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Date: 11/24/2014 03:59 PM
Subject: FW: Phillips 66 - Rail Project - Comments on RDEIR (SCH#2013071028)

Hi Murry,

Please find attached our comments on the Revised Draft EIR for the Phillips 66 Rail Project.

Thank you,

Greg

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(See attached file: Phillips 66 RDEIR Comments Package 11-24-14.pdf)



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September 30, 2014

Via Federal eRulemaking Portal: www.regulations.gov

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RE: Comments of the Railway Supply Institute, Committee on Tank Cars regarding the Pipeline and Hazardous Materials Safety Administration Notice of Proposed Rulemaking for Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, Docket No. PHMSA-2012-0082 (HM-251)

Dear Sir or Madam:

The Railway Supply Institute (“RSI”) is the international trade association of the railway supply industry. Its members provide all types of goods and services to freight and passenger railroads, rail shippers and freight car manufacturers and lessors. The members of the RSI Committee on Tank Cars (“RSI-CTC”) collectively build more than ninety-five percent (95%) of all new railroad tank cars and own and provide for lease over seventy percent (70%) of railroad tank cars operating in North America. These comments are submitted on behalf of the following RSI-CTC members: American Railcar Industries; American Railcar Leasing; CIT Rail; GATX Corporation; General Electric Railcar Services Corporation; Trinity Rail Group, LLC; and Union Tank Car Company. The RSI-CTC has a demonstrated commitment to safe rail transportation by tank car. This includes its long-standing participation in the Railroad Tank Car Safety Research and Test Project (“Tank Car Safety Project”) with the North American Class I Railroads (through the Association of American Railroads (“AAR”)) and regulators from both the United States and Canada whereby the RSI-CTC contributes funding, technical resources and thought leadership to the detection, prevention and mitigation of equipment-related factors in train accidents.

The RSI-CTC commends the U.S. Department of Transportation (“DOT”), Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) efforts to improve the safe transportation of hazardous materials as outlined in its Notice of Proposed Rulemaking for Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, Docket No. PHMSA-2012-0082 (HM-251) (“Proposed Regulations” or “NPRM”) and appreciates the opportunity to submit its comments on the

PHMSA has assumed that major portions of the affected fleets would be permanently transferred to serve heavy crude oil from Western Canada, which PHMSA refers to as “tar sands.” Below in Section X.A. Brattle identifies the regulatory, technical and economic barriers to such a transfer and discusses why it thinks it is unlikely to occur. The affected fleets are large, and have been configured for the requirements of the markets they serve. The RSI-CTC does not believe there are many other commodities whose density, shipment volumes, packaging requirements and capacity needs would be suited to the use of significant numbers re-purposed crude oil or ethanol tank cars. These markets are already adequately served by existing tank car fleets, and absent significant growth would not have the ability to absorb the repositioned assets. Even if transfer to another commodity were possible, these cars would still need to be cleaned for reassignment—which would utilize scarce repair network capacity and further constrain the limited resources available to complete the modification program.

While Brattle has assumed that the affected cars will be parked until the resources required for the modification become available, it also recognizes that for some of the fleet, this may not turn out to be an economically viable course of action. There are significant unanswered questions regarding what it would cost to store thousands of idle cars for multi-year periods, or what condition these cars might be in at the end of these periods. In many cases, the modification costs that would have to be incurred to bring them into compliance is a significant fraction of the original cost of the car. It is likely that in many cases, the economically rational solution will be to remove them permanently from service and scrap them. However, this decision will be made by individual owners based on the remaining economic life of the car.

Another possible effect of the Proposed Regulations might be to encourage affected parties to purchase new cars to replace the capacity that would potentially be idled by the Proposed Regulations. While Brattle concedes that this is a possibility, its quantitative significance is very difficult to assess. Tank cars are highly durable assets that can under normal circumstances be expected to remain in service for decades. There is an inherent economic tension involved in a decision to invest in such a durable asset in order to offset the effects of a temporary capacity shortfall. Brattle recognizes that it might happen, but it is difficult to judge the magnitude or potential economic significance of any such investments. Moreover, replacement of the existing fleet cannot take place until after 2015 when all committed tank cars in the order back log have been filled and delivered. See Section IX.C. for additional discussion.

2. Fate of the Affected Traffic

Faced with a sudden and significant loss of rail capacity, shippers will undoubtedly attempt to shift traffic to alternative modes. Their choices, however, are limited. Some crude oil may move toward barge or pipeline transportation. However, because pipeline and barge are cheaper modes of transportation than both rail and trucking, we can assume that if these are not currently utilized, it is because these modes are unavailable for crude oil transportation in the relevant geographic regions.⁵⁷ For this reason, it is

⁵⁷ A variety of industry observers have noted that pipelines lack the flexibility of rail, and so are less suited to many of the new oil developments. See e.g. Kevin Sterline, William Horner, Chip Rowe, BB&T Capital Markets Report “Examining the Crude by Barge Opportunity” (June 10, 2013); Curtis, Trisha, “Lagging Pipelines Create US Gulf

reasonable to assume that truck transportation is the only available alternative mode for much of this traffic.

Brattle estimates that replacing lost rail capacity in 2017 with truck transportation for crude oil and ethanol shipments in North America would require approximately 20,000 trucks carrying over 370,000 truckloads on North American highways. In 2018, the full year in which the loss of capacity will be felt, replacement transportation would require approximately 70,000 trucks carrying almost 1.6 million loads. Note that these figures already reflect what Brattle believes to be reasonable assumptions regarding potential diversions to pipeline and barge transportation.

Table B5: Crude Oil and Ethanol Truck Traffic Required to Replace Lost Rail Capacity

| With Regulation | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
|--|------|------|------|------|-------|-------|-------|------|------|------|------|------|
| Trucks Dedicated to Crude and Ethanol Service, thousands | 0 | 0 | 0 | 20 | 69 | 65 | 64 | 56 | 45 | 30 | 14 | 1 |
| Truckloads, thousands | 0 | 0 | 0 | 371 | 1,600 | 1,227 | 1,090 | 956 | 762 | 506 | 234 | 12 |

The safety and environmental consequences of a substantial increase in truck traffic are significant. From 2002-2009, the over-the-road truckers transporting hazardous materials spilled 58% more total liquid hazardous materials and roughly double the total equivalent hazardous materials (including gasses, liquids and solids) than railroads did per year and per billion ton-miles.⁵⁸ These trucks would be traveling on major highways and roads alongside passenger traffic. Additionally, between 2015 and 2025, 6.41 million tons of CO2 emissions would be associated with this increase in truck traffic.

From an economic standpoint, if such traffic diversions were to occur, they would lead to significant increases in transportation costs for shippers. Brattle estimates that, at normal truck transportation rates, the increased costs would amount to \$5.4 billion in 2017, and would rise to \$21.0 billion in 2018. In subsequent years, these additional costs would decline slowly as the fleet of legacy DOT-111 tank cars is gradually modified or replaced.

Light Sweet Crude Glut,” *Oil & Gas Journal* (Mar. 3, 2014). While barge transportation can be an attractive alternative in some situations, its role is limited by transloading and terminal availability and capacity, the size of the barge tanker fleet, and lack of geographic proximity to production areas. In order to use barge transportation, shippers must get crude oil to barge terminals. Often this has been accomplished through reliance on rail.

⁵⁸ Association of American Railroads, *Just the Facts – Railroads Safely Move Hazardous Materials, Including Crude Oil* (July 2013).

It is unreasonable, however, to assume that a sudden and substantial increase in truck demand would not affect rates. The current tank truck fleet is fully occupied today hauling other hazardous commodities that require secure trailers with sufficient strength and safety features to provide safe highway transport. If the demand for these same trailers suddenly rises in order to satisfy substantial additional demand from crude oil producers, a shortage of hazardous materials tankers will arise quickly in this market. Rates for their services can be expected to soar. Such increases can be expected to lead to even greater increases in costs to shippers of crude oil and ethanol, but also to significant disruptions to the markets for other commodities currently carried by these tankers.

The direct effects of a shift toward an inherently much more costly mode, especially when combined with significant rate increases, can be expected to have a significant effect on costs to refiners and ultimately to the prices paid by consumers for gasoline and other petroleum products. The magnitude of these effects could be substantial, and that the increased burden on consumers could have measurably adverse effects on the national economy.

It is also unclear whether a modal shift of this magnitude to truck transportation is either operationally or economically feasible. We can assume that the current fleet is matched to the current demand for the commodities it transports. The Proposed Regulations would create a sudden surge in demand for these vehicles. Any rapid change in their production rate would take time to roll out. More importantly, however, it is unclear how fleet owners would respond to what is essentially a temporary surge in demand. Expanding the truck fleet capacity to meet this temporary surge could potentially lead to a situation in which motor carriers would be left with capital investments in trailers that are not fully depreciated, yet are non-competitive with the new rail cars, once the rail fleet is in compliance with the new requirements. Whether they would, in fact, be willing to make the necessary investments under such circumstances is unclear.

Trucking companies would also be required to recruit, screen and train a corresponding number of additional truck drivers to operate an increasing number of trucks. For the past three decades, however, driver retention and recruitment has historically been a significant challenge for the trucking industry.⁵⁹ This problem has become especially acute for drivers who qualify and are licensed for transport of hazardous materials.

The rapidly increasing demand for tank trucks, to replace the unusable tank cars, would also distort the truck and trailer manufacturing sectors.

3. Fate of the Affected Production

Even if it were the case that the trucking industry would be able to provide the requisite amount of service, it is not clear that crude oil and ethanol producers would be willing or able to pay for it. Faced with onerous costs of bringing product to market, shippers may

⁵⁹ Southern, R. Neil, James P. Rakowski, and Lynn R. Godwin. 1989. "Motor Carrier Road Driver Recruitment in a Time of Shortages." *Transportation Journal* Vol.28, No.4:pp 42-48. Mele, Jim. 1989. "Carriers Cope With Driver Shortage." *Fleet Owner* Vol.84, No.1:pp 104-11. Machalaba, Daniel. 1993. "Long Haul: Trucking Firms Find It Is a Struggle to Hire and Retain Drivers". *Wall Street Journal*, December 28, 1993, pg. 1.