

## Expert Advisory Committee on Crude Oil Safety in Albany County

May 28, 2015

Honorable Daniel P. McCoy  
County Executive  
Albany County  
Harold L. Joyce Albany County Office Building  
112 State Street  
Albany, NY 12207

Dear County Executive McCoy:

Enclosed please find the report of the Expert Advisory Committee on Crude Oil Safety Issues in Albany County. The report is part of our on-going efforts to identify steps that you can take and steps that can be taken by others to protect Albany County residents and its ecological resources from the harm associated with crude oil.

We commend your leadership on this critically important issue. There is no question that you have increased the health and safety of County residents.

The Committee is indebted to the assistance of many staff in Albany County government who helped us prepare the report, turned our research into comments you filed to state and federal regulatory agencies and worked to protect the public while we moved forward.

We are confident that together the actions you have already taken, the proposed measures you have advanced before the County Legislature and the additional steps outlined in this report will protect the health of County residents.

We look forward to continuing to assist you and your administration to fully protect the County and its residents from the risks posed by the massive amount of crude oil flowing through our borders.

Sincerely yours,



Peter M. Iwanowicz

Encl

cc: Chris Amato  
Phillip Landrigan, MD

## **Expert Advisory Committee on Crude Oil Safety Issues in Albany County**

On May 20, 2014, Albany County Executive Daniel P. McCoy appointed an Expert Advisory Committee to advise and report on a broad range of concerns relative to crude oil issues that were the subject of the County Executive's March 12, 2014 Executive Order. That order also directed a moratorium on the expansion of the processing of crude oil at the Port of Albany pending a public health investigation by the Albany County Health Department. Further, it called for a report on the transportation of crude oil through Albany County and the potential impact a large-scale disaster could have on the environment and the health, safety and lives of the people of Albany County. Pursuant to that directive, this report addresses the Committee's concerns regarding crude oil safety issues in Albany County including the request by Global Companies for a permit modification to allow for the heating of tar sands. This report also details the actions that the Committee recommends be taken at a national, state and local level regarding these issues.

### **Review and Recommendations for Federal Action**

Crude oil is increasingly being transported along railways from production fields in the mid-western United States and Canada to Eastern ports including Albany, New York for transfer to barges and ships to be transported to East Coast refineries. Nationally, the volume of crude oil transported by rail has increased to more than 830,000 carloads in 2014 compared to 9,500 carloads in 2008. As much as 25 percent of the highly volatile crude oil extracted from the Bakken formation of North Dakota is transported through New York State communities.

As has been well documented, crude oil from the Bakken shale deposits is more explosive and more corrosive than typical crude oils and heavy, sinking oils from tar sands formations have been found to be much more viscous than typical crude oils, making the protection of public safety and environmental health from these particular types of oils, as well as spill response and remediation, more difficult and more dangerous.

A recently revealed US Department of Transportation (USDOT) report predicts that potentially deadly oil train accidents are expected to occur an average of 10 times a year over the next 20 years potentially killing hundreds of people and costing billions in damages. The USDOT study noted, "If just one of the more severe accidents occurred in a highly-populated area, it could kill more than 200 people and cause roughly \$6 billion in damages."

The massive amounts of oil moving through Albany places residents at great risk, threatens sensitive infrastructure including public and private drinking water supplies, and exposes the natural environment to contamination. While the USDOT has taken steps at the

federal level in attempts to remedy the problems our communities are facing today, it has not gone far enough to secure the safety of our communities adjacent to railroads and their residents and environment.

## **Rail Car Standards**

- **The USDOT Should Exercise Its Emergency Authorities to Reduce Hazards Feared by Albany.**

The Enhanced Tank Car Standards and Operational Controls (NPRM) is part of the USDOT's response to the imminent hazard posed by crude by rail transport. Full implementation of the changes, particularly, the roll-out of safer tank cars, will not occur for several years. Authorized use of unsafe non jacketed DOT-111 tank cars for the most risky cargoes would not fully end until January 1, 2018. Additionally, two-way end-of-train (EOT) and electronically controlled pneumatic (ECP) braking systems would not be required until 2021 and 2023, respectively. Those deadlines are very likely to slip due to delays in implementing final rules, partly due to likely litigation. Meanwhile today's hazards will remain only partly abated, at best.

Any delay will have a disproportionate impact on the County of Albany due to the concentration of rail facilities in the County that are proximate to population centers and critical resources. Coupled with the enormous and increasing volume of crude oil transported in the County, Albany cannot wait until 2018 or even later to see an end to unsafe practices.

The Committee therefore asks that the USDOT immediately take additional steps to address those hazards that Albany County faces today. The USDOT has ample statutory authority and precedents to issue immediate orders that require rail carriers and shippers to meet enhanced safety requirements where necessary to address particular risks of harm. The comments below describe that authority and identify standards the Department should impose on rail carriers and shippers operating in the County of Albany.

- **New DOT-117 Tank Car Standards and Deadlines for their Implementation.**

In the May 2015 USDOT Final Rule, Option 2 was selected to become the standard for new tank cars. New tank cars produced after October 15, 2015 will be required to meet DOT Specification 117 design or performance criteria. The 117 specification calls for

9/16 inch steel, a thermal protection system, a redesigned bottom outlet to prevent accidental opening, and a minimum 11 gauge jacket among other upgrades.

Below is the timeline for the replacement of DOT-111s and 1232s by the 117. As evident through the adopted dates, some older tank cars will remain carrying PG II cargos on the rails for nearly another decade before being completely phased out, a timeline that must be shortened.

TABLE 21—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 (DOT-111) [Tanks for Use in HHFTs]	
Tank car type/service Retrofit deadline	
Non Jacketed DOT-111 tank cars in PG I service .....	(January 1, 2017 *) January 1, 2018.
Jacketed DOT-111 tank cars in PG I service .....	March 1, 2018.
Non-Jacketed CPC-1232 tank cars in PG I service .....	April 1, 2020.
Non Jacketed DOT-111 tank cars in PG II service .....	May 1, 2023.
Jacketed DOT-111 tank cars in PG II service .....	May 1, 2023.
Non-Jacketed CPC-1232 tank cars in PG II service .....	July 1, 2023.
Jacketed CPC-1232 tank cars in PG I and PG II service ** and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).....	May 1, 2025.
* The January 1, 2017 date would trigger a retrofit reporting requirement, and tank car owners of affected cars would have to report to DOT the number of tank cars that they own that have been retrofitted, and the number that have not yet been retrofitted.	
** We anticipate these will be spread out throughout the 120 months and the retrofits will take place during normal requalification and maintenance schedule, which will likely result in fleet being retrofit sooner.	

Christopher Hart, the acting Chairman of the US National Transportation Safety Board, in a blog post on February 23, 2015 called the 1232's a "marginal" improvement over the 111's and urged Federal regulators to act swiftly to impose new tank car standards that exceed those of the 1232's now in production. The 117, which do exceed the 1232's specifications, need to be phased in sooner to ensure the safety of communities' residents and environment that border railroads used for shipping crude oil.

- **The USDOT’s Ruling on High-Hazard Flammable Trains.**

The stated purposes of the NPRM are to lessen the frequency and consequences of train accidents involving trains transporting flammable liquids. The NPRM defines high-hazard flammable trains (HHFTs) as, “a continuous block of 20 or more tank cars or 35 or more cars dispersed through a train loaded with a flammable liquid.”

In urbanized areas of Albany with rail facilities and petroleum terminals, accidents involving smaller train sets are not significantly less hazardous than accidents involving larger sets. The USDOT’s ruling will incentivize carriers to create smaller train sets for short distance use in urban areas near terminals and dense populations, but despite proximity to greater populations, regardless of HTUA status, those would be free of the standards applicable to longer train sets.

In the final rule, the USDOT’s new standards fail to establish smaller train sets and leave the possibility for catastrophic damages caused by HHFTs.

- **Positive Train Control.**

In 2008 Congress directed the USDOT and rail carriers to implement Positive Train Control (PTC) systems by the end of 2015, and the Federal Railroad Administration issued implementing regulations in 2010. The objectives of PTC include prevention of accidents involving freight cars such as crude oil tank cars. There is some resistance from carriers to full implementation by 2015 due to expense and alleged ineffectiveness.

Governor Cuomo has taken the positive step of implementing PTC on the Metro-North and Long Island rail systems in New York City through an FRA approved loan of \$967.1 million to the Metropolitan Transportation Authority. By instituting PTC on New York railways, Governor Cuomo has set a standard that will hopefully be recognized by the FRA.

The Committee urges the Department to hold steadfast to the implementation of PTC by December 31, 2015 and resist any efforts to dilute or retard its implementation.

- **Reduced Speeds for Trains Carrying Class 3 Flammable Liquids Proximate to Densely Populated Urban Areas or Sensitive Resources.**

The NPRM established a 50 mph nationwide speed limit for HHFTs. It also prescribed a 40 mph speed limit for HHFTs containing any tank cars not meeting the enhanced standards. The options will apply the lower limit for such non-compliant HHFTs in all areas and in “high threat urban areas (HTUA);”

A high threat urban area (“HTUA”) means an area defined as such by the U.S. Department of Homeland Security for purposes of planning for terrorist and other major threats against chemical or industrial facilities in large urban areas. In New York State, only metropolitan New York City and Buffalo are HTUAs.

The Committee finds that the Department’s speed limit of 40 mph is applied too narrowly.

First, as shown already by recent accidents, tank cars meeting the enhanced CPC-1232 standards still can cause catastrophe. The USDOT should not tie speed limits to the car standards. Rather, it should set a nationwide speed limit for all trains carrying Class 3 flammables regardless of whether the train set meets the enhanced tank car standards, and regardless of whether the train set has fewer than 20 tank cars in a block or 35 tank cars overall.

Second, the USDOT was incorrect in not setting lower speed limits based on the vulnerability of proximate population, property and resources were an accident to occur. The City of Albany has a 2013 population that is just under 100K, but has substantial population density immediately adjacent to the rail operations of CP, CSX, Global, Buckeye and the Port of Albany. The Cities of Cohoes and Watervliet are smaller, but their downtowns, as well as those of other communities, are proximate to the CP rail line. The risks to these communities are not less just because their populations are smaller. In fact, due to the proximity of their populations to rail facilities, they are at much greater risk than many municipalities with larger populations.

The Committee recognizes that setting local speed limits in a national rule is complicated, and that the carriers avoid high speeds in urban areas. However, voluntary and unenforceable speed limits can be and often are violated, including in Albany. The final rule should have:

- set appropriate criteria,
- required carriers, after obtaining input from the local and state interested parties, to propose mile-by-mile speed limits meeting the criteria set by the Department,
- provided for the USDOT to review the limits, and
- required compliance thereafter with USDOT-approved limits.

## **Fuel Volatility**

- **Stabilization or Conditioning of Crude-by-Rail Prior to Interstate Shipment.**

The USDOT's efforts to address the imminent hazards of shipping crude by rail – assuring correct classification and better tank cars, etc. – are driven by the fact that much of the crude oil being shipped from the boom areas in North Dakota and elsewhere contains relatively high levels of volatile hydrocarbons, so-called natural gas liquids (NGLs). The volatility of NGLs in crude oil increases the risks of major fires in the event of a rail accident.

Many producers use stabilization or conditioning methods to strip out the NGLs before shipping the product, which is then less flammable. These practices stem partly from commercial considerations – the NGLs have economic value – and partly from pipeline companies' operating standards. However, stabilization or conditioning is not required for crude oil shipped by rail.

The May 2015 Final Rule states that, “Any specific regulatory changes related to treatment of crude oil would consider further research and be handled in a separate action” and unfortunately did not mandate stabilization at this time. The Final Rule also stated that USDOT will, “continue to work with various stakeholders to understand best practices for testing and classifying crude oil,” however there is no mention of any specific date for a rule in the future.

The USDOT has ample authority to set standards for transport of hazardous materials and, in particular, to address the volatility of crude oil shipped by rail. The County recognizes that setting a volatility standard for crude by rail raises complex issues of capacity and logistics, but the USDOT's responsibilities to assure safe transport of hazardous materials mean it is obligated to take on these issues. The producers and the producing states have no incentives to make the investments to ship a safer product out-of-state. Standards for stabilization or conditioning must be established.

## **Improve Information Flow**

- **Carriers of Class 3 Flammables to Provide More Information to Local Responders.**

The NPRM requires carriers to provide advance notice to SERC of any train sets carrying more than 1,000,000 gallons of Bakken crude oil. The NPRM also requires that, “a rail carrier must identify a point of contact for routing issues that may arise involving the movement of covered materials and provide the contact information...to state and/or

regional fusion centers and state, local, and tribal officials.” These points are wholly inadequate.

First, it is local responders who most need the information. In New York as in most states, the SERC is a coordinating and planning body, not a responder. When an incident occurs in Albany, it is the County and its municipalities who must respond. Local responders must possess information about materials pertaining to a crash, such as the type and amount hazardous materials being transported through the county. Notice to the SERC is inefficient at best and likely useless. The notice should be direct.

Second, once any system of advance notice is established, it should apply to all trains carrying Class 3 flammables. The USDOT should not create incentives for carriers to avoid requirements by segmenting cargo into smaller train sets. In any event, the 1,000,000 gallon threshold is arbitrary. Much lower volumes can still have catastrophic results, especially in Albany.

Third, local responders need additional information that only the carriers possess. For example, rail lines often have non-public rights of way for access to the tracks for maintenance. Carriers also typically maintain stores of emergency response equipment and supplies, and contracts with third emergency responders. The USDOT was incorrect in not requiring carriers to provide local responders with information about all such facilities, and to update that information regularly.

Fourth, beyond notifying SERC, there is no requirement to notify any other governing body. Rather, it is only required that the railroad provide appropriate contact information to state, local and tribal officials in order to request information related to the routing of hazardous materials. This implies that it falls upon the municipality to contact the railroad in order to inquire about the schedule of trains and their hazardous cargo. As the municipality has no knowledge beyond what the railroad tells them, they would need to make frequent contact to obtain daily schedules and any unscheduled changes which could occur at any time without the municipality being able to predict when to call. It would make more sense to reverse process to mandate the railroad contact the municipality with scheduling and routing updates of hazardous materials.

Finally, the NPRM requires the SERC notice only for Bakken crude; however Bakken crude is not the only risky cargo. Rail transit of crude oil from Canadian tar sands is also growing exponentially. Indeed, the Global Petroleum terminal in Albany has proposed facility modifications specifically intended to facilitate handling of Canadian tar sands crude. The Canadian tar sands crude generally is less volatile than the Bakken crude, but is more difficult to clean up, particularly if released to water resources such as the Hudson River or drinking water resources. All crude by rail and other Class 3 flammables should require notice.



## **Reduce Financial Risk**

- **Requirement of Financial Assurance.**

The NPRM assesses various potential standards under a variety of criteria, including cost to carriers and shippers, and risk reduction. The County observes that even a few incidents easily could cause damages with costs far exceeding the industry's costs of meeting strict standards. Meanwhile the boom in crude oil production and transport by rail is generating enormous revenues and profits for some even as fuel costs to consumers have remained stable. The carriers, shippers and consumers can afford safety. The neighbors of crude-by-rail operations should not bear the heavy risks of unsafe transport while the rest of the country benefits.

The carrier involved in the Lac-Mégantic tragedy is now defunct and incapable of addressing its consequences. The principal carriers and shippers active in Albany County are more substantial, but still the County has no assurance under current regulations that the persons responsible for an incident involving crude-by-rail have the financial capacity to reimburse the County and its municipalities for the costs of responding to an incident and to handle whatever other damages and response actions arise.

The USDOT should evaluate financial assurance mechanisms, e.g.:

- insurance
- mandatory contracts with third party responders
- back-up contracts to achieve redundancy
- the imposition of an oil train safety levy on crude oil shipments to fund a compensation fund to cover uninsured losses as well as other safety related grants and expenses. The compensation fund should grow to no more than \$2 billion.

The USDOT should determine which of these or similar mechanisms are necessary and appropriate, and then require carriers and shippers of Class 3 flammables to provide them.

- **Require that Financial Assistance be Given to the Municipalities Which Host Railway Tracks.**

The final rule failed to establish the requirement for any financial assistance to the communities which host railroads. A yearly grant funded by the oil train safety levy (compensation fund) between the cities of Albany, Watervliet and Cohoes, as well as other smaller towns that are all subject to be impacted by any sort of train incident and must have the means to protect their citizens and property. These grants would be used for the purchase of equipment, training, creation of training facilities and/or any other measures deemed appropriate by the county to prepare its fire fighters to combat an emergency arising from a derailment or any issue related to a train car incident.

- **Requirement for Carriers of Class 3 Flammables to Provide a Communication Plan to Disseminate Information to the Public.**

Carriers of class 3 flammables would be required to create a formal communications plan to address fundamental concerns in neighborhoods throughout the county affected by oil transport. This would include a series of FAQ's that every resident of the county should know and similar announcements. This would require all stakeholders to keep the message comprehensible to the public and consistent with research/testing.

The creation of an information channel in both traditional and electronic media is vital to inform residents of the best practices in the event of an incident either adjacent to the port of Albany or any related facility in the county. This channel could leverage a website, newsletter and/or telephone hotline as vehicles to distribute up to date information on rail transport accessible to all concerned residents.

Communication is vital to assist first responders with members of the county who are in the Special Needs registry for the elderly, mobility impaired or families requiring special assistance in complying with any direction from emergency response personnel. In addition to those with special needs, carriers need to provide information to educational institutions and non-for-profits who may be able to assist affected neighborhoods with best practices and additional information to meet unanticipated gaps in services.

- **The Department Should Evaluate Additional Precautions to Secure Safety in Densely Urbanized Areas and Neighborhoods.**

First, the department should evaluate possible regulation of combination of oil and other combustible materials being transported on the same train to decrease likelihood of catastrophe in case of derailment.

Second, there should also be an evaluation of the development of separate routing rules for operations near residential areas. Railroad companies should be required to evaluate safest routes for transportation of oil, in regards to life, property and environmental impact. This route planning should include a risk analysis funded by rail road companies. This analysis should ensure that any track used in the cities of Albany County is inspected for wear and damage at least twice weekly. It will also look at safeguards for rail operators and their procedures.

- **The USDOT Should Adopt a Shorter Schedule for Implementation.**

The NPRM proposes a schedule for new rail cars to meet the new standards and for existing cars to be retrofitted, if they will be used in HHRTs. The schedule is based principally on the physical capacity of the rail car industry to produce the new cars and retrofit the old.

Although major capital projects cannot be accomplished overnight, the USDOT should be very ambitious in setting the pace of these improvements. The industry will respond if its customers have no choice.

## **Review and Recommendations for State Action**

The state has made headway in correcting some of the shortcomings of the regulations put forth by USDOT. Since the five agency report Transporting Crude Oil in New York State (EO 125) was submitted in April of 2014, there have been additional recommendations to improve railroad safety. These recommendations include the creation of five additional railroad inspector positions, aggressive inspection blitzes resulting in the recent identification of multiple critical and non-critical defects in tanks cars and railroads, and strategic and tactical information disseminated from the Office of Fire Prevention to respective government agencies across the state.

The NYDEC has likewise taken the prudent and important step of rescinding the previously issued Negative Declaration in regard to Global's permit application. The NYDEC took into account the over 19,000 public comments on the environmental impact of these modifications, primarily to heat Canadian tar sands crude oil. The Notice of Intent addressed several points that were recommended by the Albany County Department of Health, including the potential emissions of sulfur compounds and the overall environmental impact on the Ezra Prentice homes immediately adjacent to the Port of Albany. The Committee commends the State for taking these steps and hopes that it is the intent of the state to perform a full Environmental Impact Statement to assess the millions of gallons of crude that pass through Albany every day.

It is the desire of the Committee that this rescission will ultimately lead to a full EIS that will include an evaluation of not only what is taking place presently at Global's facility and what Global's application proposes regarding the heating of tar sands, but also the impact that the increased traffic of oil trains has brought to the community and environment of Albany and the lifecycle climate change impacts of tar sands oil that is proposed to be moved through the Port of Albany.

### **Preparing Communities and First Response**

- **NYS should increase the State's oil spill fund from \$20 million closer to \$2 billion or legislation should be enacted to ensure that companies moving or storing crude oil have financial surety to cover cost of spills, clean up and other losses.**

NYS' oil spill cleanup fund is vastly underfunded and should there be a catastrophe similar to those that occurred in Canada and West Virginia, NYS' cleanup fund would not be sufficient to deal with the massive clean-up costs that were not covered by private insurance.

The County recognizes the recent increase from \$25 to \$40 million in the state's oil spill fund, however this amount is still too low to cover the costs associated with a major oil spill.

- **The Committee supports the resolution of the New York State Association of Counties that calls for maintaining the oil spill fund within the auspices of the New York State Comptroller ([http://nysac.org/legislative-action/LCResos15\\_IGA\\_Reso4.php](http://nysac.org/legislative-action/LCResos15_IGA_Reso4.php))**

### **A Full Environmental Review and Assessment of Risk**

- **The NYDEC Should Require a Full EIS.**

On November 21, 2013 the Department issued a determination (the "Negative Declaration") that approval of Global's application would not involve any adverse significant impacts on the environment and no EIS was needed. As of May 21, 2015 that decision has been rescinded on the basis of several considerations.

Under SEQR and its implementing regulations promulgated by the Department, the Department is the lead agency responsible for considering Global's application for a permit modification. Before determining whether to approve the application, SEQR requires the Department to determine whether that action may have a significant impact on the environment and, if it may have a significant adverse impact, the Department must prepare or request an EIS. *6 NYCRR 617.1.*

Even if an EIS was not mandatory (as it is), the Department has the discretion to require an EIS before proceeding to authorize Global to modify its facilities to accommodate tar sands crude. While the Department has rescinded the Negative Declaration it has not issued an EIS, rather they offered Global the opportunity to respond to the points they addressed in the Notice of Intent/Incomplete Application. The Department can and should require an EIS.

Global's preference is to obtain the Department's approval without having to prepare an EIS. The Department's preference, however, should run towards a full assessment of the environmental consequences of an approval including climate change impacts.

- **While the NYDEC has Recognized the Ezra Prentice Homes as an Environmental Justice Community for the Purposes of Global’s Permit Application, it must follow the requirements of its EJ policy and fully engage the community.**

The Ezra Prentice Homes are a residential community adjacent to the Port of Albany, and likewise affected by the actions of Global and Buckeye. This community is predominantly populated by minority and low income families with higher than average levels of respiratory related illnesses compared to the City of Albany as a whole. The Ezra Prentice Homes are likewise designated as an Environmental Justice Community (see appendix A) which requires certain steps be followed in a permitting application. In the NYDEC permit modification process however, there was no EIS, Clean Air Act review, public hearing, or notice to the community.

The Department’s Notice of Intent to Rescind and Notice of Incomplete Application make specific reference to the Ezra Prentice Homes saying that there is, “potential for these proposed changes to have significant adverse impacts on the environment.” This recognition to the importance of the Ezra Prentice Homes’ proximity to the Port of Albany should not only be a point for the recession of the negative declaration, but it should also be the reasoning for a full Environmental Impact Survey.

It is the recommendation of the Committee that upon the basis of the potential harm to the Ezra Prentice Homes, an Environmental Justice Community, that the department perform a full EIS along with the other requirements pertaining to the protection of this community. The DEC must follow and implement the requirements of its Environmental Justice Policy which includes full engagement of the community.

- **In Light of the Failure of the Federal DOT to Use Emergency Powers on Railcar Safety and the Lengthy Phase Out Period, the NYDEC Commissioner Should Re-Consider His Earlier Determination and Exercise his Authority under Article 71 of the ECL to Halt the Receipt and Storage of Petroleum Products at the Port of Albany in DOT-111 and CPC-1232 Rail Cars.**
- **The EIS Should Use a Projected Slate of Production rather than a Conservative Estimate from a Previous Year.**

In the initial permit application provided by Global, they did not directly model their current slate of products, including the 1.8 billion gallons of crude oil that they are permitted for, in the storage tanks but based the permit calculations on a variation of products modeled in their 2012 permit PTE. This substitution was based on the premise

that the current slate of products has lower total VOCs than the 2012 PTE; therefore using the 2012 PTE was a conservative estimate for total VOCs.

Global needs to clearly substantiate this substitution in the permit application to include all the data needed and assumptions made to complete the necessary calculations.

- **The EIS Should Have Specific Explanations of the Heating Process.**

Global has been repeatedly vague about if they would process the heavier crude oil (i.e., Tar Sands oil) and how much they would need to process if permitted to heat product at their Albany facility. Clearly, logic would indicate that if permitted to heat product the intention would be to proceed with reviewing these heavier varieties of crude oil

In the permit process Global should be required to model the worst case scenario for emissions based on the maximum amount of the heavier crude oil they could potentially handle. This would be based on the number of train cars they could heat per day, how much heated product they can hold in the storage tanks and how many months of the year would require heating of product for offloading, storage and transport. In particular, Global should clearly document the worst case scenario for benzene if the maximum amount of heated product is processed.

- **The NYDEC Should Require Clarification on Global's Tanks.**

In the permit application when calculating the emissions from the storage tanks Global indicated that all the tanks are white. However, some of the storage tanks are blue, which would increase the emissions calculations somewhat. There is no factor for blue tanks in the TANKS program. The closest alternative is green. We have been told that Global intends to paint the storage tanks white, so using white in the calculations is valid. There should be some language in the permit holding Global to this commitment and verifying that the change is completed.

- **The NYDEC Should Require Actual Emissions Data from Facilities Similar to Global's Planned Operations.**

The EPA has requested actual emissions data from operational facilities which are employing similar heated petroleum products activities. To our knowledge this information has not been made available by Global or the DEC. This type of information

would be invaluable to better understand the potential public health impacts related to the proposal changes at the Global facility and to educate the community.

If this information is available it needs to be provided in the permit application. If this information is truly not available this would indicate that these types of operations are not yet well characterized. This lack of information and clarity should compel the DEC in the permit process to require Global to provide the necessary level of evaluation to adequately characterize the potential impacts related to heating petroleum products and processing these products. In addition, if Global is permitted to process heavier crude oils at their facility, it may be prudent to include some form of ongoing air monitoring to access any changes in emissions and air quality from the baseline.

- **The NYDEC Should Require Global to Address Noise in its Operations.**

Global conducted an inadequate noise analysis in connection with the 2012 permit modification. Therefore, noise related to overall train activity should be addressed as part of the overall project. Information on how noise was characterized in the prior permit modification should be made available.

- **The EIS Should Address Cumulative Impacts.**

Global's application, if approved, would allow Global to handle large quantities of a new category of crude oil in different ways than in the past, which is sufficient to warrant an EIS. The scope of that EIS, however, must not focus narrowly on the proposed change in air emissions or the increase in handling tar sands crude. Rather, it should broadly assess the cumulative impacts of the recent growth in crude-by-rail operations in Albany County.

The Department's own mandates under SEQR explain the applicable standards. NYDEC's SEQR Handbook (3<sup>rd</sup> Edition – 2010) instructs lead agencies to assess cumulative impacts if proposed or likely actions foreseeably may combine simultaneously or sequentially in a way that combined impacts may be significant to the same resources. Cumulative impacts do not have to be associated with one applicant, and include indirect or secondary impacts, long term impacts and synergistic effects. The impacts of unrelated, incremental actions become significant where the impacts are to a specific resource. SEQR Handbook, pp. 83-85.

The particular changes proposed by Global to its air Title V permit may be incremental. These changes are preceded and foreseeably followed, however, by actions by Global and



others that cumulatively may have very significant, adverse impacts on the Hudson River and the people and built environment of Albany County. Global's application presents the archetypical circumstance where cumulative impacts should be assessed in an EIS before the Department takes action on the application.

Global's application provides the opportunity and duty for the Department to require a broad assessment of the impacts of turning Albany into a global hub for crude oil, now and before the Department approves more unexamined growth.

- **The EIS is Necessary Even if Global's Authorized Air Emissions and Throughput Would Not Increase.**

Global and others emphasize that this application does not request an increase in authorized throughput of petroleum products or emissions of air pollutants. Approval of the application, however, involves impacts beyond those directly authorized by the Department. Actual emissions may increase even if the cap on emissions does not. Spills or fires at Global or the Port or from the trains making deliveries to Global may not be authorized, but they are foreseeable consequences associated with any petroleum terminals. The Department's approval of the application indirectly would authorize Global to handle a type of crude oil having very different characteristics than Global has handled until now. It is well within the Department's authority and duties under SEQRA to evaluate the full set of impacts of that change in Global's overall operations.

In addition, petroleum terminals may cause noisome odors and emissions with significant impacts on the quality of life or health of neighbors even while in compliance with air emission permits. The County urges the Department to consider the recent concerns about the new oil-by-rail terminal built by Irving Oil in New Brunswick. The Provincial authorities permitted the terminal in reliance on Irving's statements that new odors and emissions would not increase, but once in operation, the overpowering odors and increased VOCs dramatically impacted the nearby community.<sup>1</sup> Those foreseeable impacts, not just the directly authorized emissions, are among those the Department must consider under SEQRA.

Similarly, the Department's round of ambient air testing in South Albany does not erase the need for an EIS. That testing was too limited in duration and scope. An EIS that considers the foreseeable impacts of the continuing crude-by-rail boom in Albany is the only sound basis for evaluating the impacts of this particular, incremental change.

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<sup>1</sup> Reuters Exclusive: Air quality problems dog Irving's New Brunswick oil-by-rail terminal, August 28, 2014, at <http://www.reuters.com/article/2014/08/28/us-oil-railway-irving-idUSKBN0GS29620140828>.

- **The EIS Must Address Public Safety and Mitigation of Risk.**

The crude-by-rail boom indisputably has increased risks to the population, property and natural resources of the U.S. and the State of New York, as recognized by the USDOT, the Governor, and others as described earlier. Some of the safety rules are set by federal agencies, which also control what rail tank cars are permitted to carry crude oil and other flammables.

It is the Department, however, which has the authority to determine whether to approve Global's pending application and thereby authorize the handling of tar sands crude in Albany County.

It is the Department which has the authority to make that determination with or without an EIS under SEQR.

It is the Department which has the authority to make that determination whether the new crude-by-rail activities at Global and on the rail lines are accompanied by adequate protections against accidents, spills and adequate response capacities.

Government's most basic job is to protect public health and safety. The Department should not make a decision on Global's application prior to reviewing an EIS that directly addresses the public safety issues triggered by Global's planned operations and by the related current and foreseeable growth in the amount of crude by rail coursing through Albany County.

The Department should not approve the requested modification until it determines, based on an EIS, that the change in Global's operations would not pose unacceptable risks to public safety and that appropriate mitigation measures are in place to reduce those risks.

It is clear that the Department recognizes the dangers posed by the expansion of increased traffic and business at the Port of Albany through the recent instillation of a permanent air pollution sensor in the South End neighborhood of Albany. The data collected at this monitor will help the residents in the South End neighborhood of Albany better understand the levels of air toxics measured in the air, but it still falls short of the comprehensive long-term review of pollutants like benzene in the neighborhoods adjacent to the Port of Albany. In August, the DEC released results of limited sampling for benzene that indicated levels were no worse than other urban areas of the state, but exceeded the benzene safety levels. Citizens and community leaders have called for comprehensive air testing for benzene.

As part of determining the health and safety of big oils plans to turn Albany into a global crude oil hub, we recommend that the state provide \$2 million to support a

comprehensive air pollution monitoring system for the port of Albany and other sensitive locations in the County. A small fraction of the bank settlement funds could be dedicated for this purpose.

### **Recommendations for Local Action**

- **The County Should Maintain the Existing Moratorium on the Heating of Crude Oil Until a Complement Environmental Review is Conducted Under SEQRA and Risks that have been Identified are Mitigated.**
- **The County Legislature Should Implement Legislation to Hold Companies Responsible for an Incident not Reported in a Specific Time.**

State law, Navigation Law Article 12, requires that “the notification of a discharge must be immediate, but in no case later than two hours after discharge.” Notification is made to the DEC unless the quantity is known to be less than 5 gallons, the spill is contained and under control of the spiller, the spill has not and will not reach the State’s water or any land (spill occurred on a surface such as concrete and is contained), or the spill is cleaned up within two hours of discovery. Failure to notify the DEC results in a penalty of \$25,000 per day. Additional laws and regulations, such as Chemical Bulk Storage Regulations (6 NYCRR Part 595, 596, 597), Article 17 of the Environmental Conservation Law, as well the Federal Clean Water Act likewise require notification to the proper authorities.

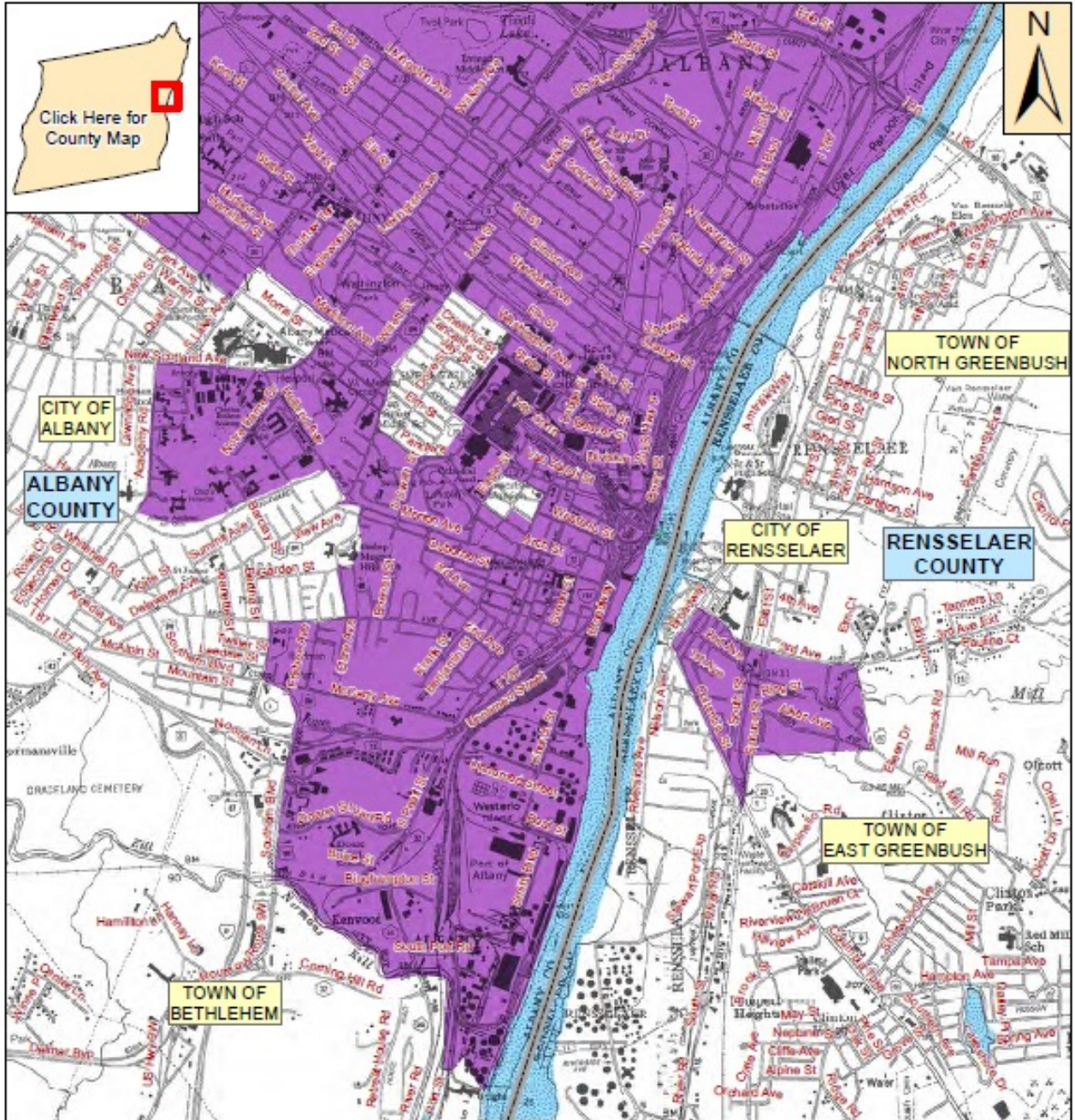
The laws of the state do not go far enough to ensure reporting of an oil spill. A proper response to ensure the protection to citizens of the county as well as to the environment requires immediate action. In past occurrences, notifications have not been made for the railroad company was held responsible, not an individual. Legislation needs to be passed to hold individuals accountable with criminal charges and corresponding penalties.

- **The County Should Request that Railroad Operators in the County (CP, CSX and others) Allow for Appropriate County Staff and the Sheriff’s Office to Ride the Rails to Record the Potential Areas of Environmental Concern and Communities that Could be At-Risk Anywhere Along the Rail Lines in the County.**

The Committee concurs with a recommendation made by Sheriff Apple that access of a rail company vehicle would be ideal. To be clear, the point of the access is not to examine the conditions of the rail facilities, rather it is to examine, in person, areas where the environment could be significantly impacted.

Appendix A

Potential Environmental Justice Areas in the City of Albany  
(South detail), Albany County, New York



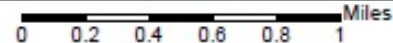
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Neither EPA nor NYSDEC guarantees the accuracy, completeness, or timeliness of the information shown and shall not be liable for any loss or injury resulting from reliance.

Data Source for Potential Environmental Justice Areas:  
U.S. Census Bureau, 2000 U.S. Census

Legend

- Potential EJ Area
- County Boundary
- Waterbodies



SCALE: 1:30,000

For questions about this map contact:  
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