of zero accidents and injuries across all the utilities and businesses it regulates, and within all CPUC facilities.⁵ To achieve that goal, the CPUC embraces a comprehensive safety-management approach that integrates public policy, risk management, and compliance with federal and state laws and general orders. This approach has been and will be used as a foundation for continuous improvement of the regulated utilities' safety as well as the CPUC's safety oversight role.

II. CPUC Safety Culture

The CPUC railroad safety inspectors identify public safety risks, “beyond the regulations.” The CPUC works to continuously enhance the safety culture of the railroad industry as well as its own safety culture. To promote a comprehensive safety culture, the CPUC uses pro-active tools, cooperative engagement, and presentation methods, such as:

- Risk Management Status Reports (RMSR)
- Crude Oil Reconnaissance Team (CORT)
- Operation Lifesaver Presentations
- Railroad Bridge Evaluation Program (RBEP)
- Near-miss Reporting and Analysis
- Positive Train Control Team (PTCT)
- High-speed Rail (HSR)

A. Risk Management Status Reports

CPUC railroad safety inspectors complete Risk Management Status Reports when they discover an identified need to document and remedy risks for which there was no regulation. In addition to serving as an important tool for risk management, Risk Management Status Reports are a means for CPUC railroad safety inspectors to work across disciplines. Any CPUC railroad safety inspector has the ability, and the responsibility, for addressing railroad-related safety risks regardless of their discipline or federal certification.

In the course of field work, an inspector may identify an item of concern that is either: (1) out of his/her area of expertise; (2) outside of the formal/official reporting and action protocol; or, (3)

⁵ See the Special Interest section of the CPUC's webpage at <http://www.cpuc.ca.gov/puc/> and select “Safety Policy Statement of the CPUC.”

an item, or related item, which despite prior formal or informal regulatory action, is still a safety risk.

Once a Risk-Management Status Report is documented, the assigned inspector works with his or her supervisor to mitigate the identified risk. The inspector and supervisor meet with the responsible railroad, shipper or associate entity responsible representative and convey the safety risk associated with the issue. The responsible representative will either remedy the risk, or choose to ignore the identified risk. The CPUC railroad safety inspector performs a follow-up inspection to determine whether the risk was mitigated. If the railroad fails to eliminate or sufficiently mitigate the risk, the CPUC Program Manager will pursue resolution with the responsible railroad officials, and may bring the issue up to the Deputy Director, or to the full Commission, if necessary.

During the 2014-15 fiscal year:

- 9 previous fiscal year reports were closed out.
- 17 new reports were created. Of that amount:
 - 6—shirking identified non-regulated safety risks
 - 3—unsafe non-regulated conditions on railroad property
 - 2—seeking increased no trespassing signage on railroad property
 - 2—right-of-way protections (fencing)
 - 2—issues related to CPUC General Orders or federal law requirements
 - 2—perceived potential derailment hazards
- 4 of the new reports were closed during the fiscal year.
- 13 reports from the last fiscal year, 2014-15, remain open. Of these:
 - 5—shirking identified non-regulated safety risks
 - 2—unsafe non-regulated conditions on railroad property
 - 2—seeking increased no trespassing signage on railroad property
 - 1—right-of-way protection (fencing)
 - 1—issue related to CPUC General Orders or federal law requirements
 - 2—perceived potential derailment hazards

B. Crude Oil Reconnaissance Team

Increases in railroad shipments of domestic and Canadian crude oil to California refineries have recently become a national concern. Additionally, these shipments may traverse highly hazardous areas in tank cars.

CPUC railroad safety inspectors witnessed a significant amount of construction of new crude-oil related railroad transfer facilities in the Bakersfield area in anticipation of the increasing volumes of crude oil transported by railroad from the Midwest and Canadian shale-oil formations. Upon further investigation, the branch Program Manager formed an interdisciplinary team of federally-certified ROSB railroad safety inspectors, naming it the Crude Oil Reconnaissance Team. The individual specialties include: track and structures, signal and train control, hazardous materials shipping and security, operating practices, and railroad equipment (railroad cars and locomotives).

The Crude Oil Reconnaissance Team actively monitors and inspects the new building and transportation activities to ensure all crude oil facilities comply with federal and state safety laws, in addition to mitigating risks that are not defined in regulations.

The team's purpose is to:

- Assess and mitigate risks and potential risks to public safety associated with crude oil railroad transportation in California.
- Identify and to resolve relevant areas of general safety and regulatory compliance by the railroads.
- Provide guidance to the UPRR, BNSF, their contractors and sub-contractors, and all associated maintenance staff to improve the safety of crude oil transportation.

The Crude Oil Reconnaissance Team proactively monitors and inspects the crude-oil transfer facilities to ensure all crude-oil facilities comply with federal and state safety laws, in addition to mitigating risks that are not defined in regulations. The Crude Oil Reconnaissance Team also performs rail and railroad equipment inspections and investigations, and identifies areas found to be most vulnerable to the consequences of any crude oil releases.

In 2014-15, three transfer facilities were constructed or are in the planning stages. These include:

1. Plains All American transfer facility in Bakersfield
2. Alon USA Energy Inc.
3. Kern Oil and Refining

The Plains All American transfer facility is forecasted to transfer 65,000-barrel-a day from railroads, but was designed for 140,000 barrels per day. Completed in 2014, the Plains facility has unloaded 23 trains during the period of November 2014 to March 2015, but is not yet running at full capacity. The Plains facility is expecting 13 more trains between August and the end of September and there is no expectation that any of the loads will consist of bakken crude-oil, the highly volatile crude oil, but the type of crude-oil moved by rail is subject to change.

Alon USA Energy Inc., plans to build a crude oil transfer facility in Bakersfield, has proposed to

build a transfer facility with the capacity to unload 150,000, double-track loop rail terminal at its Rosedale Highway plant that would handle an average of two “unit trains” per day or approximately 143,000 barrels per day-gallons-a-day. A unit train is more than a mile long and so named because they travel as a unit and not switched en-route and not mixed with other types of freight. Unit trains can be loaded and offloaded with the train intact as a single location. Alon is finalizing their construction plans and is in the process of obtaining their permits.

The Kern Oil and Refining (Kern Oil), located in Bakersfield, is projecting more activity with the shipment of crude oil to their facility. In the first two quarters of 2015 there was little to no shipments of crude-oil to the Kern Oil facility. In August 2015, Kern Oil received a one-unit train consisting of 103 tank cars loaded with petroleum crude oil. Kern Oil is scheduled to begin receiving five to seven tank cars on a weekly basis.

Similar crude oil by rail facilities are being developed by Phillips 66 in Santa Maria, by Kinder Morgan in Richmond, and by Valero in Benicia. These facilities are still in the planning and or the permitting stages.

By being proactive, the CPUC has assisted in getting the railroads to implement several safety upgrades to these routes, including:

- Track safety upgrades to approximately 29 miles of track in the Bakersfield area.
- Track upgrades with improved continuous welded rail to mitigate derailments.
- Public grade-crossing upgrades with improved signal lights and concrete pads.
- Consideration for three additional public grade-crossing upgrades to include passive warning devices, in addition to active warning devices.

The Crude Oil Reconnaissance Team continues to perform surveillance activities and site inspections and investigations with the goal to work with the railroads and their associated contractors to improve and maintain competencies and to address potential risks as these facilities continue to receive trains and unload the crude oil.

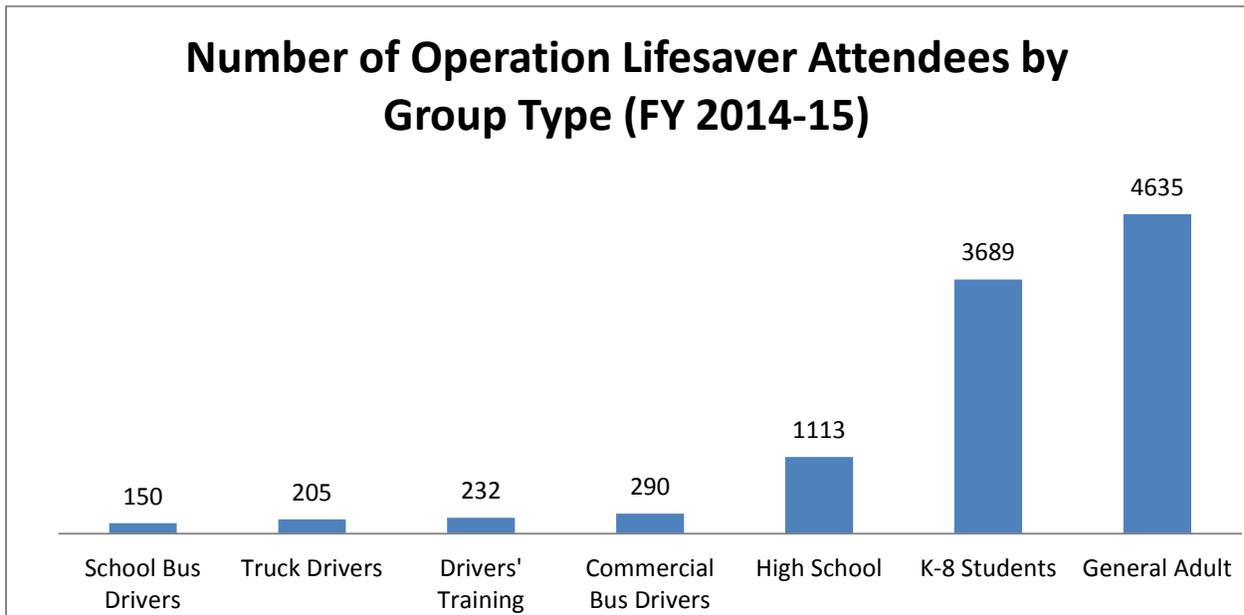
C. Operation Lifesaver Presentations

To further the CPUC culture of safety, CPUC rail safety staff present at Operation Lifesaver events. Operation Lifesaver’s mission is to end collisions, deaths and injuries at highway-rail grade crossings and on rail property through a nationwide network of volunteers who work to educate people about rail safety. CPUC railroad safety inspectors and support staff volunteer throughout the state, providing presentations to schools, community organizations, drivers’ education classes, bus driving workshops and trucking organizations, as well as educating the public at weekend events such as festivals and safety fairs.

During the 2014-15 fiscal year, CPUC rail safety staff performed 52 Operation Lifesaver

presentations, which reached more than 10,000 people. Some notable presentations include:

- Bilingual presentations to farm workers who work close to railroad tracks in Monterey, Riverside, and Fresno Counties.
- Presentations to San Francisco school children at the annual Halloween Fair.
- Events in Sonoma and Marin counties, preparing residents and businesses for the upcoming operation of Sonoma Marin Area Rail Transit (SMART) commuter rail in that region.



CPUC railroad safety inspectors use Operation Lifesaver to proactively promote a culture of safety. On September 5, 2014, while inspecting departing trains at the Union Pacific Railroad (UPRR) yard in El Centro, a CPUC railroad safety inspector witnessed two boys trying to jump onto a slowly moving train. Later in the day, the CPUC railroad safety inspector spotted a young couple walking between stationary freight cars while looking for space to crawl under a rail car and cross the tracks. In both cases the CPUC railroad safety inspector approached the trespassers, explained the potentially fatal consequences of their actions, and directed the boys and the young couple away from the equipment. Subsequently, the CPUC railroad safety inspector alerted the UPRR Special Agent of the inspector’s observations.

Realizing the community could benefit from Operation Lifesaver rail-safety presentations, the CPUC railroad safety inspector proceeded to the nearby school, which was in close proximity to the railroad tracks. The CPUC railroad safety inspector met with the principal, explained the Operation Lifesaver program, and offered rail safety presentations at the school. The principal welcomed the idea and within days made a date available. About 600 students attended the Operation Lifesaver presentation.

Appendix B provides some examples of Operation Lifesaver presentations.

D. Bridge Observations

Potentially significant safety risks are the age and unknown conditions of California's railroad bridges. Many of these bridges are old steel and timber structures, some over a hundred years old. In addition, many of California's railroad bridges span large bodies of water, major highways, and/or areas of high population density.

Title 49 CFR, Part 237, requires track owners to create a bridge management program, perform annual bridge inspections, and calculate load capacities. It also requires railroads to make their bridge management program documents and records available for inspection and reproduction by the FRA.

The CPUC railroad safety inspectors who specialize in bridges work in close cooperation with FRA bridge inspectors to focus inspection efforts on bridges that have been identified as a risk based on the consequence of an accident. In addition, the CPUC and the FRA have agreed to cooperate to ensure that railroads complete their bridge management programs and make the documents available for inspection by the FRA and the CPUC.



CPUC Railroad Safety Inspector assesses a bridge in Kern County

During 2014-15, the CPUC rail safety staff performed the following:

- Accompanied the FRA bridge inspector on two bridge inspections to initiate a risk inventory.
- Created an initial database of California's railroad bridges.
- Researched other states' approaches to assessing risks associated with railroad bridges.
- Created an interactive map of California's railroad bridges that includes location identifiable by latitude and longitude, as well as by the traditional railroad method of subdivision and milepost.

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- Created a Railroad Bridge Oversight Plan.
 - Created bridge observation forms in order to:
 - Evaluate and confirm the railroads’ bridge inspections.
 - Assess the frequency and quality of the railroad’s bridge inspection program.
 - Populate the CPUC railroad bridge database with the ages of bridges and the volume of traffic.
 - Identify whether the bridges will experience increased traffic due to the increase in crude oil transportation by rail.

During 2014-15, the CPUC railroad safety inspectors who specialize in bridges performed the following:

- 13 field activities
- 51 bridge observations
- 22 General Order Reports identifying defects
- 7 Risk Management Status Reports (inquiries about bridge safety concerns sent to railroads)
- 2 responses to informal complaints

Moving forward, the CPUC staff will use the results of the initial inspections to prioritize inspections for the remaining railroad bridges. Criteria that may affect a ranking of the risk of a bridge include proximity to high-population areas, use by passenger rail carriers, frequency and use by railroads carrying hazardous materials, and proximity to a seismic fault.

E. Near-Miss Reporting and Analysis

Public Utilities Code Section 7711.1 requires the CPUC to collect and analyze near-miss data for incidents in California occurring at railroad crossings and along the railroad right-of-way. “Near-miss” is defined as including a runaway train or any other uncontrolled train movement that threatens public health and safety. In support of this requirement, the CPUC has developed a process for managing the risks discovered through the collection and analysis of near-miss data. Using near-miss data to identify locations where there are conditions which may pose a greater likelihood of accidents, and/or have greater consequences in the event of an incident,

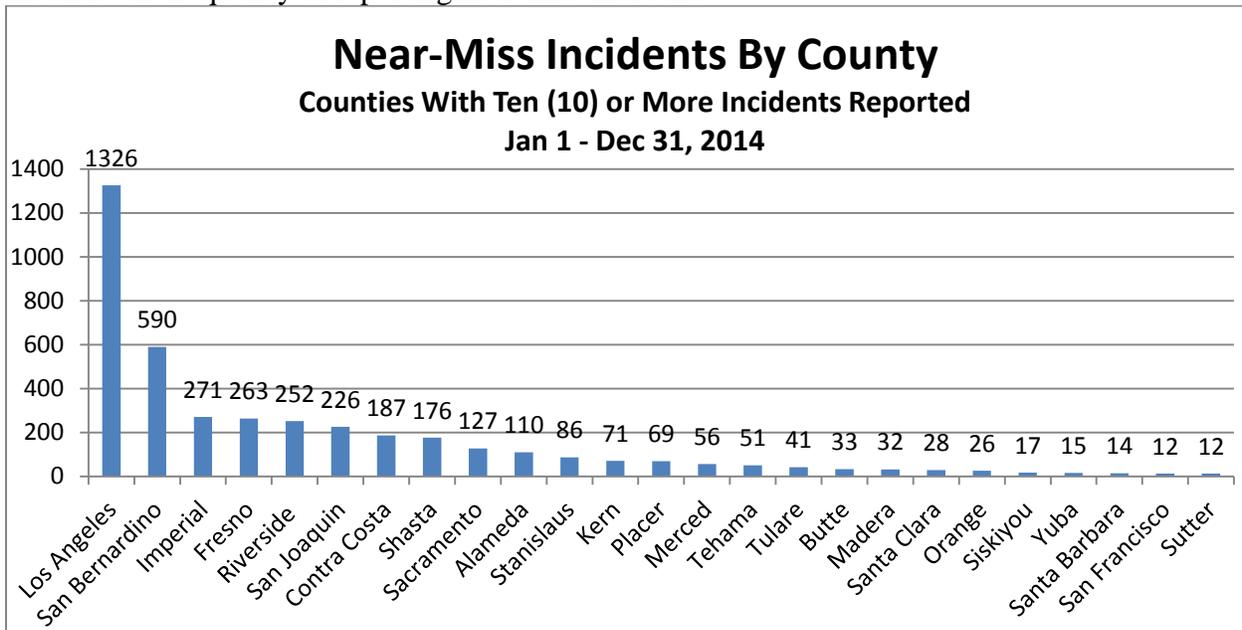
enables the railroad risk assessment team to improve railroad safety.

To proactively mitigate risks, the CPUC has broadly interpreted the term “near-miss” to include an incident that does not result in the occurrence of an accident, but presents an unintended condition or exposure to a hazard that may have caused an unwanted incident. A negative incident may be preceded by one or more events, making near-miss data useful information for identifying potential threats to public health and safety.

Unfortunately, the data are not systematic or comprehensive. Reporting of most near-miss incidents is voluntary and railroad corporations operating trains in California do not equally report near-miss information in a standardized format and do not use a uniform threshold for determining what conditions qualify as near-miss incidents. As such, the reported near-miss data may not be useful for comparisons. Nevertheless, because the data may describe conditions that may be leading indicators of accidents and thus describe characteristics that can be addressed, the near-miss data still has considerable accident prevention usefulness.

In 2013 there were just over 1,000 near-misses reported in the State of California and in 2014 there were over 4,100. There is no evidence to suggest that drivers or pedestrians have become increasingly unsafe around railroad property. It appears that the increase in the near-miss incidents may be associated with the UPRR and the BNSF being more consistent in reporting to the CPUC.

The following graph indicates near-miss incidents by county. It may be expected that Los Angeles County experienced the highest number of near-miss incidents due to the population density, the amount of rail traffic entering and exiting the ports, and the number of railroad crossings. Regardless, it is difficult to draw any real conclusions based on the randomness and inconsistent frequency of reporting near-miss incidents.



F. Positive Train Control

The Rail Safety Improvement Act of 2008 (P.L.110-432) requires all railroads to install PTC devices in specified areas by December 31, 2015. On October 29, 2015, the U.S. President signed bill that included a three-year extension of PTC implementation. Railroads now have until December 31, 2018 to implement PTC, and as late as 2020 under certain circumstances.

PTC is a global positioning system-based technology to provide real-time location and speeds of trains and avoid collisions, such as in the event of an operating rule violation, such as missing a signal. CPUC railroad safety inspectors have been actively engaged in design review, observations, and inspections during the development and construction of PTC systems in California.

PTC systems are designed to avoid human error by providing computerized control of trains to ensure train separation (collision avoidance), line speed enforcement, temporary speed restrictions, and rail worker wayside safety.

Some California railroads may meet the initial 2015 deadline. As of this writing, Metrolink is likely to be the first passenger railroad to complete implementation by December 31, 2015. Both BNSF and UPRR have provided assistance to Metrolink. BNSF is most likely to complete implementation, followed by UPRR. After UPRR, Caltrain, North Coast Transit District, Sonoma Marin Rail Transit, Amtrak, and Altamont Corridor Express are likely to follow. Short Line Railroads, if applicable, will most likely be last to complete implementation.⁶

During 2014-15, the CPUC railroad safety inspectors who specialize in PTC performed the following:

- Conducted 16 field activities.
- Performed 57 PTC surveillance observations.
- Participated in 29 various railroad PTC status meetings.
- Provided ongoing correspondence with the railroads to determine status, challenges, and issues of implementation.

Appendix C includes more information on PTC technology as well as the status of PTC implementation for California railroads.

G. California High Speed Rail

The California HSR Authority has made strides in the past year towards realization of its plan to have the first HSR operation in the nation in which trains will be capable of traveling at speeds greater than 200 miles per hour. On January 6, 2015 a ground-breaking ceremony was held in Fresno with Governor Brown as the keynote speaker.

⁶ For a technical discussion of PTC, see the 2014 Annual Report to the Legislature, Appendix B.

In June 2015, recognizing the shift from planning to construction, the Authority’s Board of Directors approved a construction contract led by Parsons Brinckerhoff Inc.. Work has begun on the first section; a 29-mile section of track stretching between Avenue 17 north of Madera and East American Avenue to the south of Fresno. On June 26, 2015 the Authority’s design-build contractor Tutor Perini/Zachary/Parsons conducted the first concrete pour at the Fresno River Viaduct in Madera, the first aerial structure that is part of the HSR system.



The Mayor of Fresno addresses the crowd at the January 6, 2015 Ground-breaking Ceremony in downtown Fresno.

The plan is for passengers to safely travel between San Francisco and Los Angeles within three hours by the year 2029. Ultimately, San Diego and Sacramento would also be connected to the system. To accomplish this, a multitude of safety features are incorporated into the design of the HSR train. Many grade separations will be constructed to prevent grade-crossing incidents involving train and vehicle or pedestrian collisions. Freight railroads owning adjacent tracks will also benefit, as the grade separations will also include their rail in the design. Other grade crossings will be closed to allow for a sealed corridor in which trains can operate at high speeds without the risk of collision with a vehicle or pedestrian.



Congressman Costa being interviewed at the historic HSR Groundbreaking event.

CPUC railroad safety inspectors participate in the planning and implementation stages to provide information to the HSR Authority on the special California railroad laws and General Orders. In addition, they provide feedback when potential risk factors are identified, take note of any possible conflict with existing regulations, and team with community leaders and stakeholders regarding possible safety concerns.

CPUC railroad safety inspectors participate regularly in HSR Fire and Life Safety Committee consultations in both Sacramento and Fresno. These meetings bring a variety of state, federal and local agencies together to share information on the unique needs presented by operation of HSR. Emergency-response can be challenging when faced with structures that are elevated, for example, or parallel electrical transmission lines.

Numerous design elements are incorporated into the train sets to be used by HSR that reduce risk in the case of emergency. Security is an integral part of the planning process as well, with risk assessment being a core element. As regulators, CPUC railroad safety inspectors will proactively assess safety risks, as well as monitor compliance with existing regulations.

III. The Foundation of the Rail Safety Program

The CPUC employs 48 railroad safety inspectors who are federally certified in specific disciplines. All inspectors have earned federal certification in each of the following disciplines: hazardous materials, motive power and equipment, operations, signal and train control, and track. In addition to the individual inspections, the inspectors also perform overarching risk assessment and risk management to identify and address public safety risks that may not be a violation of a federal or state law.

A. Regular Inspections

Over the past year, CPUC railroad safety inspectors have engaged in both proactive safety efforts and retroactive accident investigations to mitigate public safety risks. CPUC railroad safety inspectors perform regular inspections, focused inspections, accident investigations, security inspections and complaint investigations. Some examples of inspections and investigations, as well as a comprehensive list of rail safety inspections and investigations, are included in the Appendix D.

Total inspection data for each discipline for the 2014-15 fiscal year include:

CPUC Hazardous Materials inspectors:

- Submitted 682 reports for 28,977 units
- Identified 602 defects
- Cited 8 defect violations

Hazardous Materials units can include each tank car, each record to ensure accurate representation of substance, each evaluation of a release plan, each inspection of the shipper's paperwork, and other similar items.

CPUC hazardous materials inspectors conduct a variety of activities, including the investigation of accidents involving the actual or threatened release of hazardous materials as reported by the OES 24-hour Warning Center. Inspectors also conduct unannounced inspections at the facilities of shippers, consignees, freight forwarders, intermodal transportation companies, and railroads.

CPUC hazardous materials inspectors also inspect facilities to ensure compliance with GO 161—Rules and Regulations Governing the Transportation of Hazardous Materials by Rail. For example, inspectors look for the appropriate grounding of cars to prevent dangerous static electricity buildup during unloading. GO 161 also has requirements for reporting the release or threatened release of hazardous materials where there is a reasonable belief that the release poses a significant present or potential harm to persons, property, or the environment.

CPUC Motive Power and Equipment inspectors:

- Submitted 905 reports for 78,301 units
- Identified 3,040 defects
- Cited 25 defect violations

Motive power and equipment units can include each locomotive, each rail car, inspection records or specific components thereof.

PU Code 765.5(d) requires the CPUC to establish, by regulation, a minimum inspection standard to ensure that at the time of inspection, that railroad locomotives, equipment, and facilities

located in the Class I railroad yards will be inspected not less frequently than every 120 days.⁷

During the 2014-15 fiscal year CPUC railroad safety inspectors did not satisfy the mandate. Of the 52 facilities, 42 sites were inspected three times or more during the fiscal year. Of the remaining 10 facilities, 7 were inspected twice and 3 were inspected once.

The primary reason for not meeting the mandate is employee retention. When a certified CPUC railroad safety inspector leaves, it takes at least one year to hire a new inspector, get the inspector appropriate training for federal certification, and train the inspector in the field using an experienced CPUC railroad safety inspector. In addition, the experienced inspectors may miss their mandates because they spend a significant amount of time training the new-hires on unique California-specific laws and CPUC General Orders.

CPUC Operating Practices inspectors:

- Submitted 695 inspection reports for 12,379 units
- Identified 338 defects
- Cited 80 defect violations

Operating practices units can include ensuring the accuracy of train consist records, observing crews performing switching operations, reviewing the accuracy and completeness of accident records, ensuring compliance with certifications and licenses, and other similar items.

CPUC Signal and Train Control inspectors:

- Submitted 156 reports for 8,250 units
- Identified 414 defects
- Cited 0 defect violations

Signal and train control units can include each signal system appurtenance, maintenance and testing records, warning devices at crossings, and other electronic or mechanical signaling systems.

CPUC Track Inspectors:

- Submitted 881 inspection reports for 25,481 units
- Identified 5,201 defects
- Cited 120 defect violations

Track units can include a mile of track, a switch, a Roadway and Maintenance Machine, a record, and other similar items involving the track structure.

⁷ UPRR and BNSF are the only Class I freight railroads operating in California. The Surface Transportation Board defines a Class I railroad as "having annual carrier operating revenues of \$250 million or more" after adjusting for inflation using the Railroad Freight Price Index developed by the Bureau of Labor Statistics. (49 CFR, Part 1201).

PU Code 765.5(d) requires the CPUC to establish by regulation a minimum inspection standard to ensure that all branch and main line track is inspected not less frequently than every 12 months.

Inspectors use several methods to inspect track. Each method has its benefits and drawbacks depending on the terrain, steepness, and location. The methods include:⁸

- Physically walking the track.
- Riding in a hi-rail vehicle (motor vehicle outfitted with steel rail guide wheels).
- Riding in a FRA “geometry car” (special rail cars equipped to identify, collect, and disseminate track defects and other potential accident-causing conditions).

In the 2014-15 fiscal year, CPUC railroad safety inspectors surveyed 3,797 miles of track in California aboard the track geometry vehicles. The track geometry vehicles identified 2,523 defective conditions. CPUC railroad safety inspectors conducted follow-up inspections to monitor the railroads’ compliance and verify that the defects had been corrected.

B. Focused Inspections

Public Utilities Code section 765.5(e) requires the CPUC to conduct focused inspections of railroad yards and track, and to target the railroad yards and track that pose the greatest safety risk, based on inspection data, accident history, and rail traffic density. Focused inspections involve inspectors from a variety of disciplines or multiple inspectors from a single discipline, working together at a specific location or rail facility. Typically, focused inspections are joint efforts between the FRA and CPUC, though Public Utilities Code section 767.5 permits the CPUC to conduct the inspections as the Commission determines to be necessary.

Focused inspections allow CPUC railroad safety inspectors to evaluate all aspects of a railroad or facility’s operational and maintenance practices and procedures. They also allow for close evaluation of railroad management and labor abilities, technical expertise and experience, and safety culture. If corrective actions are recommended by CPUC railroad safety inspectors, a follow-up inspection is performed to determine progress by the railroad entity in carrying out the recommended actions.

In the 2014-15 fiscal year, CPUC railroad safety inspectors performed 45 focused inspections, which consisted of:

- 9 track inspections
- 8 hazardous materials inspections

⁸ The Annual Report to the Legislature for the 2013-14 fiscal year provides a detailed explanation about the methods of track inspections: <http://www.cpuc.ca.gov/NR/rdonlyres/79512E3D-2E8D-4CBD-A3E7-5000FA73CCA1/0/2014ROSBAnnualReportLeg.pdf>.

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- 11 operating practices inspections
 - 4 motive power and equipment inspections
 - 6 signal and train control inspections
 - 7 CPUC General Order-related inspections.

The Appendix E includes a list of focused inspections.

C. Accident Investigations

Public Utilities Code section 315 requires the CPUC to investigate the cause of all accidents occurring within the state upon the property of any public utility directly or indirectly connected with its maintenance or operation, resulting in loss of life or injury to person or property. CPUC railroad safety inspectors evaluate each accident when reported to the CPUC (usually, by OES) and determine the appropriate investigative response based on accident severity criteria, including:

- Impact to the public (evacuations, injuries, fatalities)
- Injuries or fatalities to railroad employees or passengers
- Environmental impact
- Impact on commercial transportation (highway closures, commuter interruptions)
- Violations of state or federal railroad safety regulations or operating rules

In the 2014-15 fiscal year, there were 714 reported rail incidents. These incidents resulted in a total of 155 fatalities and 93 injuries. While the CPUC rail safety supervisors review all reported incidents, 55 required further investigation. Appendix F lists the accident investigations performed by CPUC railroad safety inspectors.

D. Security Inspections

Public Utilities Code sections 7665 through 7667 require every owner, operator, or controller of each rail facility to provide a risk assessment to the CPUC for each rail facility, and prescribes the information that must be included. It also requires every rail operator to develop and implement an infrastructure protection program to protect rail infrastructure from acts of sabotage, terrorism, or other crimes. The code requires the CPUC to review the infrastructure protection program submitted by the rail operators, and permits the CPUC railroad safety inspectors to conduct inspections to facilitate the review. To facilitate compliance, the CPUC provided all railroads with a “Security Plan Guidance” document that includes specific requirements of the security plans.⁹

⁹ Genesee & Wyoming Company, which operates four railroads within California, has adopted the security plan guidance as a blue print to develop a standard format for each railroad.

During 2014-15 CPUC railroad safety inspectors performed security reviews on 35 railroads.¹⁰ Of the 35, 33 were in compliance with the mandates. The CPUC Rail Safety Security inspectors are working with the two railroads to bring them into compliance and will be conducting additional reviews. The two that were not in compliance include:

- Lake Railway, located in Alturas, did not have a risk assessment nor infrastructure protection plan. Lake Railway was provided the statutes and “Security Plan Guidance” document developed by the CPUC.
- Pacific Southwest Railway Museum had a plan; however, there were several areas within their plan that did not comply with the statutes.

Below is a table identifying the railroad, inspection dates and compliance issues:

NAME	DATE OF INSPECT.	COMPLIANT	COMMENTS
Altamont Commuter Express	03/10/2015	Y	
Santa Maria Valley RR	05/18/2015	Y	
Fillmore Western	05/26/2015	Y	
San Joaquin Valley RR	03/09/2015	Y	
Modesto & Empire Traction	03/10/2015	Y	
Central California Traction Company	03/11/2015	Y	
Stockton Terminal & Eastern Railroad	03/11/2015	Y	
Sacramento Valley Railroad	03/11/2015	Y	
Quincy Railroad	03/12/2015	Y	
California Northern Railroad	04/07/2015	Y	
Richmond Pacific Railroad	04/08/2015	Y	
San Francisco Bay Railroad	04/08/2015	Y	
Cal Train	04/09/2015	Y	
Napa Valley Railroad	04/07/2015	Y	
Niles Canyon Railway	04/08/2015	Y	
Santa Cruz Monterey Bay	04/09/2015	Y	
Metrolink	05/11/2015	Y	
Amtrak Los Angeles	05/20/2015	Y	
San Diego & Imperial Valley	06/03/2015	Y	
Ventura County Railroad	06/15/2015	Y	
Trona Railway Company	05/19/2015	Y	
National Switching Service	04/06/2015	Y	
North County Transit District	05/26/2015	Y	

¹⁰ Amtrak, Union Pacific and Burlington Northern Santa Fe railroads produce national security plans that are reviewed annually by the FRA. To ensure compliance with state laws, CPUC Rail Safety Security Inspectors reviewed each railroad’s security plan at various locations within the state.

Pacific Sun Railroad	05/26/2015	Y	
Pacific Southwest Railway Museum	06/19/2015	N	7665.2, 7665.4, and 7665.8. PSRM was instructed to correct these deficiencies. They will be re-inspected within 60 days to determine their progress and compliance.
Baja California Railroad	06/03/2015	Y	
West Isle Line	05/05/2015	Y	
Santa Cruz & Big Trees	04/09/2015	Y	
Amtrak Oakland	05/07/2015		
Sierra Northern Railroad	03/10/2015	Y	
Pacific Harbor Lines	05/11/2015	Y	
Los Angeles Junction Railroad	04/10/2015	Y	
BNSF	04/10/2015	Y	
UPRR	06/17/2015	Y	Phone Interview. Security manager is located in Omaha NE.
Lake Railway		N	New railroad. Provided all PU codes and Security Plan Guidance and time to develop their plan. Railroad will be inspected in the near future to ensure compliance.

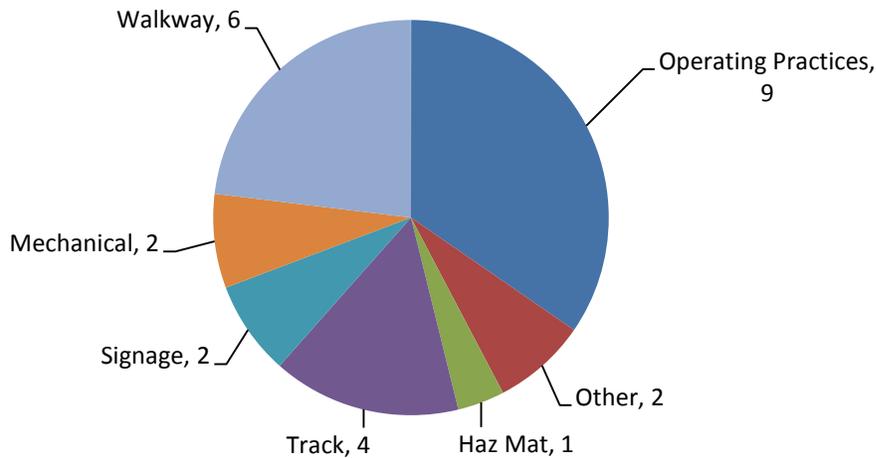
E. Safety Investigations

The CPUC receives safety concerns and complaints from various sources, including railroad employees, railroad unions (United Transportation Union and the Brotherhood of Locomotive Engineers), the general public, and government personnel. CPUC railroad safety inspectors initially contact the FRA to determine whether the complainant notified both agencies. The CPUC and FRA determine which agency will perform the investigation to eliminate duplication.

For complaints investigated by the CPUC, an inspector discusses the issue with the complainant or a contact person. The inspector investigates the issue and relevant location and gathers data, including photographs and other pertinent information. The inspector discusses the issue with railroad managers in an effort to gain compliance by pointing out unsafe conditions, practices or risks pertinent to the complaint. A formal or informal action plan is discussed with railroad management, including a timeframe for remediation. The inspector then prepares a written response, with proposals for resolving the complaint, for review by his or her supervisor. A response letter is prepared by one of the CPUC railroad safety supervisors and mailed to the complaining party or his/her representative. A follow-up inspection is performed to ensure compliance and/or remedial action.

In the 2014-15 fiscal year, the CPUC investigated and resolved 26 safety complaints.

Informal Complaints by Type 2014-15 Fiscal Year 26 Total Closed Complaints



IV. Challenges for Rail Safety

A. Reporting of Accidents and Incidents

In the CPUC's 2013 and 2014 Annual Railroad Safety Activity Reports,¹¹ the CPUC reported that the most significant challenge facing railroad safety in California is the noncompliance of many railroads with these requirements for reporting incidents and accidents to the OES and/or CPUC. Such noncompliance limits the CPUC's ability to comply with Public Utilities Code section 309.7, which requires CPUC railroad safety inspectors to advise the Commission on rail safety issues, and propose regulatory remedies to address unsafe conditions. As a result, CPUC railroad safety inspectors may be unaware of unsafe conditions, and thus may be unable to address those conditions.

Railroads have been inconsistent in their compliance with federal law, California law, and CPUC General Orders with regard to reporting accident / incidents and hazardous materials releases to the CPUC.

- Public Utilities Code section 315 requires the CPUC to investigate the cause of all accidents that have occurred on the property of any public utility resulting in loss of life or injury to person or property and permits the CPUC to make an order or recommendation.

¹¹ <http://www.cpuc.ca.gov/NR/rdonlyres/7945B5AC-B200-431B-A8C4-648AB1BEAB2D/0/2013AnnualReporttotheLegRNCV.pdf>

- Public Utilities Code section 7661 requires the Safety and Enforcement Division to investigate any incident that results in a notification, and report its findings concerning the cause or causes to the commission.
- Public Utilities Code section 7662 requires railroads to provide immediate notification to OES¹² of accidents and incidents;¹³
- Public Utilities Code section 7672.5 requires railroads to immediately report incidents resulting in a release or threatened release of a hazardous material to relevant agencies, including OES.¹⁴
- General Order 161 requires railroads to immediately notify the appropriate emergency-response agency in the event of a hazardous materials incident.

Immediate reporting provides an opportunity to enhance safety. Information regarding an accident's circumstances and cause is often lost quickly as time passes. This information is necessary for the CPUC to deploy inspectors to determine whether the railroad violated regulations or otherwise had unsafe operating or maintenance practices.

On DATE in the this fiscal year, the CPUC _____. (Last year we sent a letter, did we do anything about this this year?)

B. Recruitment and Retention Problems

This issue was also identified in the 2013 and 2014 CPUC Annual Railroad Safety Activity Reports and continues to be a challenge.¹⁵ The 2013 Report identifies the issue more thoroughly, including the programmatic need, the justification, and the statewide significance.

The inability to compete with salaries of railroad, rail transit, and the federal railroad inspectors compromises the safety of all Californians. Last year, the CPUC railroad safety inspectors failed to meet the statutory mandate to inspect all railroad facilities located in class I railroad yards every 120 days due to lower remuneration than their peers at other rail facilities and the FRA. The CPUC railroad safety inspectors who are certified in motive power and equipment performed just 143 inspections, when they could have performed about 156.¹⁶ Of those 143 actual inspections, they identified 3,040 defects and cited 25 defect violations. Using averages, if the CPUC had been able to retain well-trained inspectors, they could have likely identified 3,315 defects and 27 violations. That results in the possibility of 275 missed defects, which

¹² The California Office of Emergency Services was formerly called the California Emergency Management Agency (CEMA).

¹³ OES immediately notifies the CPUC.

¹⁴ OES immediately notifies the CPUC.

¹⁵ <http://www.cpuc.ca.gov/NR/rdonlyres/7945B5AC-B200-431B-A8C4-648AB1BEAB2D/0/2013AnnualReporttotheLegRNCV.pdf>

¹⁶ 52 facilities 3 times per year.

could cause derailments of railroad cars carrying hazardous materials in heavily populated California, or worse, passengers.

When a certified CPUC railroad safety inspector leaves, it takes at least one year to hire a new inspector, federally certify the inspector, and train the inspector using an experienced CPUC railroad safety inspector. In addition, the experienced inspectors often miss their required inspections because they spend a significant amount of time training the new-hires on unique State-specific laws and CPUC General Orders.

The CPUC supports compensation parity and stands ready to assist in any appropriate venue to achieve this parity.

V. Penalties and Citations

The CPUC Office of Rail Safety can assess penalties depending on the violation. For violations of federal railroad safety regulations, railroad safety inspectors make recommendations to the FRA for the assessment of penalties. For violations of certain General Orders¹⁷ and a Public Utilities Code section, CPUC Resolution ROSB-002 delegates Commission authority to the Director or Deputy Director of the Safety and Enforcement Division to issue citations to railroad carriers. The General Orders contain requirements for trackside walkways and clearances, and the Public Utilities Codes provides requirements for wayside signage and certain railroad operating rules. A railroad issued such a citation may accept the fine imposed or contest it through a process of appeal.

During the 2014-15 fiscal year, CPUC railroad safety inspectors noted:

- 233 citations for violations of federal laws.¹⁸
- 15 citations for violations of state laws, for a total penalty amount of \$____, which was deposited into the General Fund.

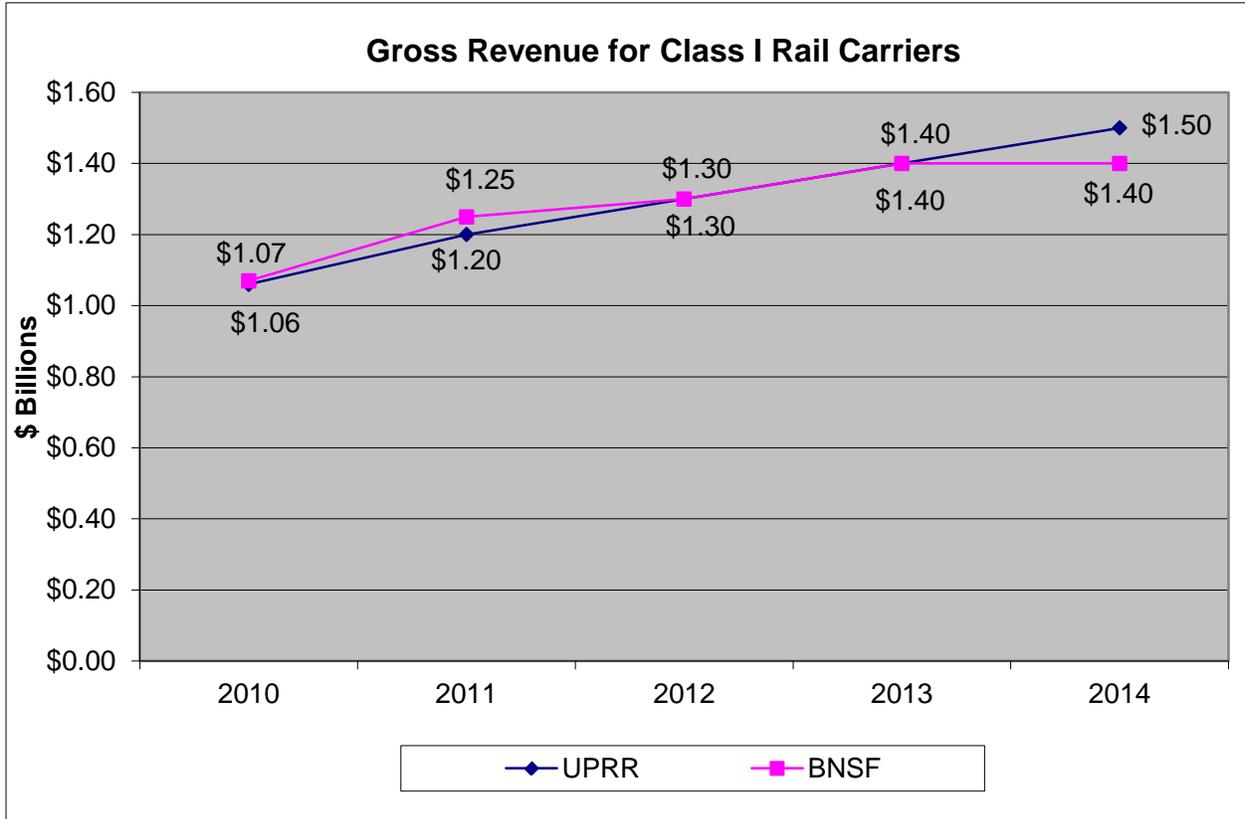
VI. Regulatory Fee Impact on Competition

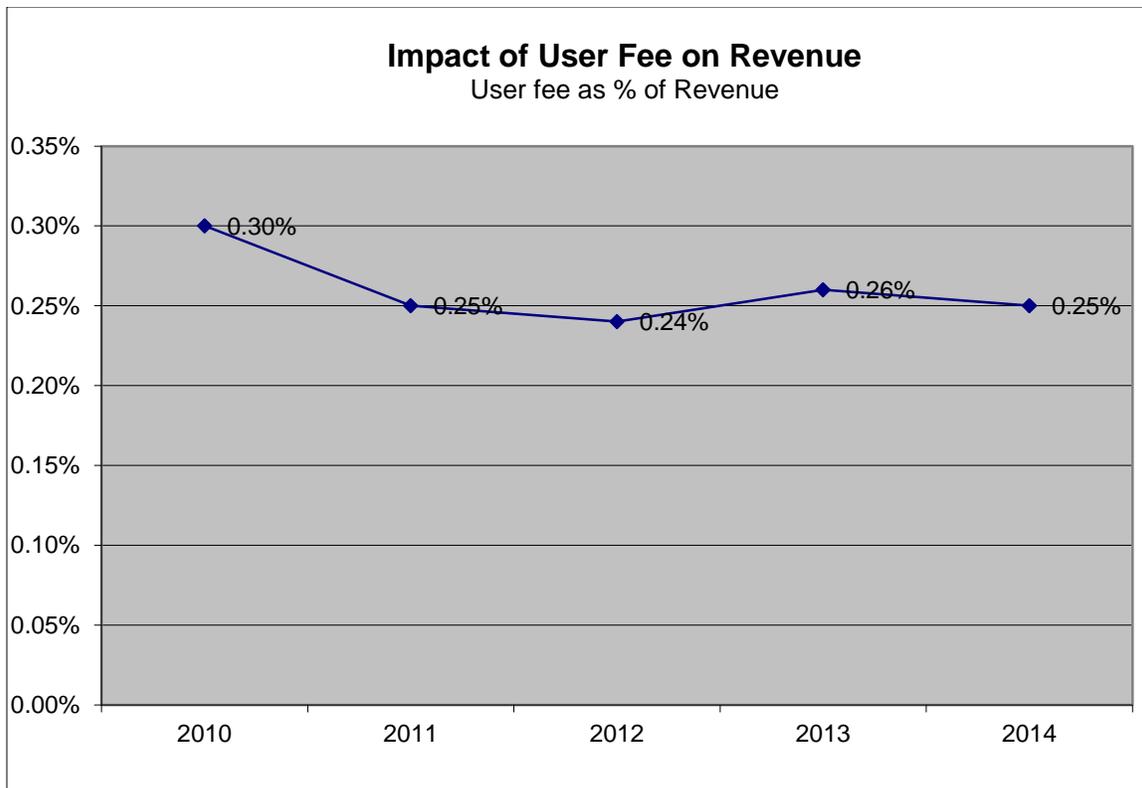
Public Utilities Code section 309.7 requires the activities of the CPUC that relate to safe operation of common carriers by railroad, other than those relating to grade crossing protection, to be supported by the fees paid by railroad corporations. In 2014-15 the Legislature appropriated \$7.6 million from the CPUC Transportation Reimbursement Account. The fees paid by the railroad corporations are deposited into a dedicated subaccount within the CPUC Transportation Reimbursement Account and are the sole funding source for the CPUC Railroad Operations and Safety Program. The fees do not fund any other CPUC programs.

¹⁷ GO 26-D, GO 118-A.

¹⁸ Fines under federal regulations range from about \$1,000 to \$5,000 each, per day. The final penalty amount depends on the resolution of a claims conference between the railroad and the FRA.

The railroad user fees assessed in 2014-15 on UPRR and BNSF represented just one fourth of one percent of revenues (0.0025), and were unlikely to have had any effect on competition.





UPRR and BNSF have experienced record profits over the past few years. UPRR Board of Directors approved a two-for-one stock split in 2014 that was paid out as a dividend to its shareholders.¹⁹ The first quarter of 2015, UPRR stock produced a 10-percent dividend increase. According to UPRR, “Union Pacific has paid dividends on its common stock for 116 consecutive years.”²⁰ For BNSF, its 2014 profit rose 2 percent over the prior year to \$3.8 billion,²¹ despite reduced volume on the railroad’s network as a result of congestion-related service delays. In 2013, financial analysts estimated that BNSF Railway accounted for approximately twenty-percent of Berkshire Hathaway’s net income.²²

Planned PTC expenditures for BNSF were \$250 million in 2013 and \$200 million for 2014. PTC expenditures in 2015 are projected to be equivalent.²³ UPRR expended \$419 million in 2013 and \$384 million in 2014 on PTC.

BNSF has increased its nation-wide capital budget to \$6 billion for 2015, while UPRR remains at \$4.3 billion, which is similar to 2014 levels.

¹⁹ http://www.uprr.com/newsinfo/releases/financial/2014/0515_stocksplitt.shtml

²⁰ http://www.uprr.com/newsinfo/releases/financial/2015/0205_dividend.shtml

²¹ http://www.omaha.com/money/despite-service-bottlenecks-bnsf-profits-chug-along/article_447069dd-d85c-56bc-a06e-65dc3219fd22.html

²² http://journalstar.com/ap/business/bnsf-s-earnings-a-big-part-of-berkshire-s-profit/article_0091af0d-2133-5460-90af-b23ba1b563fa.html

²³ BNSF actual expenditures on PTC for 2013 and 2014 are not available.

California-specific capital expenditures are varied. BNSF appears to have increased its planned capital expenditures in California by about 40 percent over a two-year period.

Capital Investments in California			
(\$ millions)			
	2013	2014	2015 (projected)
BNSF	\$100	Unavailable	\$141
UPRR	Unavailable	\$432.1	\$137

VII. Local Safety Hazard Sites

Public Utilities Code section 7711 requires the CPUC to report to the Legislature on sites on railroad lines in the state it finds to be hazardous. The sites were formally identified in 1997 in Commission Decision, D.97-09-045, and were termed Local Safety Hazard Sites (LSHS).²⁴ Two methods to determine sites were used: 1) sites determined by a statistically significant higher derailment rate than elsewhere on the line, and 2) sites determined by the operating railroad to require stricter operating practices than elsewhere on the line. For example, railroads place a limit on how much tractive effort (locomotive power) can be concentrated at any one point in a train in relation to the tonnage the locomotives are pulling on steep grade and tight curves. Too much tractive effort concentrated at any one point, such as the front or rear of a train, can cause cars to derail in tight curves.

Section 7711 also requires the CPUC to include a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years, describe the nature and probable causes of the accidents, and indicate whether the accidents occurred at or near sites that the Commission has determined to be hazardous. This report, in addition to the electronically available list of all railroad derailment accidents over the past five years and the causes, fulfills those requirements.²⁵

Table 1 lists the accidents that have occurred “at or near” an identified local safety hazard site within the previous five years pursuant to Public Utilities Code subsection 7711(a). The original analysis identifying these sites was based on the higher risk main line and siding accidents.

²⁴ The CPUC is currently using the term “high hazard areas” to distinguish from the legal term “local safety hazard” sites, as used in the preemption exemption language of the Federal Railroad Administration (49 U.S.C. § 20106).

²⁵ A list of all derailments is located at <http://www.cpuc.ca.gov/PUC/safety/Rail/Railroad/>

Table 1—List of Local Safety Hazard Sites

*LSHS #	Current LSHS Track Line	Previous LSHS Track line at time of D.97-09-045 ²⁶	RR Milepost	Number of Derailments 2010-14	Overlap with Site #**
16	UPRR Mojave Subdivision	SP Bakersfield Line	335.0 to 359.9	12	
9	UPRR Black Butte Subdivision	SP Shasta Line	322.1 to 332.6	2	#10
10	UPRR Black Butte Subdivision	SP Shasta Line	322.1 to 338.5	3	#9
19	UPRR Mojave Subdivision	SP Bakersfield Line	463.0 to 486	2	
12	UPRR Roseville Subdivision	SP Roseville District	150.0 to 160.0	3	
6	UPRR Yuma Subdivision	SP Yuma Line	542.6 to 589.0	2	#3, #4
22	UPRR Canyon Subdivision	UP Feather River Division	234.0 to 240.0	1	#25
25	UPRR Canyon Subdivision	UP Feather River Division	232.1 to 319.2	3	#22, #23
3	UPRR Yuma Subdivision	SP Yuma Line	535.0 to 545.0	0	#6
23	UPRR Canyon Subdivision	UP Feather River Division	253.0 to 282.0	1	#25
4	UPRR Yuma Subdivision	SP Yuma Line	586.0 to 592.0	0	#6
26	BNSF Gateway Subdivision	UP Bieber Line,	15.0 to 25.0	1	
31	BNSF San Diego Subdivision	ATSF San Diego	249.0 to 253.0	1	
1	UPRR Coast Subdivision	SP Coast Line	235.0 to 249.0	0	
7	Central Oregon and Pacific Railroad Siskiyou Subdivision	SP Siskiyou Line	393.1 to 403.2	0	
27	UPRR L.A. Subdivision, Cima Grade		236.5 to 254.6	0	
28	BNSF Cajon Subdivision	ATSF Cajon	53.0 to 68.0	0	

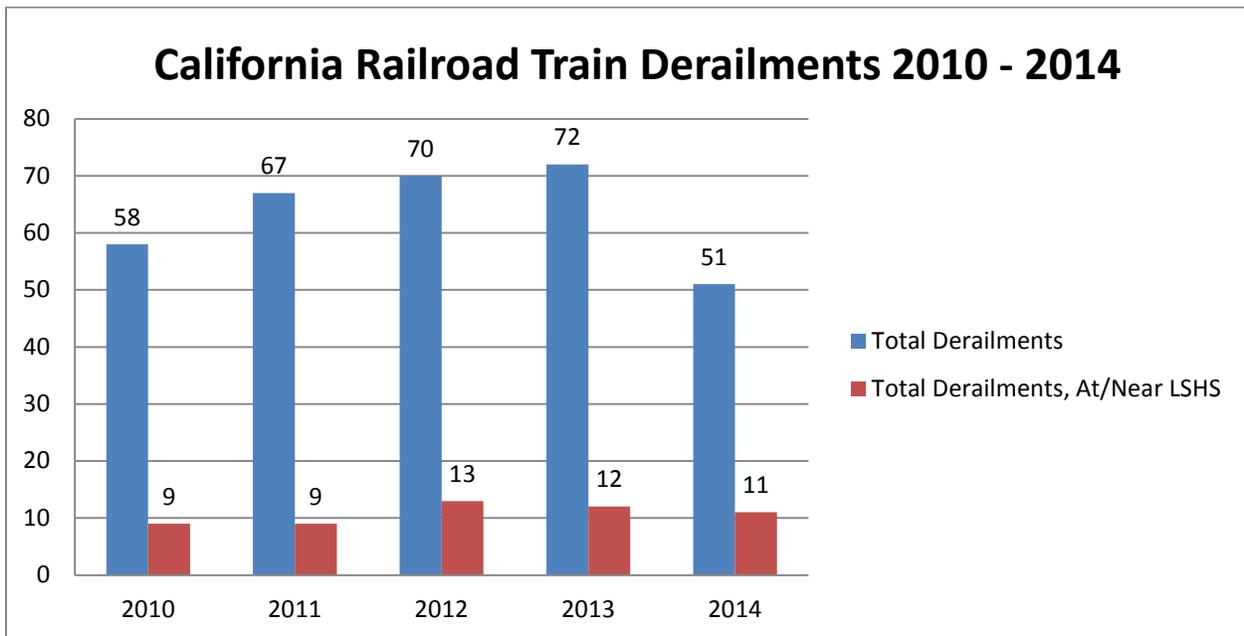
²⁶ In 1996, UPRR purchased Southern Pacific Railroad.

29	BNSF Cajon Subdivision	ATSF Cajon	81.0 to 81.5	0	
30	BNSF Cajon Subdivision	ATSF Cajon	55.9 to 81.5	0	

*The LSHS number (LSHS #) is for identification purposes only, and does not indicate any ranking.

** Where a site’s boundaries overlap with another site identified by the different method, the other site is listed in this column.

Within the previous five calendar years, California experienced 318 derailments. Of that total, 31 derailments, or 10 percent, occurred at or near local safety hazard sites. For this report, “at or near” includes any location of railroad track along the railroad right-of-way that is contained in the segment of railroad designated to be a local safety hazard site, including the distance of track one mile on each side of the local safety hazard site. Maps of local safety hazard sites are included in the Appendix.



Data source: Federal Railroad Administration, Office of Safety Analysis

Appendix A – State Railroad Safety Laws and Regulations

State Constitution, Article XII, Sec. 4	The commission may fix rates and establish rules for the transportation of passengers and property by transportation companies
PU Code Sec. 309.7 (a)	(a) The division of the commission responsible for consumer protection and safety shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail. The Safety and Enforcement Division shall advise the commission on all matters relating to rail safety, and shall propose to the commission rules, regulations, orders, and other measures necessary to reduce the dangers caused by unsafe conditions on the railroads of the state.
PU Code Sec. 309.7 (b)	(b) In performing its duties, the Safety and Enforcement Division shall exercise all powers of investigation granted to the commission, including rights to enter upon land or facilities, inspect books and records, and compel testimony. The commission shall employ sufficient federally certified inspectors to ensure at the time of inspection that railroad locomotives and equipment and facilities located in class I railroad yards in California are inspected not less frequently than every 180 days, and all main and branch line tracks are inspected not less frequently than every 12 months.
PU Code Sec. 309.7 (c)	(c) The general counsel shall assign to the Safety and Enforcement Division the personnel and attorneys necessary ...to enforce safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation.
PU Code Sec. 309.7 (d)	(d) The activities of the Safety and Enforcement Division that relate to safe operation of common carriers by rail, other than those relating to grade crossing protection, shall also be supported by the fees paid by railroad corporations.
PU Code Sec. 315	315. The commission shall investigate the cause of all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make such order or recommendation with respect thereto as in its judgment seems just and reasonable.
PU Code Sec. 765.5	<p>(a) The purpose of this section is to provide that the commission takes all appropriate action necessary to ensure the safe operation of railroads in this state.</p> <p>(b) The commission shall dedicate sufficient resources necessary to adequately carry out the State Participation Program for the regulation of rail transportation of hazardous materials as authorized by the Hazardous Material Transportation Uniform Safety Act of 1990 (P.L. 101-615).</p> <p>(c) On or before July 1, 1992, the commission shall hire a minimum of six additional rail inspectors who are or shall become federally certified, consisting of three additional motive power and equipment inspectors, two signal inspectors, and one operating practices inspector, for the purpose of enforcing compliance by railroads operating in this state with state and federal safety regulations.</p> <p>(d) On or before July 1, 1992, the commission shall establish, by regulation, a minimum inspection standard to ensure, at the time of inspection, that railroad locomotives, equipment, and facilities located in class I railroad yards in California will be inspected not less frequently than every 120 days, and</p>

	<p>inspection of all branch and main line track not less frequently than every 12 months.</p> <p>(e) Commencing July 1, 2008, in addition to the minimum inspections undertaken pursuant to subdivision (d), the commission shall conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration, or as the commission determines to be necessary. The focused inspection program shall target railroad yards and track that pose the greatest safety risk, based on inspection data, accident history, and rail traffic density.</p>
PU Code Sec. 768	768. The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. The commission may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling. The commission may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.
PU Code Sec. 7661	The Safety and Enforcement Division shall investigate any incident that results in a notification...and shall report its findings concerning the cause or causes to the commission.
PU Code Sec. 7662	Requires a railroad to place appropriate signage to notify an engineer of an approaching grade crossing and establishes standards for the posting of signage and flags, milepost markers, and permanent speed signs.
PU Code Sec. 7665.2	By July 1, 2007, requires every operator of rail facilities to provide a risk assessment to the commission and the agency for each rail facility in the state that is under its ownership, operation, or control, and prescribes the elements of the risk assessment.
PU Code Sec 7665.4	<p>(f) Requires the rail operators to develop an infrastructure protection program, and requires the CPUC to review the infrastructure protection program submitted by a rail operator. Permits the CPUC to conduct inspections to facilitate the review, and permits the CPUC to order a rail operator to improve, modify, or change its program to comply with the requirements of this article.</p> <p>(g) Permits the CPUC to fine a rail operator for failure to comply with the requirements of this section or an order of the commission pursuant to this section.</p>
PU Code Sec. 7667	
General Order 22-B	Requires accident investigations on all incidents occurring on railroad property.
General Order 26-D	Establishes minimum clearances between railroad tracks, parallel tracks, side clearances, overhead clearances, freight car clearances, and clearances for obstructions, motor vehicles, and warning devices to prevent injuries and fatalities to rail employees by providing a minimum standards for overhead and side clearance on the railroad tracks. (Pursuant to PU Code Sec. 768.)
General Order 72-B	Formulates uniform standards for grade crossing construction to increase public safety. (Pursuant to PU Code Sec. 768.)
General Order 75-D	Establishes uniform standards for warning devices for at-grade crossings to reduce hazards associated with persons traversing at-grade crossings. (Pursuant to PU Code Sec. 768.)
General Order 118-A	Provides standards for the construction, reconstruction, and maintenance of walkways adjacent to railroad tracks to provide a safe area for train crews to work. (Pursuant to PU Code Sec. 768.)
General Order 126	Establishes requirements for the contents of First-Aid kits provided by

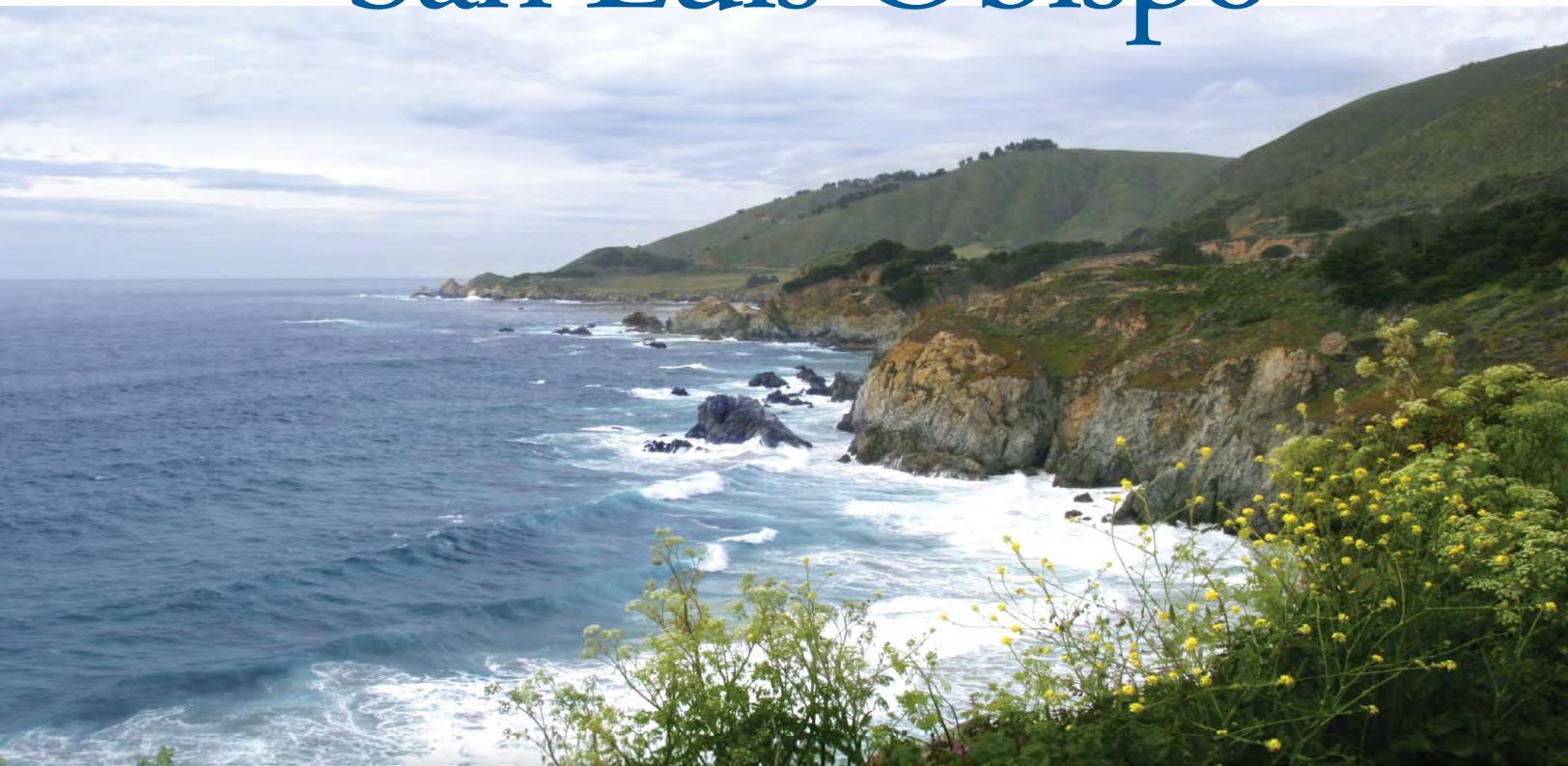
	common carrier railroads. (Pursuant to PU Code Sec. 768.)
General Order 161	Establishes safety standards for the rail transportation of hazardous materials. (Pursuant to PU Code Sec. 768.)
General Order 135	Establishes regulations governing the occupancy of public grade crossings by railroads. (Pursuant to PU Code Sec. 768.)

ATTACHMENT 5

San Luis Obispo County Tourism Analysis Report 2008

September 2008

Tourism San Luis Obispo



By:



Dean Runyan Associates

Study Commissioned by
Economic Vitality Corporation
www.sloevc.org





Economic Vitality Corporation
P.O. Box 5257, San Luis Obispo, CA 93403
805.788.2012 PH 805.781.6193 FAX
www.sloevc.org

Keeping SLO County business vital.

September 24, 2008

The **Economic Vitality Corporation** is pleased to have commissioned the enclosed study that evaluates the tourism industry of San Luis Obispo County.

This first-ever study and the accompanying report provides you with research never seen before, thanks to **Strategic Marketing Group** and **Dean Runyan Associates**, as well as the supporters of this project.

As a countywide economic development organization, the EVC commissioned this independent study in order to provide an analysis of one of the largest business sectors in San Luis Obispo County. The primary purpose of the study is to develop data and offer recommendations useful to government and businesses leaders in order to address the strengths and weaknesses of this economic engine of the county.

The research for this project lasted several months as SMG focused on key topics: tourism opportunities for SLO County and individual cities; factors influencing maximum tourism promotion; potential short and long-term challenges facing the industry; competitive dynamics; and visitor attitudes and interests. Among the key findings are economic impacts on the tourism industry, our competitive advantage compared to neighboring counties, and strategic recommendations to improve our competitive position.

The Board of Directors of the EVC and the supporters of this project believe that business and government leaders will find great value in the results of this study and that it will be used to help improve our competitiveness in this economic engine of our local economy.

We wish to thank the supporters of this project.

Sincerely,

A handwritten signature in blue ink that reads "Dave Christy".

Dave Christy, Ph.D.
Chair, Board of Directors

A handwritten signature in blue ink that reads "Michael E. Manchak".

Michael E. Manchak
President/CEO

We wish to thank the following project sponsors...



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ECONOMIC VITALITY CORP.

PROJECT SPONSORS

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City of Morro Bay



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SWOT

Strengths, Weakness, Opportunities, Threat Analysis

A review of SLOC's strengths and weaknesses, and the opportunities and threats that will affect its future success is important for building a sustainable competitive advantage.

*Figure 28
SLOC SWOT Analysis*



Strengths

- ✓ Tourism Experience: As identified in "SLOC Product Experience" above, SLOC possess a critical mass of tourism components including geographical variety, recreation, and historic, arts and cultural activities.
 - Geographic variety: SLOC has a variety of distinct areas, from coastal areas to wine-growing regions, and has the culture of the different communities within the county.
 - Recreational Opportunities: SLOC possesses a significant amount of recreational opportunities.
 - Arts/Culture/Special Events: Every area within SLOC offers a wide variety of arts, culture, and special events, supported by both public and private funding, that provide activities for both locals and visitors
 - Attractions- SLOC hosts a number of attractions, including Hearst Castle and area wineries.

- Family Environment: The previously-mentioned SLOC activities and ambiance provide a quality family atmosphere. This is critical to the tourism experience as many other competitor segments are vying for this important market segment.
- ✓ Tourism Promotion Infrastructure: SLOC has a strong tourism promotion infrastructure that includes an umbrella County VCB, as well as tourism promotion efforts via its chambers of commerce and visitor bureaus.
- ✓ Proximity to Consumer Markets: Because SLOC is equidistant to Los Angeles and San Francisco (about 190 miles), it has superb proximity to major population bases.
- ✓ Established Airport Access: Currently, air access is possible through the SLOC Regional Airport, which offers commuter-level aircraft service on a number of carriers including United Airlines and U.S. Airways. However, it has lost approximately 15% of its air service with the elimination of service from Delta and American Airlines.

Weaknesses

- ✓ Intra Region Competition: SLOC's areas have had mixed success in cooperating to develop a countywide tourism promotion program. This can create unnecessary and detrimental intra-county competition.
- ✓ Traffic/Crowding: Traffic and crowding within SLOC is visible and frequently mentioned concerns.
- ✓ Weekend Orientation: SLOC's equidistant location between Southern and Northern California markets creates a significant weekend-only business. This visitor base tends to compound traffic and crowding problems. Additionally, day visitors contribute to the congestion problem with a comparatively small economic impact.
- ✓ Funding Limitations: Collectively, SLOC's tourism promotion organizations compete against destinations with significantly larger budgets. Because competition within the primary Southern California market is intense, the effectiveness of its limited funds is questionable.

Opportunities

- ✓ Increased Interest in the Rural Tourism Experience: Consumer interest in rural tourism has never been greater. SLOC offers a variety of related experiences, from bicycling, to Hearst Castle, to wine tasting.
- ✓ Improved California Tourism Efforts: The recent restoration of the State of California Office of Tourism's budget should result in an aggressive national program to create additional visitation at the statewide level.
- ✓ BID Funding: This is a new key opportunity since the last VCB Strategic Marketing Plan brings the emergence of a BID as a sustained funding tool for tourism communities.

Threats

- ✓ Competition: SLOC faces stiff competition from areas throughout the central coast as well as from those that compete for the Southern California market. The destination already faces increased tourism efforts from areas along the California Coast including Ventura, Santa Barbara, Santa Monica, Newport Beach, and SLOC. Almost every county in the state has identified tourism as an economic development tool. As such, the level of resources allocated to tourism promotion has increased significantly.

- ✓ Weak Economy- In the short term, concern exists about the California economy and its potential impact on tourism.
- ✓ Lack of a Unified Approach to Tourism: A much more cohesive effort for tourism promotion is necessary. The current system minimizes the county's competitiveness and continually subjects the area to a loss of market share to its competitors.
- ✓ Tourism Backlash: As tourism increases throughout the SLOC, the resulting traffic and crowding could lead to a greater backlash against tourism support. When possible, tourism promotion agencies must support programs generated to preserve the environment as well as downtown areas.
- ✓ Continued Weakness in the Airline Industry- The potential for more air service losses is a certainty if that industry continues to weaken. To date, the local community has lost approximately 15% of available seats into the SLOC Regional Airport.

Key Issues

A. Issues Overview

After thorough review and analysis, SMG identified a number of key issues to consider and address in order to maximize tourism within the county. These are organized into four core areas of concern:

- The economic environment
- The competitive environment
- Infrastructure issues
- Issues related to tourism promotion

Two of the core areas are external to SLOC and not controllable, and two are internal and much more controllable. However, all of them do affect tourism and tourism promotion within SLOC. Combined, each core area has played a role in SLOC's inability to maximize its efforts.

*Figure 29
SLOC Issues*



➔ The Economic Environment

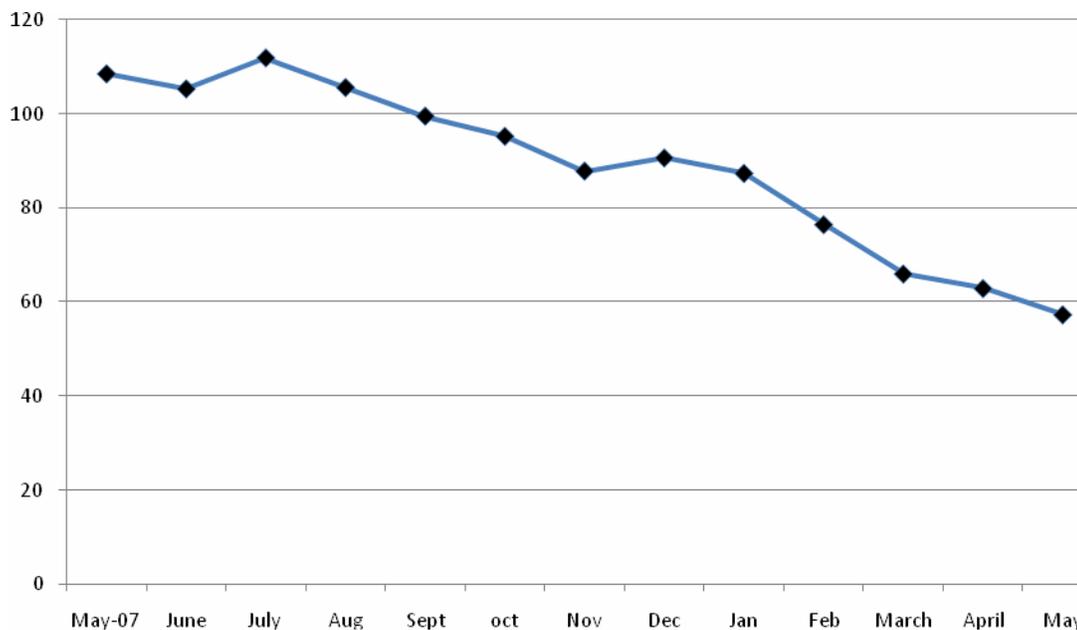
For the purposes of this report, the economy is considered from a macro (state) perspective as well as micro (local) perspective.

Macro Economy

Significant concerns exist in both the national and state economy (a significant source of visitors for SLOC). Inflation, rising unemployment, the sub-prime crisis, and rising fuel prices are all driving to create an environment of concern.

Consumer confidence has fallen to its lowest level in years. Within the past year alone, consumer confidence has fallen from an index of 108 to 57.

*Figure 30
US Consumer Confidence*



Source: The Conference Board

The impact of oil prices is significant to both air and auto access. As such, its impact is significant from a core market and destination market view.

Significant challenges face California tourism that could interfere with consumer ability and desire to travel.

Three of the major issues to watch in 2008/09 include:

1. State Budget Deficit

The state of California has projected a budget shortfall of approximately \$18 billion for FY 2008/09. The impact could include both budget cuts and increased taxes, creating a double-whammy for both the overall California economy and the tourism economy.

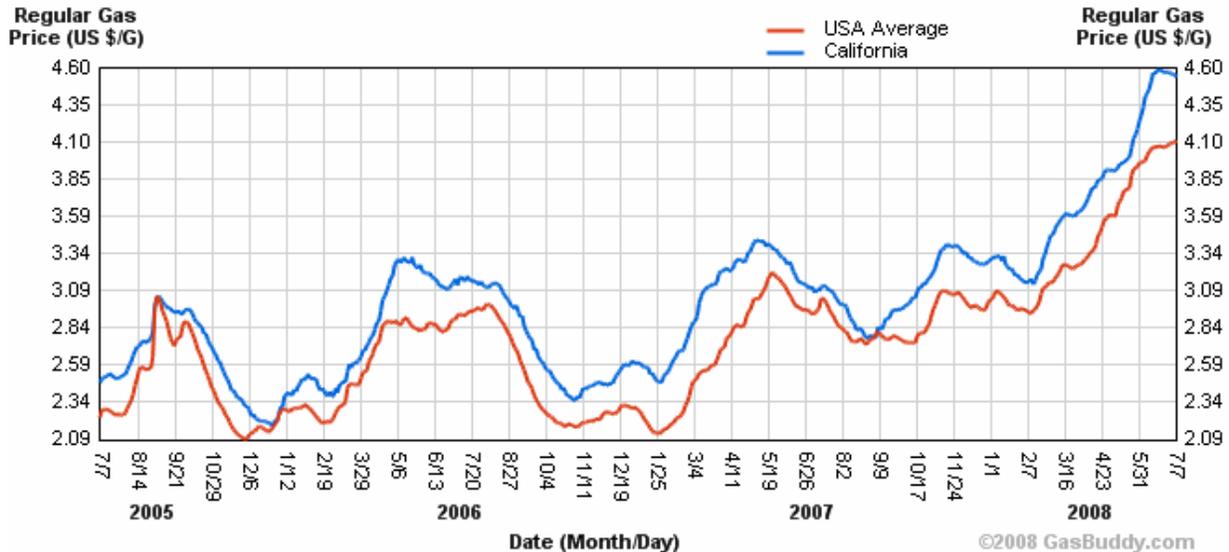
2. Sub-prime Mortgage Collapse

The sub-prime mortgage collapse has hit California particularly hard. In turn, this will have repercussions on the overall economy.

3. Gas Prices

Gas prices have continued to rise. Although no significant drop-off in tourism has resulted from rising prices, additional price increases could begin to impact traveler decisions. California gas prices have outpaced the national average (see Figure 31).

Figure 31
Average Gas Prices: Us and California
36 Month Average Retail Price Chart



Source: California Gas Prices.com

The escalation in fuel prices and the impact they may have on both auto and air travel is the most significant issue to tourism.

- For the drive market: SLOC receives a significant portion of its visitor base from drive markets in Southern and Northern California as well as the Central Valley. As such, it could be vulnerable to other destinations closer in proximity and convenience.
- For air travel: The SLOC Regional Airport has lost approximately 15% of its seats into the airport.

Local Economy

One of SLOC's major issues is the economic impact on local government budgets.

- Although current data is not available, local businesses have indicated business levels have slowed.
- The impact this will have on local municipalities and budgets remains to be seen, though typically budgets and spending have been conservative or reduced in similar situations.

Locally, SLOC has experienced uneven growth in different areas of the county.

- Both Pismo Beach and Paso Robles have grown at rates higher than those within the rest of the county.
- As such, parts of the county compete against other areas.
- Although this dynamic could work in a win/win dynamic, it often becomes a zero-sum and a win/lose situation when one area of the county gains at the expense of another.

➤ The Competitive Environment

SLOC faces significant competition from Santa Barbara County to the south and Monterey County to the north. Although these two destinations represent major geographic competitors, they are hardly the only competition for the county.

- Several other competitors interact directly with each of SLOC's core attributes of wine country, beach and downtown experiences (see Table 24).

Table 24
SLOC Competitors by Attribute

Wine Country	Beach	Downtown Experience
Temecula	Ventura	Ventura
Napa	Carlsbad	Santa Monica
Sonoma	Huntington Beach	Huntington Beach
Sierra Foothills	Newport Beach	Newport Beach
Mendocino County	Santa Cruz	Santa Cruz
Santa Barbara	Santa Barbara	Santa Barbara
Monterey	Monterey	Monterey

In addition to the added competition to SLOC's core attributes from these areas, their continued improvement in destination experience, tourism funding and marketing expertise, create a significant level of competition for SLOC. This emphasizes the need to maximize SLOC's resources and effectiveness in tourism promotion.

➤ Infrastructure

Infrastructure is a concern to SLOC's lodging and attractions.

Lodging

A significant difference exists between SLOC's lodging mix and that of its competitors; namely, SLOC has a significantly higher mix of non-branded properties.

- SLOC's properties do not benefit from national distribution.
- Smaller properties also tend to lack sophisticated marketing and advertising efforts, which places a bigger burden on local marketing agencies.

The flip side of this issue is SLOC's lack of name brands that signal the destination's quality.

- This is a key differentiating factor between SLOC and its competitors
- Brands like Hyatt in Pebble Beach and Bacara and Four Seasons in Santa Barbara have significant brand strength, and strong sales and marketing efforts to support group and convention meeting segments.

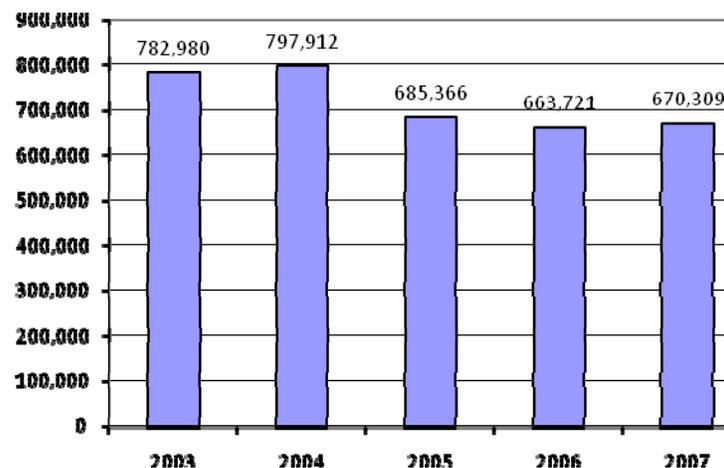
Attractions

SLOC's two major attractions—Oceano Dunes and Hearst Castle—have both been in place for many years.

The Oceano Dunes facility, which provides economic impact to the southern part of SLOC, offers unique beach access and many recreation activities. However, it has limited weekend growth potential because it is located in an environmentally sensitive area and park access is capped on high demand weekends.

Hearst Castle has been a centerpiece of the central coast for decades and, at one time, hosted over a million visitors annually. Although it is still a significant driver, visitation numbers have fallen in recent years (see Figure 30).

Figure 32
Hearst Castle Attendance



Source: California State Parks

This decline is likely partly due to the competitiveness of the Monterey Bay Aquarium, which attracts about 1.2 million visitors annually. Additionally, Hearst Castle's exhibits and facilities must be continuously upgraded as it has a limited number and type of attractions.

To stay competitive for the next generation, tourism industry professionals may need to consider developing one or more new attractions. One possibility is the full development of the San Luis Obispo botanical gardens, which will provide a major environmental attraction and a unique differentiation point to the region.

Convention Center

Without a convention center, SLOC is reliant on the Non-Group Free Individual Traveler (FIT) segment. Adding a properly-conceived and financed convention center, and air and highway access to support it, would allow for the growth of meetings and conventions... a key travel industry segment.

Wine Industry/Rural Locations

Although most of SLOC's tourism occurs within three major city areas (Paso Robles, San Luis Obispo, and Pismo Beach), appropriate and relevant tourism in the rural areas of the county is critical for the overall county. Further development of agricultural tourism is a key component to developing this tourism.

Both city and county planners need to consider the wine industry's growth and the region's other agricultural offerings in order to facilitate growth in agricultural tourism, and investigate how to locate lodging and restaurants at the wineries, as SLOC's competitors have done.

☞ Tourism Promotion Systems

1. Competitive Perspective

SMG has identified two distinct views of competitive dynamics within SLOC. The first is **intra-regional**, in which several areas within the county see other county areas as their competition.

The second view is **inter-regional**, in which SLOC as a whole views areas outside of the county (specifically Santa Barbara and Monterey Counties) as competition. Depending on how one sees the competitive playing field dictates how one makes tourism promotion decisions.

*Table 25
Competitive Perspectives*

Intra-Regional (Internal) Perspective	Inter-Regional (External) Perspective
<p>The primary tourism competition is within the county.</p> <ul style="list-style-type: none"> • Believes that each area must seek competitive advantage over other areas of the county, • Less supportive of cooperative approaches and, as a result, misses out on the financial leverage available to cooperative approaches. • Has a win/lose dynamic. • Focuses on stealing market share from within the county as opposed to outside of the county. 	<p>The competition is external to the county. By working together and growing the pie, each area within the county will benefit from independent and overall efforts.</p> <ul style="list-style-type: none"> • Believes that SLOC is more effective competing as a whole against external competition. • This perspective is more supportive of cooperative marketing approaches and as a result takes advantage of the financial leverage available to cooperative approaches. • This perspective holds a win/win dynamic. • This perspective is focused on stealing market share from outside the county as opposed to inside of the county, and as a result unites the efforts within the region.

SLOC lacks agreement on how to define its competitive playing field and, consequently, lacks agreement on how to promote the region.

2. Differing Perspective on Tourism Promotion

As often happens in counties with a number of successful cities or attractions, SLOC lacks an overall countywide perspective. As such, cities focus on growing business for their specific city, which can be a win/lose situation.

Conversely, a properly implemented countywide “grow the pie” approach has a greater chance to create a win/win situation for SLOC and the individual areas within it.

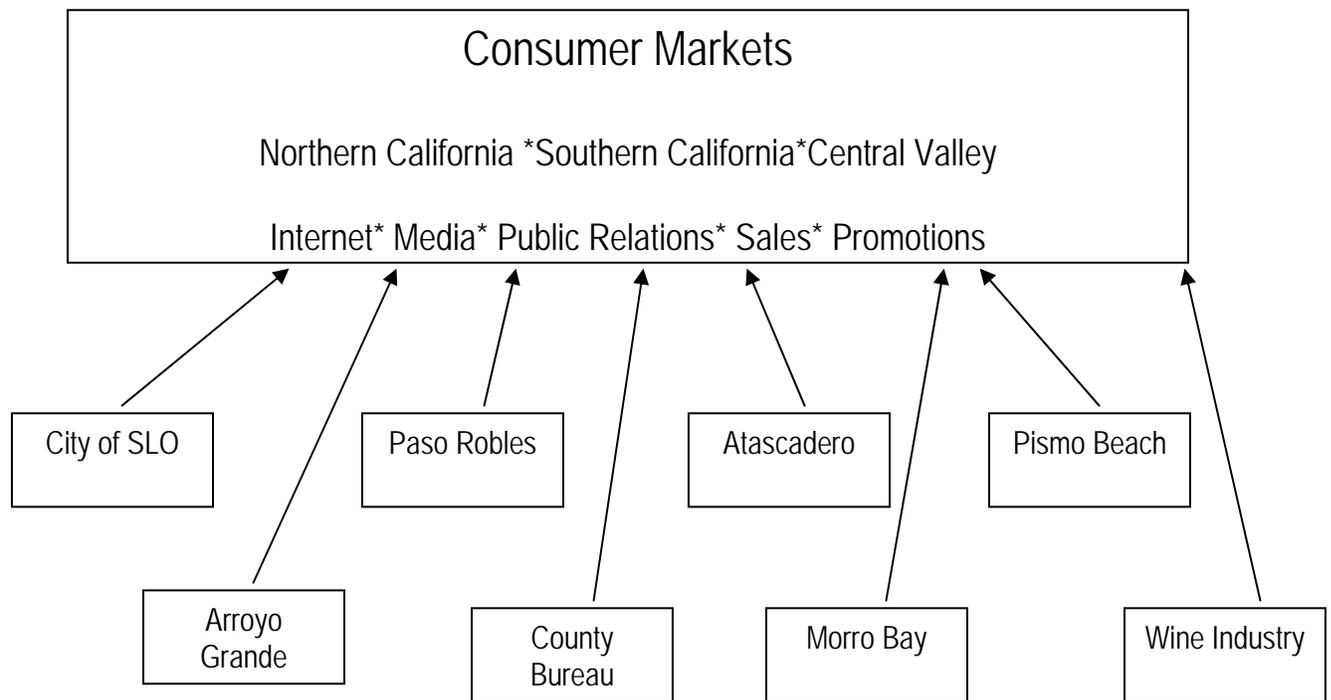
With SLOC’s variety of tourism promotion organizations, the potential for fragmented efforts and for turf protection are higher. Consequently, understanding the need for a unified tourism approach is vital.

In rural communities, the most effective unit of competition is not the city or attraction, but the county as a whole. Visitors are often attracted by the appeal of the whole region’s attributes. Viewing the county in its entirety first instead of a single area’s attributes yields the most benefit for all within it.

A review of SLOC’s tourism promotion organizations indicates significant fragmentation in tourism promotional efforts. Each organization’s promotional efforts often start with their specific needs (organization-centered), not the consumer’s (consumer-centered). This “inside out” thinking can limit the effectiveness of overall tourism promotional efforts especially when competitor destinations are sending a unified message to this marketplace.

Figure 33 illustrates how an individual organization may believe it is presenting a clear message, while the consumer is receiving a variety of messages, each competing for their attention.

Figure 33
 Organization-Centered Promotional Efforts and Consumer Confusion



An uncoordinated intra-county approach can have a significant impact:

- *Inconsistent target market selection*
 Different organizations target different market segments. Some organizations are interested in day visitation, while others are more interested in overnight visitation. Some prefer the Central Valley market, while others prefer Southern California. Without a truly coordinated strategy that benefits each organization, success cannot be maximized. Additionally, markets may change based on the short- and long-term priorities of each agency.
- *Duplication of effort/lack of efficiency*
 With so many organizations promoting tourism within the region, a considerable duplication of efforts exists, specifically for fulfillment materials, websites, postage, etc. For a region with a relatively small budget, these inefficiencies can waste time and valuable promotional dollars.
- *Inconsistent message*
 With so many organizations promoting tourism within the region, the marketplace receives a considerable number of positioning messages. Many of these position SLOC as a wine region, a beach region, an urban experience, a recreation region, and a boutique shopping region. These messages all promote individual activities but fail to capture consumer awareness at an emotional level that is often necessary to break through the competitive clutter of other destinations.

Both Monterey and Santa Barbara Counties have a consistent brand message and significant funds to promote that message. For example, Monterey County's VCB provides an umbrella brand that allows its areas, such as Pacific Grove and Carmel, to operate underneath its brand in a coordinated way. In comparison, SLOC appears fragmented. This is not to say these messages cannot be used by individual areas, but they lack coordination for their use. The current county VCB budget cannot provide a strong umbrella brand.

Overall, intra county competition does not capitalize on the total (and limited) tourism promotion resources available within SLOC.

➤ **Funding Levels**

SLOC is significantly underfunded when compared with Monterey and Santa Barbara Counties, and is significantly disadvantaged by its more distant location from both Northern and Southern California population centers. Combined, the tourism promotion agencies currently spend \$211 per available room. In comparison, Monterey County spends \$456 per room. To reach parity with Monterey, San Luis Obispo would need to increase tourism promotion revenues by \$2 million and, more importantly, coordinate those dollars to gain maximum leverage.

➤ **The Rise of the BIDs**

One of SLOC's most controversial issues is the county VCB's attempt to develop a countywide Business Improvement District (BID). Despite significant time and effort, the VCB has not developed the countywide support necessary to implement a BID.

In fact, some areas in the county, including Paso Robles and the City of San Luis Obispo, are developing competing BIDs. It would be anticipated that at some point Pismo Beach would have to consider a BID in an effort to keep pace with the other areas. The result of this move to BIDs is a further reinforcement of the fragmentation in tourism promotion suggested previously.

Currently the county VCB is funded by SLOC, the City of San Luis Obispo and, to a lesser degree, Morro Bay and Grover Beach. Pismo Beach, the largest generator of tourism spending in the County, does not currently support funding for the county VCB.

This funding is year to year. The county VCB attempted to develop a countywide BID to increase overall funding for tourism under the agency.

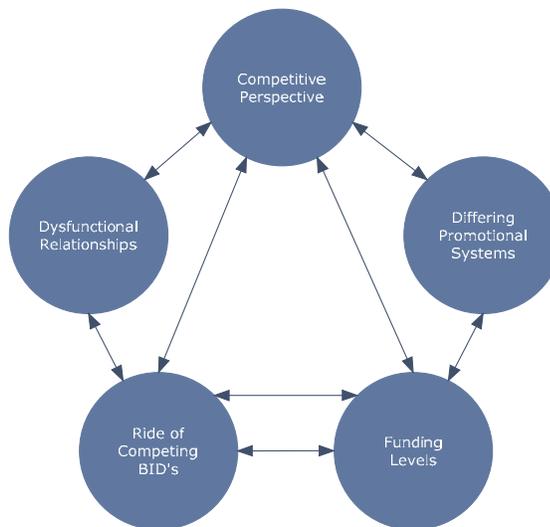
This has created a stressed relationship within parts of the SLOC tourism industry and the county VCB and, consequently, an unwillingness to support and complete the countywide BID. This problematic relationship (and the recognized need for more tourism promotion dollars and the intra-county competitive environment) may have provided the impetus for the individual community BIDs.

The failure to deal with this stressed relationship is creating a dynamic that will significantly increase intra-county competition. Rather than an integrated and leveraged approach to developing tourism funding resources and promotional approaches within the county, the level of competition among Paso Robles, San Luis Obispo, Pismo Beach and the unincorporated county will increase substantially.

Issues Interrelationships

For the most part, the identified issues are interrelated and have a cause and effect impact on each other. A "systems approach" to improve the tourism efforts within the county has not existed before. Figure 34 identifies the issues and illustrates the impacts they have on one another.

Figure 34
INTERRELATIONSHIP DIAGRAM



Recommendations

Recommendation 1: SLOC Airport

The impact of gas prices on the airlines is significant. SLOC's air service has already declined. As a proactive measure, SMG supports the recent formation of an airport task force comprised of key county stakeholders from both the public and private sectors. The purpose of this organization is to aid airport management in working to maintain and increase air service into and out of SLOC.

The task of this committee could include the following:

1. Review monthly airport statistics.
2. Develop strategies and approaches that encourage carriers to maintain air service.
3. Identify weak routes and develop programs to strengthen those routes.
4. Develop viable and continuous contact with carrier route planning departments including periodic visits.
5. Inform the greater SLOC about the economic benefit and need of the airport as integral to the county.
6. Develop a marketing fund and airport incentives to assist carriers in maintaining and/or expanding service.
7. Attract new airline service and routes

Recommendation 2: Resort Brand Lodging Attraction

One of the weaknesses identified in this report is that SLOC's lodging mix is heavily weighted to unbranded facilities with under 50 units. The attraction of a major brand lodging property, similar to what other competitive destinations offer, would benefit the entire region.

SMG recommends a coordinated approach with the Economic Vitality Corporation of SLOC in conjunction with other city economic development representatives working together to attract a major brand resort property.

ATTACHMENT 6

2013 California State Rail Plan



May 2013



2013 CALIFORNIA STATE RAIL PLAN

May 2013

Prepared for

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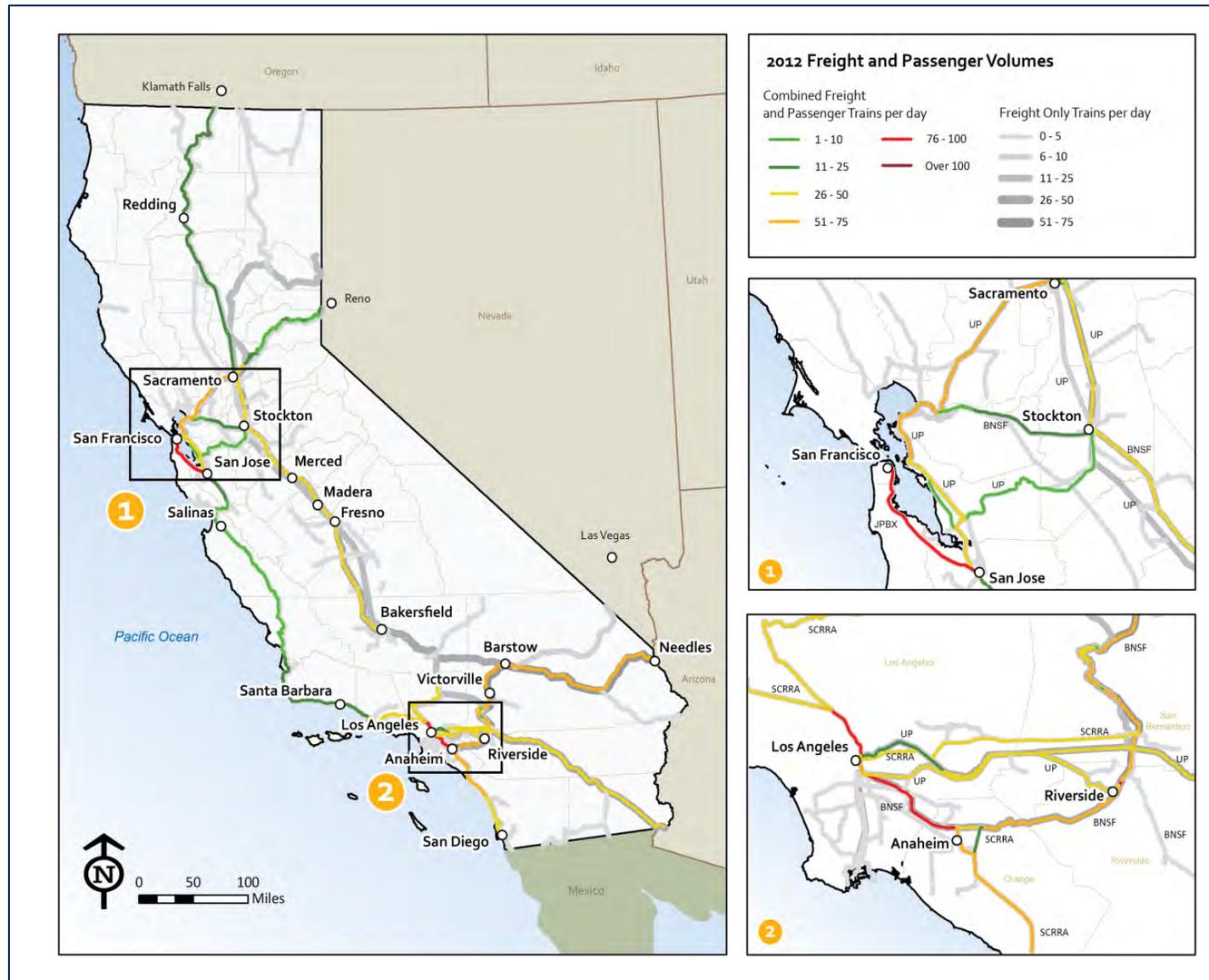


Exhibit 7.1: Current Daily Train Volumes on California’s Shared-Track Rail Corridors

Sources: Oak Ridge National Laboratory (ORNL) Rail Network; Cambridge Systematics, Inc., 2013; Esri, 2012.

Note: The freight train volumes shown in this exhibit are year 2007 daily estimates. Passenger volumes current as of August 2012.