



**Rob Benedict**  
Vice President,  
Petrochemicals &  
Midstream

**American  
Fuel & Petrochemical  
Manufacturers**

1800 M Street, NW  
Suite 900 North  
Washington, DC  
20036

March 29, 2023

The Honorable Maria Cantwell  
Chair, Committee on Commerce, Science, & Transportation  
United States Senate, Washington, DC 20510

202.457.0480 office  
202.457.0486 fax  
afpm.org

The Honorable Ted Cruz  
Ranking Member, Committee on Commerce, Science, & Transportation  
United States Senate, Washington, DC 20510

## **RE: Improving Rail Safety in Response to the East Palestine Derailment**

Dear Chair Cantwell and Ranking Member Cruz:

The derailment of a Norfolk Southern freight rail train on February 3<sup>rd</sup>, 2023, was and continues to be, devastating to the community of East Palestine, Ohio. This derailment has understandably raised questions and concerns about rail safety. This tragic derailment has rightly led to bipartisan calls to address the root causes and contributing factors that led to this accident to ensure no community faces such a preventable disaster again.

American Fuel & Petrochemical Manufacturers (AFPM) is a trade association representing the United States refining, petrochemical and midstream energy infrastructure industries. AFPM members make the fuels and petrochemicals that make modern life possible and keep America moving. To produce these essential goods and bring them to market, AFPM members depend on safe and efficient rail transportation to move their feedstocks and products to and from refineries and petrochemical facilities. More than two and half million carloads of fuel and petrochemical feedstocks and products — including crude oil, natural gas liquids, refined products, petrochemicals and plastics — move by rail every year. AFPM members prioritize the safety of our people, communities and products above everything else, and that includes the safety of our products in transit. As freight rail shippers, we have made significant investments to support and improve the safety and efficiency of the rail transportation system.<sup>1</sup>

Rail safety is a shared responsibility that includes railroads, rail shippers, emergency responders and the regulatory agencies responsible for oversight. The primary goal of rail safety policy is to reduce or eliminate the risk of a derailment from occurring in the first place. In the absence of preventing a derailment, effective rail safety policies should also aim to mitigate the consequences of a derailment and aid in the emergency response for a derailment.

AFPM appreciates the time and attention your Committee is devoting to the issue of rail safety in the wake of the East Palestine derailment. We share the Committee's goals of advancing transportation safety and protecting human health and the environment. While AFPM supports

---

<sup>1</sup> Read more about AFPM's commitment to rail safety [HERE](#).



the legislative intent of the *Railway Safety Act of 2023* and other similar proposals that seek to improve rail safety, it is critical that Congress be guided by facts and data when developing legislation that can impact a wide range of stakeholders and consumers alike. The best, most effective rail safety policy to protect families, communities and the environment will require a solid grounding in facts and data. Thus, in advancing additional rail safety policies, Congress should focus on the specific causes and contributing factors of the East Palestine, Ohio, derailment and other rail safety events rather than advancing unrelated measures that could end up stifling rail transportation and leaving root causes unaddressed.

AFPM believes it is important to let the National Transportation Safety Board (NTSB) complete its investigation before rushing to judgement and implementing policies that may not effectively address the causes and contributing factors for this derailment and that could hamper the rail network. While NTSB is not expected to release its' final report on the incident for many months, NTSB's preliminary reporting should be viewed as an initial policy roadmap to improve rail safety.<sup>2</sup>

AFPM believes the following policies and principles, would most effectively improve rail safety and begin to address the specific failure points that led to the catastrophic derailment in East Palestine.

### **Increasing and Improving the Use of Wayside Detection to Prevent Derailments**

Wayside detectors are a valuable diagnostic tool for the rail industry. These detectors collect real-time information on the health of passing rail cars and transmit the data back to railroad personnel who can use this information to identify potential rail safety issues and intervene to mitigate them before they escalate to the point where derailment or other incidents could occur.

Currently, the frequency and placements of wayside detectors is not regulated by the United States Department of Transportation (DOT). In addition, there are no official protocols governing when certain wayside detector readings should require specific action from a train crew—such as additional inspections, reductions in train speed or even full emergency stops to visually inspect cars. The requirements and thresholds for when a railroad dispatch center would notify the rail crew operating a train of a safety alert, are set by the individual railroads and vary across the industry. In the absence of any uniform DOT standards, this is left to the discretion of each railroad's internal policies.

The NTSB has already indicated that wayside detectors are a primary focus of their preliminary derailment investigation. Installing more wayside detectors across freight rail routes that frequently transport hazardous materials would improve the quality and frequency of real-time data transmissions and could also enhance safety warning systems by helping to identify potential problems earlier and at more regular intervals, enabling more immediate response measures, and hopefully the prevention of rail incidents.

---

<sup>2</sup> See "[Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires](#)" Preliminary Report RRD23MR005, issued February 23, 2023.



AFPM believes more wayside detectors, and clear protocols for how wayside readings ought to be responded to, would enhance safety warning systems, and help prevent incidents from occurring. AFPM supports establishing requirements for the installation, maintenance, and placement of wayside defect detectors and guidance from DOT over how railroads must respond to specific wayside detector readings and communicate that information to railroad operators.

### **Providing Emergency Responders with Resources to Effectively Respond to Derailments**

It is critical that emergency responders have the training, resources, and information, they need to respond to train derailments, particularly those involving hazardous materials. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) implements a Hazardous Materials Grant Program that offers six funding streams aimed at improving emergency response to hazardous materials incidents. These grant programs are funded by hazardous material registration fees paid by both rail shippers and railroads. Although the Infrastructure Investment and Jobs Act (P.L.117-58) increased the authorized level of the program to \$46.8 million, the current fee structure raises only approximately \$23.6 million. AFPM supports efforts to fully fund these programs, including provisions to increase railroads' commitments to this program as detailed in S.576 – the *Railway Safety Act of 2023*.

First responders should have the real-time emergency response information they need to respond to any rail incident both quickly and safely. Congress and NTSB agree on this point. The *Fixing America's Surface Transportation Act of 2015* (FAST Act (P.L.114-94)) contained a provision that required DOT to issue a rulemaking to ensure the availability of robust real-time emergency response information.<sup>3</sup> NTSB has issued DOT a safety recommendation for DOT to require “that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.”<sup>4</sup> DOT started this regulatory process in 2017 with an advanced notice of proposed rulemaking, but there has been no follow through in the form of an actual proposal despite the congressional mandate.<sup>5</sup>

AFPM supports the completion of this DOT rulemaking process but urges careful consideration of changes that would vastly and indiscriminately expand the scope of information reporting. Vastly increasing proactive notifications for all hazardous material shipments by rail could only serve to overload and burden emergency responders rather than support emergency response. In addition, unfiltered broadcasting of train manifest information could compromise the security of hazardous materials rail shipments.

---

<sup>33</sup> The FAST Act includes the *Hazardous Materials Transportation Safety Improvement Act of 2015* (sections 7001-7311), which instructs the US DOT to issue regulations that would require Class I railroads to generate accurate, real-time, and electronic train consist information and provide that information to first responders, emergency response officials, and law enforcement personnel that are involved in the response of an accident involving the rail transportation of hazardous materials. (See [Pub. L. 114-94](#).)

<sup>4</sup> See [NTSB Safety Recommendation R-07-004 and -005](#).

<sup>5</sup> See 82 Fed. Reg. 6451, Advanced Notice of Proposed Rulemaking, “[Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information by Rail](#)” published January 19, 2017.



## Improving Pressure Reliefs Valves to Mitigate the Impacts of Derailments

Expediting the current phase out of the tank car fleet, as the *Railway Safety Act of 2023* proposes, would not have prevented the East Palestine derailment. This policy change would pose significant burdens on shippers and consumers and threaten refiners, petrochemical manufacturers and ultimately consumers. While railroads are quick to point to tank car specifications as their preferred risk reduction method, it is clear derailment prevention would have a greater impact on improving rail safety and should be the priority.

AFPM members prioritize the safety of our people, communities, and products above everything else, and that includes the safety of our products in transit. As rail shippers, we control the tank cars we own and lease up to the point when we offer the railcars into transportation and the railroad assumes control. AFPM members' tank cars are highly regulated and subject to extensive inspection requirements. We depend on the railroads to operate trains safely, maintain tracks and conduct pre-trip inspections of their trains and rail cars loaded onto the tracks.

AFPM members and other shippers voluntarily began the transition to new state of the art "DOT-117" tank cars well before it was required and will continue to transition our tank car fleets in accordance with DOT's tiered schedule. The DOT schedule is risk-based, and safety driven and was informed by extensive analyses, including consideration of tank car shop capacity. In the FAST Act, Congress considered all stakeholder input and data analysis and updated and confirmed the categories and schedule for DOT's risk-based phase out of rail cars. Further, the Bureau of Transportation Statistics annually reports on the progress of the fleet upgrade and tank car shop capacity.<sup>6</sup> To date, shippers have replaced nearly 100,000 tank cars with new or retrofitted cars.<sup>7</sup>

Proposals that expedite the DOT schedule do not adequately consider market realities of tank car shop capacity and supply chain constraints and do not address the root causes associated with the East Palestine derailment. AFPM members are reporting more than a one-year wait for new car orders and retrofits due to constraints in rail shop capacity. Expediting the timeline without assurance of shop capacity could result in a deficit of tank cars for Class 3 Packaging Groups II and III materials moved by rail such as gasoline, diesel, jet fuel, naphtha, methanol, petroleum lubes, heating oil, xylene, styrene, petroleum distillates, octanes, etc. A rail car shortage brought about by accelerated, unachievable tank car phase out schedules could severely impact the operations of refiners and petrochemical manufacturers and potentially contribute to an increase in the price of fuels and other related goods that consumers and our economy need. A premature phase out could also shift shipments of these materials from rail to highway transportation, further straining a market already short on truck drivers and move hazardous materials to a transportation mode with a higher statistical probability of incidents resulting in release.

---

<sup>6</sup> See US DOT, Bureau of Transportation Statistics, [Fleet Composition of Rail Tank Cars Carrying Class 3 Flammable Liquids: 2022 Report](#) published September 29, 2022.

<sup>7</sup> These investments by rail shippers have resulted in significant rail safety improvements. Since 2013 the U.S. flammable liquid fleet has realized a 74% reduction in Conditional Probability of Release, a common measure of tank car puncture resistance, for crude oil, and a 60% reduction for ethanol. [Tank Car Resource Center - Progress](#)



Alternatively, a more targeted and risk-based approach to improve tank car safety would address the valve housings that both PHMSA, through a safety advisory, and NTSB, in their March 2, 2023, Investigative Update, identified.<sup>8</sup> While it is important for NTSB to conclude their investigation into the East Palestine derailment prior to jumping to any conclusions about what caused the incident, the NTSB's March 2, 2023, Investigative Update indicated that the aluminum covers over tank car pressure valves melted or were consumed during the fire after the East Palestine derailment and that melted aluminum was observed around the valves inside the protective housing. Following the NTSB's Investigative Update, PHMSA safety advisory encouraged all hazardous materials tank car owners and offerors to survey their fleets for any tank cars currently equipped with aluminum protective housings and to consider replacing this equipment with carbon steel housings. AFPM supports making this effort mandatory.

### **Increasing Competition to Enhance Overall Rail Safety**

It remains clear that more rail competition would enhance safety, as shippers would be empowered with options to switch freight rail carriers if they face persistent safety and service concerns from their current freight rail providers. Rail shippers count on the railroads to operate trains, maintain safe tracks, conduct pre-shipment inspections, and deliver essential materials on time and safely. AFPM members continue to be extremely vocal and critical of the precision scheduled railroading (PSR) operating model that is widely used by railroads. PSR cost-cutting and Class 1 consolidation have compromised rail service, led to significant reductions in the rail workforce, drops in the frequency of service, systemic delays, condensed training schedules, and the deployment of much longer trains. When developing future rail safety initiatives, we urge policymakers must review and determine if PSR-related cuts to employment levels, operational overhead and operational practices could potentially have safety impacts.

Almost 80 percent of the nation's shippers, including most AFPM members, are captive to just one railroad. They essentially have no ability to shop for better service. Captive shippers cannot choose another railroad if they do not like the railroad's operating practices. Reciprocal switching would bolster competition and allow shippers to negotiate fair terms in indemnity, liability, and insurance; including terms associated with safely shipping cargos. When there is no choice in rail carrier it becomes a "take it or leave it" proposition with no room for shippers to push for better safety practices in relation to shipping cargos. AFPM supports consideration and review of how PSR has impacted rail safety.

### **Conclusion**

AFPM thanks the Committee for its time and consideration of all stakeholder viewpoints on this important effort to improve rail safety. AFPM emphasizes the need for maintaining a safe and efficient rail network for the energy and petrochemical industries and the U.S. economy. AFPM shares Congress's desire to prevent an event like what happened in East Palestine from ever

---

<sup>8</sup> See US DOT, PHMSA "[Safety Advisory Notice for Tank Cars Equipped with Aluminum Manway Protective Housing Covers](#)" published March 2, 2023 and [NTSB Investigative Update](#) published March 2, 2023.



happening again. We urge Congress, and this Committee to be guided by the facts and data and pursue policies that prioritize eliminating derailments. In the absence of preventing a derailment altogether, effective rail safety policies should also aim to mitigate the consequences of a derailment and aid in the emergency response.

AFPM and our members appreciate your consideration of our perspective and priorities to bolster rail safety.

Sincerely,

Rob Benedict  
Vice President, Petrochemicals & Midstream  
American Fuel & Petrochemical Manufacturers