



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

August 7, 2019

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

The Honorable Howard "Skip" Elliott
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Administrator Elliott:

Thank you for the briefing that your staff provided to staff of the Transportation and Infrastructure Committee on July 12, 2019, regarding the Department of Transportation Special Permit 20534, and the Federal Railroad Administration's (FRA) and Pipeline and Hazardous Materials Safety Administration's (PHMSA) process for evaluating the transportation of LNG by rail tank car. Your staff shared the ongoing and planned research that FRA and PHMSA are pursuing to determine the safety of the movement of LNG by rail tank car, and we were pleased to hear that FRA and PHMSA acknowledged that certain operating conditions would be required for the movement of this type of commodity in a rail tank car.

This letter requests that, if PHMSA is still considering the special permit process to allow Energy Transport Solutions, LLC (ETS) to transport LNG by rail tank car before it receives the results of these safety studies, a revised draft special permit be posted to the public docket with FRA and PHMSA's proposed operating conditions before any special permit is finalized. This would ensure that the public and interested parties are able to adequately consider these operating conditions along with the safety risks associated with the proposed movement.

PHMSA is required by statute to provide this opportunity to first responders, environmental groups, and public citizens. Neither the special permit, nor the revised draft environmental statement that PHMSA posted after our prior letter dated June 28, 2019 (prior letter), adhere to Congress' explicit instruction to provide the public with enough information to adequately consider the risks, provide suggestions, and make useful comments to assist the agency in its decision-making.¹ To withhold operating conditions until finalizing the special permit would run counter to this transparency process because proposed operating conditions represent a central element of any draft permit. If FRA and PHMSA are in fact considering operating conditions, it is critical that the public have the opportunity to provide feedback so that the agencies can fully consider the safety implications to communities.

¹ See 49 USC 5117(b).

The requested special permit presents unique and substantial risk to the safety of the public and the environment. Should even one rail tank car get punctured, the results could be catastrophic. Due to LNG's cold temperature, if it were to spill near an ignition source, the evaporating gas can burn above the LNG pool, resulting in a pool fire that would spread as the LNG pool expanded away from its source; such a pool fire is intense, burning far more hotly and rapidly than crude oil or gasoline fires, and cannot be extinguished. The risks of such an incident include thermal radiation. As PHMSA's own draft environmental statement acknowledges, a BLEVE² event is also possible, which could impact individuals up to one mile away from the explosion.

Our prior letter also requested additional information about the proposed recipient of the special permit. More information needs to be disclosed to the public on the safety record of the shipper, ETS, including whether the company has ever handled the movement of hazardous materials in the past, and the proposed routes on which it intends to move LNG by rail tank car in unit train configurations with 100 or more LNG rail tank cars per consist.

When Congress authorized the Secretary of Transportation to issue special permits to allow deviations from hazardous materials requirements, it put in place a restrictive statutory framework. The statute requires that, "[w]hen applying for a special permit or renewal of a special permit under this section, the person must provide an analysis prescribed by the Secretary that justifies the special permit. The Secretary shall publish in the Federal Register notice that an application for a new special permit or modification to an existing special permit has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application."³ PHMSA has incorporated a similar requirement in its regulations.⁴

After our prior letter, PHMSA posted a redacted version of ETS' application, which requested permission to move LNG by rail tank car along three routes. The redaction allowed ETS to withhold from the public its shipping experience and incident record. It is unclear why FRA and PHMSA allowed ETS to redact this information. Additionally, the quantitative risk analysis that PHMSA posted to the public docket, also after our prior letter, only analyzed a 227-mile track along eastern Pennsylvania. If the special permit would allow ETS to move LNG by rail tank cars beyond this route, a quantitative risk analysis should be performed for all intended routes such that the public can adequately be informed of the risks.

² A BLEVE, shorthand for a boiling liquid expanding vapor explosion, occurs when liquid inside a tank car rapidly boils and results in a high-pressured explosion. PHMSA's draft environmental statement acknowledged the possibility of a BLEVE event with an LNG rail tank car, even with a small breach of the container.

³ 49 USC 5117(b).

⁴ See 49 C.F.R. § 170.105(d), in order for any special permit to be issued, the applicant must provide: information describing all relevant shipping and incident experience; a statement identifying any increased risk to safety or property that may result if the special permit is granted; and either (i) substantiation, with applicable analyses, data, or test results (e.g., failure mode and effect analysis), that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought; or (ii) an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for.

In order to ensure the special permit follows proscribed statutory and regulatory requirements, a proper safety analysis and all operating conditions under consideration must be posted to the docket. That's why we are writing today to request that PHMSA post a revised draft special permit to the public docket with FRA and PHMSA's proposed operating conditions before any special permit is finalized. Thank you for your consideration of this request.

Sincerely,



PETER A. DeFAZIO
Chair



TOM MALINOWSKI
Member of Congress