

The Union Pacific Railroad Company appreciates this opportunity to comment on Valero's Crude by Rail Project. Union Pacific has enjoyed a longstanding and strong relationship with the community of Benicia. We greatly appreciate the cooperation extended to us over the years. As the largest Class I railroad in the United States, we make safe operation of our trains our highest priority.

Union Pacific operates North America's cleanest and most modern locomotive fleet. Since 2000, UP has spent approximately \$6.5 billion to purchase more than 3,700 fuel-efficient locomotives—using less fuel means reducing emissions. In fact, we move one ton of freight 480 miles on a single gallon of diesel fuel.

## **Safety**

Union Pacific is a common carrier by rail. Federal law requires common carriers, like Union Pacific, to move hazardous materials, such as ethanol or crude oil for our customers. If our customer delivers the hazardous material in conformity with the United States Department of Transportation requirements, Union Pacific must transport the hazardous material. Safety is Union Pacific's highest priority. This includes the safety of our employees and their families, our customers, our rail lines and the communities where we operate and our employees live.

Union Pacific transports all commodities in accordance with all applicable federal laws and industry standards. To maximize safety and security when moving hazardous materials, Union Pacific has implemented additional voluntary rules to secure trains operating on our 23-state network. Union Pacific invests substantially in efforts to improve hazardous materials transportation safety, funding an array of security and hazardous materials-related initiatives that exceed mandatory compliance measures. Union Pacific is continuously improving safety when it comes to transporting crude oil and other hazardous materials. Every day, Union Pacific is inspecting tracks, locomotives, and cars carrying crude oil and other hazardous liquids. Union Pacific also has extensive training and preparedness programs involving specialized safety training for rail personnel, as well as local first responders. Since 1986, Union Pacific has sponsored 60 five-day AAR Security and Emergency Response Training Center courses, training nearly 1,300 personnel. Annually, UP trains about 2,400 first responders system-wide through various programs.

Union Pacific does not make hazardous materials, own the tank cars that move the hazardous materials, load or unload those tank cars or decide the origin or destination where the hazardous materials are shipped. In addition, Union Pacific has stringent processes in place to ensure equipment is properly secured, including several checks and balances to mitigate the risk of an uncontrolled movement. To maximize safety and security, there also are unique steps to secure an unattended train or locomotive. As a preliminary matter, it is important to note that the unloading tracks at the Valero Benicia refinery are on a zero percent grade, meaning that the tracks are level so that the potential for an uncontrolled movement is extremely remote. The departure track is at a 0.6% grade, which could allow some movement, but departing trains would be empty. In any event, Union Pacific has detailed requirements for securing trains requiring locomotive engineers to count the number of hand brakes on a train and determine the number of hand brakes that must be set to secure the train. The effectiveness of the hand brakes must then be tested by releasing the air brakes. In addition, the locomotive engineer must complete a train and locomotive checklist.

Railroads haul 20 percent of the chemicals used in the United States and are the safest mode to move hazardous materials. As reported by the Association of American Railroads, 99.9977% of all rail hazmat shipments reach their destination without a release caused by train accident. A review of our records for the Benicia area from 2009 to present indicate two releases of oil from UP locomotives, one in the amount of two ounces and the other in the amount of five to ten gallons. Neither release was from a tank car.

In 2012, railroads set new overall safety records, continuing a string of safety achievements reaching back decades. Rail hazmat train accident rates have declined by 91% since 1980. Union Pacific's security efforts include:

- The Response Management Communication Center and Department of Defense-certified operation center
- A surveillance network that can report the location and movement of hazardous cargo within seconds.
- Employee and contractor background checks and training.

Freight rail and pipelines both have excellent safety records for transporting crude oil, although pipelines spill more of their product than railroads. Additionally, freight railroads have a solid track record for minimizing impacts to the environment. This is illustrated in the following data from the Association of American Railroads:

- Over the past decade, total railroad crude oil spills equal less than one percent of the total pipelines spills. (2002-2012, railroads spilled 2,268 barrels total vs. pipelines' 474,441 barrels total).
- Last year, the pipeline crude oil spill percentage was 10 times that of the railroads (Rail = 0.00006% vs. pipelines = 0.0005% in 2012).
- Over the past decade (2002-2012), the estimated spill rate for crude oil moving by rail was 0.38 compared with the estimated pipeline spill rate of 0.88 (measured as gallons spilled per million barrel miles moved).
- Average pipeline spills are four times larger than the average rail spill, (average 65 barrels by rail vs. average 266 barrels for pipelines from 2002-2012).
- Three quarters of railroad crude-oil spills, or 74% of the 129 incidents that occurred from 2002-2012, involved spills of less than five gallons.

In response to the July 6 derailment in Lac-Mégantic, Quebec, the FRA issued Emergency Order 28 on August 2, outlining railroad safety measures for certain hazardous material movements, including crude oil and ethanol unit trains. Union Pacific is fully complying with the order, which went into effect on September 1, and includes the following safety-related requirements:

- Designate trains carrying loads of hazardous materials that will not be left unattended on main line tracks or sidings outside of yards or terminals unless specifically authorized.
- Develop a written plan that specifies locations and circumstances under which it is safe to leave unattended trains or vehicles transporting hazardous material loads.
- Develop a process for employees securing unattended trains or vehicles that include specific communications with the train dispatchers.
- Review, verify and adjust as necessary protocols related to securing unattended trains or vehicles.
- Implement operating rules and instructions regarding job briefings that include appropriate securement protocols.
- Implement procedures for inspecting equipment for proper securement in cases where an emergency responder has been on, under or between equipment.

### **Project Benefits**

The Valero crude by rail project will allow the refinery to receive crude from more North American sources and will reduce emissions associated with transportation of the crude oil. Related improvements would occur within the refinery boundaries.

Union Pacific is also in the process of repairing and replacing rail infrastructure on its lines in Benicia, including crossings at roadways and crossings impacted include Industrial Way, Park Road, Oregon Street, East Channel Road and Bayshore Road. The maintenance project consists of replacing

five miles of old rails and railroad ties and replacement of existing crossing surfaces and repaving. When complete, the project will result in:

- Improved railroad crossings including concrete pads and new asphalt.
- Improved freight train fluidity.

This work is separate and apart from Valero's crude by rail project, which involves laying new track and building a loading rack within the refinery. This work is the subject of Valero's application for land use approval.

No local permits or approvals are required for Union Pacific's maintenance work, nor does Union Pacific require approvals for the transportation of crude by rail. However, as noted above, Union Pacific is committed to working with the City to address any concerns it may have.

### **How Railroads Are Regulated**

**General:** Under the Commerce Clause of the United States Constitution, no state or local government may impose law or regulations that unduly burden interstate commerce. Because railroads are a key component of our system of interstate commerce, most aspects of their operation are governed exclusively by federal law.

Railroad safety is regulated by the Federal Railroad Administration ("FRA"), which is part of the United States Department of Transportation. The FRA operates through several regional offices; Benicia is covered by the FRA's Sacramento office. The FRA's Hazardous Materials Division administers a safety program that oversees the movement of hazardous materials such as petroleum and chemical products, throughout the Nation's rail transportation system.

In addition to the extensive safety requirements administered by the FRA, railroads are subject to a number of other federal laws designed to protect public health and safety and the environment, including the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act. Locomotive emissions standards and related locomotive operating requirements are established by the U.S. Environmental Protection Agency ("USEPA").

**Crude Movements:** Union Pacific transports all materials (hazardous or otherwise) in accordance with applicable federal law, industry standards, and other operating rules to safely and efficiently move freight. Specifically, Federal law, 49 CFR 130 - Oil Spill Prevention and Response Plans, requires transporters of oil (both non-hazardous and hazardous) to have a written emergency response plan. Union Pacific's Hazardous Material Emergency Response Plan (HMERP) meets this requirement. Additionally, UP's Hazmat Team is trained and ready to respond to and manage incidents involving the release, or potential release, of hazardous materials during an incident.

**Land Use:** With respect to land use requirements, the Interstate Commerce Commission Termination Act ("ICCTA") affords railroads considerable flexibility in making necessary improvements and modifications to rail infrastructure, subject to requirements of the federal Surface Transportation Board. Congress afforded railroads this flexibility because of the integrated national nature of the American rail system and the need for uniform and consistent standards across the country. As a general matter, ICCTA broadly preempts state and local regulation of railroads. This preemption extends to "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities . . . [T]he remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

The courts have repeatedly held that the ICCTA preempts state and local regulation, i.e., "those state laws that may reasonably be said to have the effect of 'managing' or 'governing' rail transportation." *Norfolk Southern Railway Company v. City of Alexandria*, 608 F.3d 150, 157-158 (4th Cir. 2010) (city ordinance and permit regulating the transportation of bulk materials, including ethanol, was

preempted by the ICCTA). The ICCTA also preempts state and local regulation of the construction and operation of rail lines. *Emerson v. Kansas City S. Ry. Co.*, 503 F.3d 1126 (10th Cir. 2007); *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439 (5th Cir. 2001); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005)(preconstruction permitting of a transload facility); *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998) (environmental and land use permitting). As one court noted, “[i]t is difficult to imagine a broader statement of Congress’ intent to preempt state regulatory authority over railroad operations.” *CSX Transp. v. Georgia Public Service Comm’n*, 944 F.Supp. 1573, 1581 (N.D. Ga. 1996).

While it is clear that Union Pacific does not require local land use permits in order to make improvements or modifications to its operations or rail lines, as noted above, we are committed to operating our business safely and working with the communities we serve to address concerns about those operations.

### **Response to NRDC Comments**

The Natural Resources Defense Council’s comments to the Commission dated July 1, 2013 assert that there are significant emissions at major railyards elsewhere in. See NRDC letter at pp.29-30. Although it is not clear how this would be relevant, NRDC neglects to mention that Union Pacific has dramatically reduced emissions at its major yards.

NRDC also argues that even though rail emissions are lower than marine emissions, the rail emissions are of greater concern “because those emissions are occurring much closer to residential populations and thus may result in significantly higher exposure. . . .” NRDC offers no factual basis for this assertion, and in fact there is none. The closest residence for marine activities is approximately 2000 feet from the source. The residence closest to crude by rail activities is about 2500 feet away.

Finally, NRDC argues that Tier 4 locomotives should be required. The USEPA has already established requirements for Tier 4 locomotives and a schedule for their manufacture beginning in 2015. Tier 4 locomotives are not currently available for purchase and are still in the development stage by the manufacturers. Union Pacific will comply with EPA’s requirements. Because Union Pacific’s locomotive fleet operates throughout the Western United States, however, the Company does not have the ability to dedicate Tier 4 locomotives to local service.