

## 2014 Marine & Rail Oil Transportation Study **Frequently Heard Comments**

March 2, 2015

The Washington State Department of Ecology (Ecology), in collaboration with the Utilities and Transportation Commission (UTC) and the Washington Military Department's Emergency Management Division (EMD) today released a final version of the *2014 Marine and Rail Oil Transportation Study*.

The team developed the study over a 9-month period. During that time several expert panels and stakeholder meetings were held, along with two public meetings. Comments were collected at all of the meetings as well as through Ecology's oil movement Website. Over 1,000 comments were received in total.

Comments were collected through December 1, 2014, and used to inform the study. The following list presents a summary of the 15 most frequently received comments and the state's response to each.

Not every comment submitted received a response. This was the result of the large number of comments received, available resources, and time constraints presented by the study deadline.

Additionally, comments regarding coal trains, State Environmental Policy Act-related evaluations, and other permitting exercises fell outside the scope of this study and therefore are not addressed in this document.

**1. Comment: *Oil trains negatively impact tribal culture, tribal community subsistence harvest, and tribal treaty rights. Increased rail traffic will interfere with access to usual and accustomed land and waters, while a spill would cause irreparable harm to these areas. Increased vessel traffic associated with the increase in oil trains will also create conflicts with use of usual and accustomed fishing areas. Concern was also expressed for the safety of tribal members crossing rail tracks to access usual and accustomed areas.***

**Response:** The study team appreciates the concerns expressed in these comments, and acknowledges the potential adverse impacts that increasing oil train traffic may impose on tribal treaty rights. We have attempted to capture these concerns within the final study. A compilation of potential impacts to tribal treaty rights is discussed on pages 65-66 in the

final study. Study Recommendation 43 specifically recognizes that respect for tribal treaty rights must be treated as an ongoing obligation and given a high priority as the state continues to evaluate the changing energy picture and begins to implement recommendations from the study. Additional recommendations in the final study will also serve to protect tribal interests as part of the state's overall efforts to prevent adverse impacts and reduce risks to human health and natural resources within Washington.

2. ***Comment: Stop the oil trains/keep oil trains out of Washington State/reroute the trains around populated areas/leave crude oil in the ground.***

**Response:** One of the most frequently heard comments during development of the study was the general public's opposition to oil train traffic entering and traversing Washington State. Many Washingtonians requested that the study recommend a statewide ban on transporting crude oil by rail. . Others called for a temporary ban until the risks associated with oil trains can be completely assessed and properly mitigated. Many of these comments seemed to voice an underlying sentiment that these risks have been unfairly forced on our citizens without any consideration of the effects or adverse impacts that increased oil transportation could bring into Washington State.

One of the main functions of the study was to identify and compile a complete list of risks associated with rail lines, and identify actions that the state can take to improve public safety and spill prevention, preparedness, and response. The study team was also asked to review state and federal rules and regulations on rail safety and identify any gaps. A thorough understanding of the risks and the regulatory framework associated with rail transportation of oil is required to develop strong and effective measures that will serve to protect public safety and prevent spills.

While banning or controlling the routes that are used to transport oil by rail is a very direct and clear mechanism for limiting the risks associated with such traffic, the authority to govern how train shipments of hazardous materials are routed across the United States lies with the federal government, particularly within rules issued by the Federal Railroad Administration (FRA) and the Department of Homeland Security. The final study presents a very detailed explanation of federal and state regulatory roles over railroads on pages 84-90 and in Appendix A.

Federal laws that limit the states' ability to regulate railroads for public safety issues are the 1970 Federal Railroad Safety Act (FRSA) and the Interstate Commerce Commission

Termination Act of 1995 (ICCTA). Since 1970, FRSA has preempted states from passing laws or adopting rules in safety areas where the federal government has adopted its own laws or rules. The FRA is the federal agency with jurisdiction to administer FRSA and adopt railroad safety regulations. Under the ICCTA, the courts have also held that most state and local regulation of railroads is preempted. States no longer have a role in determining the rates and routes of railroad companies or in protecting consumers, as these responsibilities now rest with the Surface Transportation Board, which replaced the Interstate Commerce Commission.

As a result of federal rules, Washington State is very limited in its ability to ban trains or dictate which routes trains will use to transit the state. Similarly, the state has no authority to prevent railroads from bringing crude oil into Washington. While the state cannot directly control train routes or the cargos carried by railroad, the study has identified other ways to influence these issues and ensure a high level of public protection. Bolstering the Utilities and Transportation Commission's (UTC) railroad safety program, further discussed below, is a prime example.

While ensuring compliance with Federal Railroad Administration (FRA) safety regulations is a federal responsibility, Washington and 29 other states do participate in the FRA's State Rail Safety Participation Program. In Washington, this program is administered by the UTC and allows the state to assist the FRA by performing inspections and issuing notices and violations for non-compliance with federal railroad safety regulations. The FRA works with the UTC and agencies in other states to authorize delegation of its enforcement authority as though state staff were FRA employees. This program does not allow the state to control or route train traffic within the state, but it does provide a way for the state to ensure that federal rail safety requirements are followed within our borders.

The UTC is carefully evaluating public safety issues related to rail operations within our state. The UTC's railroad safety program is designed to protect the public and railroad employees by ensuring that railroad companies meet established state and federal safety standards, and by educating the public about the dangers of traveling on or near railroad tracks. The UTC's jurisdiction over railroad safety and the mission of the agency's railroad safety program is focused in a few key areas that are not preempted by federal law. Those areas include opening, closing and reconfiguring railroad-highway crossings, public crossing safety, railroad employee safety, the grade crossing protective fund, education and promotion of public awareness, responding to citizen complaints, and providing technical assistance. The final study presents several recommendations (Recommendations 2, 4, 5, 6,

7, 8, and 10) intended to increase UTC's ability to protect the interests and safety of Washington's citizens and limit risks posed by oil train traffic in our state.

In addition to the UTC's partnership role with the FRA, the state can and has engaged federal agencies directly through their rulemaking processes (Recommendations 1 and 26), in an effort to voice the concerns of its citizens and minimize risks posed by oil trains traveling across the state.

Finally, Study Recommendation 42 calls for development of a rail traffic risk assessment to assist the state in identifying risks and areas of concern with respect to the rail transportation system. This effort will inform the state about specific areas of risk throughout the state, allowing us to focus on critical areas and needs.

**3. Comment: *Stabilize Bakken crude oil (i.e., remove the highly volatile fractions) prior to loading and shipping railcars to reduce the risk of explosions and fires that could result from a derailment incident.***

**Response:** As discussed in Appendix E of the final study, the physical property of greatest concern for Bakken crude is its volatility. The presence of dissolved gases and other light ends (methane, ethane, propane, butanes, and pentanes) increases the crude oil's vapor pressure and volatility, while lowering its flashpoint. A higher volatility and a lower flashpoint generally mean that a material is more likely to ignite or combust. The elevated vapor pressure of Bakken crude oil (compared with other crude oils) is widely accepted as a contributing factor in the July 6, 2013, accident in Lac-Mégantic, Quebec, Canada, in which a train derailed near the center of town causing an explosion that resulted in the deaths of 47 people.

Because of the volatility of Bakken crude oil, many states, particularly New York, have called for North Dakota to require stabilization prior to loading railcars for transport. During development of the study, the team received many comments expressing a need for stabilization of crude oil prior to shipping.

Because Bakken crude is extracted, classified, and loaded outside of Washington, it is difficult for the state to require conditioning. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has authority over material classification and packaging requirements for shipping hazardous materials over rail lines. The state's September 26, 2014, comment letter to PHMSA (refer to Appendix I of

the final study) recommended “...further analysis of Bakken crude and the current extraction techniques with the goal of reducing the volatility of the product prior to transport.”

While there has been no federal action at the time this document was written, North Dakota has enacted a measure to stabilize Bakken crude. On December 9, 2014, the Industrial Commission of North Dakota issued new conditioning standards, requiring all crude oil produced in the Bakken formation to be conditioned to remove lighter, volatile hydrocarbons, and thereby make the oil safer to transport by railroad. While this standard is a positive step toward reducing the volatility, it will only require the crude oil to be conditioned sufficiently to ensure a Reid Vapor Pressure of 13.7 pounds per square inch (psi) or less. Crude oil with a vapor pressure of 13.7 psi is still as flammable as gasoline and continues to present a public safety and environmental risk.

Washington will continue to look for opportunities to push for additional stabilization measures in the future. As an initial starting point, Recommendation 31 of the study calls for the Northwest Area Committee to conduct sampling of Bakken crude oil transported through Washington and perform analyses to characterize the hazards presented to first responders.

- 4. Comment: *The increased rail traffic will result in increased traffic delays at railroad crossings, negatively affecting local citizens, businesses, the trucking industry, and other forms of transportation-based commerce. Crossing delays or blocked crossing (e.g., due to train accidents) will hamper or isolate emergency response efforts and resources. Increased rail traffic stemming from oil train transport will also interfere with rail transport of other commodities, such as agricultural goods and rail passenger traffic.***

**Response:** The study team received many comments citing issues related to increased rail traffic due to the increase in oil transportation by rail. The two main concerns heard can be broadly grouped into 1) occupied/blocked crossings that delay or prevent access across the rail line, and 2) increased competition for transport among different commodities that rely on rail to bring products to market. These issues have been incorporated into the study as risks associated with increased oil train traffic (refer to pages 74-76).

While the state acknowledges both of these concerns, the Interstate Commerce Commission Termination Act of 1995 (ICCTA) generally regulates management of both issues at the federal level. State statutes regulating railroad operations, including state and

local regulations on blocked crossings, have been preempted by case law under the ICCTA [RR Ventures, Inc. v. Surface Transportation Board, 299 F.3d 523 (6th Cir. 2002)]. Similarly, with respect to competition for rail transportation among various industrial sectors, railroads have a common-carrier obligation to transport all goods offered for transportation, including hazardous materials. This obligation is a common-law doctrine, codified in the ICCTA and recognized by the U.S. Supreme Court in the early 1900s. The ICCTA maintains the common-carrier obligations of railroads and requires railroads to “provide the transportation or service on reasonable request.” This obligation ensures that railroads do not unreasonably discriminate between shippers. Thus, railroads may not refuse shipment on the basis of inconvenience or lack of profitability.

As indicated in Comment Response 2, the UTC’s railroad safety program is directed at public and railroad employee safety, and is focused on several areas involving rail crossings, including the grade crossing protective fund. The grade crossing protective fund is dedicated to safety upgrades at public crossings, along railroad rights-of-way and other projects related to railroad safety. During the 2011-2013 biennium, the UTC issued 35 grants totaling \$433,000 to local jurisdictions and railroads to upgrade public safety at crossings. UTC will continue to work with the citizens and municipalities in Washington to use the grade crossing protective fund to improve safety at rail crossings. Study Recommendations 6, 7, 8, and 11 are aimed at improving UTC’s ability to provide adequate oversight of rail crossings.

With respect to emergency response issues related to blocked rail crossings, the multi-agency letter submitted to the FRA and PHMSA (Recommendation 26 in the final study) requested that federal agencies require railroad companies to provide federal response plans to local responders, require that rail operators participate in a drill and exercise program, and require the use of the incident command system to respond together to both risks of spills and actual spills, with the federal, state, tribal and local governments under a Unified Command. These requests are intended to promote collaboration between local and state response agencies and rail and federal response and emergency planning agencies. Study Recommendations 34, 35, 36, and 37 are intended to promote, expand, and fund additional response capabilities and equipment, emergency planning efforts, and training for first responders and hazardous materials response teams. Recommendation 38 calls for continuing and expanding Ecology’s Geographic Response Planning efforts, which typically includes evaluating access routes and identifying alternate response routes during emergency incidents. Finally, Recommendation 40 calls for crude-by-rail facilities to conduct a thorough evaluation of specific locations of risk for train and/or vessel incidents during the initial permitting phases of new projects.

A blocked crossing, due to either increased train traffic or a derailment incident, is a serious concern. Increased planning, before an emergency incident occurs, will provide emergency responders the best tools to deal with such situations. The state will continue to work with local communities and responders to develop plans and conduct drills to help identify the best approaches to managing these situations.

- 5. Comment: *An oil train incident would overwhelm responders and medical resources. Responders are not adequately trained to deal with incidents involving volatile Bakken oil or diluted bitumen oils that sink below the water surface. Additional or specialized response training and equipment will be necessary in order to properly respond to a spill or emergency involving oil trains.***

**Response:** These comments were frequently heard from state and local fire fighters and emergency response personnel. As noted in the study, the potential risk to public safety and health is greatest in locations where crude by rail lines run through heavily populated areas, such as the City of Seattle with over 7,000 people per square mile in the vicinity of crude by rail lines. There are 38 heavily populated cities and towns (over 3,000 persons per square mile) that are adjacent to crude by rail lines, and at least a dozen other cities and towns with population densities of 2,500 to 3,000 per square mile at potential risk. Collectively, more than three million Washington State residents live in 93 cities and towns on or near crude by rail train routes.

The types of crude oils being transported by rail also bring different concerns with respect to spill response and cleanup. The greatest concerns with Bakken crude are the potential volatility or flammability of the oil and the higher potential for groundwater intrusion due to its solubility. With diluted bitumen, the greatest concern is the heavier portions of bitumen that may not be lighter than water, causing it to either be neutrally buoyant or sink when spilled. In order to assist in identification of the type of hazardous material being carried on trains, Study Recommendation 9 calls for the U.S. Department of Transportation to change the hazardous material identification on trains to be more user-friendly to first responders.

The study also acknowledges the issues and concerns related to emergency and spill response to oil trains carrying these types of crude oils through the state. As with most incident management situations, it is believed that the best approach is to focus on planning for responses, training responders, and ensuring that adequate response

equipment is available and ready for use. To this effect, the final study proposed many recommendations related to increasing and providing additional resources for emergency planning and response agencies in Washington. Recommendation 26 calls on federal agencies to provide state and local response agencies with federal rail response plans, require rail operators to participate in drill exercises, and require the use of the incident command system to allow a coordinated response with all federal, state, tribal and local entities. Recommendations 34, 35, 36, and 37 are intended to promote, expand, and fund additional response capabilities and equipment, emergency planning efforts, and training for first responders and hazardous materials response teams.

Additionally, existing federal guidelines and state laws put the focus for response planning on the local jurisdictions. Because the lack of resources at the local and state level to do this planning, the Military Department's Emergency Management Division is requesting the legislature fund additional planning staff. This staff would be dedicated to assisting local jurisdictions in developing plans that would meet the increased risk and resultant requirements that oil transportation movement bring to them and to better meet the requirements for Hazardous Materials Response set down in federal Law.

**6. Comment: *Some railroad routes in northwestern Washington are routinely subject to closures and delays due to landslides and mudslides. Western Washington also has a potential for earthquakes and tsunamis. Oil trains should not be allowed in such areas.***

**Response:** Many commenters noted that rail lines and rail service in western Washington are impacted by landslides and other natural phenomenon which would have disastrous consequences if an oil train were involved. The state acknowledges and concurs with this concern.

As discussed in the Response to Comment 2, the authority to govern how train shipments of hazardous materials are routed across the United States lies with the federal government, particularly within rules issued by the FRA and the Department of Homeland Security. The Pipeline and Hazardous Materials Safety Administration has authority over material classification and packaging requirements for shipping hazardous materials over rail lines. The final study presents a very detailed explanation of federal and state regulatory roles over railroads on pages 84-90 and in Appendix A.

While Washington is limited in its ability to directly control or route train traffic, the state has requested that FRA and PHMSA make available the criteria used to evaluate and select



routes used for hazardous materials shipment over rail (refer to Section III in the letter contained in Appendix I of the final study). Several other recommendations in the final study are also directed at identifying and managing risks associated with rail traffic:

- Recommendation 2 calls for additional UTC inspectors to increase state inspections in the areas of track, hazardous materials, operating practices, motive power and equipment, and crossing signals.
- Recommendation 3 seeks voluntary agreements from railroads to reduce speeds of high-hazard flammable trains to no more than 45 miles per hour.
- Recommendation 11 presses PHMSA, FRA and UTC to form and co-lead Railroad Safety Committees for Class I railroads and for short-line railroads to foster communication and cooperative approaches to promote safe practices on Washington railroads.
- Recommendation 40 calls for permitting agencies to require crude by rail facility permit applicants to conduct a thorough evaluation of specific locations of risk for train and/or vessel incidents related to the permitting proposal.
- Recommendation 42 calls for development of a rail traffic risk assessment to assist in identifying specific risks and areas of concern within the rail transportation system in Washington.

**7. Comment: *Daycares, schools, hospitals, and other sensitive receptors located near train tracks are vulnerable to a derailment/fire/explosion incident. Public health will suffer due to the increased level of engine exhaust released by the increasing oil train traffic.***

**Response:** The final study has incorporated a discussion of these concerns on pages 51-60 and 65. As discussed in Responses to Comments 2 and 6, the state's ability to control or redirect train traffic is generally preempted by federal rules and regulations. However, Washington State can and has engaged our federal counterparts to push these issues forward (refer to Study Recommendations 1 and 26) on behalf of our citizens. Other recommendations have been proposed to offer increased assurances that train derailments and incidents will not occur (Recommendations 2, 3, 11, 40 and 42).

Washington's state and local air quality control agencies are well aware of the potential adverse health impacts of diesel combustion, and have many many informational resources and publications available on the web. With respect to engine exhaust, the U.S. Environmental Protection Agency regulates emissions from locomotive engines, although the state may potentially impose some regulation through State Implementation Plans, if ambient air quality does not meet applicable quality standards. While these mechanisms should be sufficient to ensure adequate protection of public health, state and other local air

quality programs will continue to evaluate these issues and work towards better protection of public health.

In addition to air quality programs, the State Environmental Policy Act (SEPA) provides another way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, or plans. Information provided during the SEPA review process helps agency decision-makers, applicants, and the public understand how a proposal will affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified. To better leverage this regulation, Study Recommendation 40 calls for permitting agencies to require crude by rail facility permit applicants to conduct a thorough evaluation of specific locations of risk for train and/or vessel incidents related to the permitting proposal.

The study team will continue to conduct outreach efforts and further refine the issues of concern for corrective assessment work to enhance public health and safety and environmental protection action (Recommendation 43).

- 8. Comment: *A fire caused by an oil train derailment would be devastating in populated areas and could easily cause spreading wildfires in Washington, potentially cutting off access into or out of many small communities.***

**Response:** This issue is recognized and discussed on pages 61-62 of the final study. The state agrees with concerns expressed in this comment.

As with any other emergency incident, planning and preparedness are considered to be the best way to manage these risks. Study recommendations supporting this approach have been identified and discussed in the responses to Comments 4 and 5.

- 9. Comment: *Increased oil train traffic poses a special environmental risk as it transits the Columbia River Gorge, which is a National Scenic Area, and other sensitive waters along the I-5 corridor. Aquatic and natural resources in these areas will be at an increased risk of negative impacts from derailment incidents or oil spills.***

**Response:** The study team concurs with these comments. Potential environmental risks from crude by rail to such aquatic areas are discussed on pages 65-74.

The state's ability to direct or control train traffic has been discussed in previous comment responses (refer to Comments 2 and 6). While these areas will be at a higher risk for adverse impacts from oil spills due to the increased transportation of crude oil, the study has recommended several actions to increase spill prevention measures associated with oil trains (Study Recommendations 2, 3, 11, 40, and 42), and improve preparedness and response capabilities (Recommendations 26, 34, 35, 36, and 37). Additionally, the study supports state comments to federal agencies to bolster financial responsibilities of railroads regarding oil spill response and cleanup costs (Recommendation 26), and also recommends changes to statutory authority, to allow the state to establish a level of financial responsibility for all oil handling facilities, including railroads (Recommendation 28).

Finally, the study proposes to continue to conduct outreach efforts and further refine the issues of concern for corrective assessment work to enhance environmental protection action (Study Recommendation 43). The state will continue to work to protect its natural resources from risks posed by oil train transportation.

**10. Comment: *The community has a right to know what hazardous materials are being transported and when they are traveling through a particular area.***

**Response:** The study supports continuation of the FRA's emergency order requiring that railroads report movements of Bakken crude in excess of one million gallons (approximately 35 tanks cars) to State Emergency Response Commissions. Refer to Study Recommendation 26, and Section IV of the multi-agency comment letter submitted to the FRA and PHMSA (Appendix I of the final study).

In its comment letter, the agencies specifically requested that the reporting requirement be expanded to "...include any movement of any crude oil types in excess of 42,000 gallons, approximately 1.5 tank cars. Broadening the scope of the emergency order would allow for better preparation by the local response community and a more complete understanding of the type of oil moving through our cities and towns. This information is necessary for first responders, but also for those that are tasked with the cleanup of any spill. The different types of crude oils present very different logistical problems in terms of cleanup which may require special equipment in some locations. The need for our State and local first responders to be prepared for a spill or catastrophic accident should outweigh any claimed security sensitivity. The information contained within those reports should be available and

posted online for ease of access by local responders and other organizations in the event of an accident or spill.”

Hazardous material emergency planning is required by federal Public Law 99-499, the Emergency Planning and Community Right to Know Act. The act requires local jurisdiction to identify community hazardous material and to meet nine minimum planning requirements. The study identifies gaps in local jurisdiction hazardous material planning (page 480-484, Appendix K), which are to be addressed by state resources to assist local jurisdictions in meeting the minimum planning requirements. Improved planning will meet the concern of identifying hazardous materials moving through each community.

***11. Comment: Vessel traffic increases associated with increased oil train traffic and expanded marine terminal operations pose an unacceptable threat to Puget Sound, Gray’s Harbor, the Columbia River, and Washington’s outer coastline.***

**Response:** Many comments expressing concern for the potential increase in oil-laden vessel traffic associated with the increase in trains transporting crude oil to Washington’s waterway terminals and refineries were received and heard during the course of the study. A detailed discussion of such potential changes to tank vessel oil transport is presented in Appendix B of the final study, while a more concise summary of these changes, as well as potential risk mitigation measures can be found on pages 95-103.

As with railroad operations, states’ ability to control waterway operations is preempted by the federal government, and most states rely on the U.S. Coast Guard (USCG) for waterways management. Thus Washington State has little opportunity to directly impose restrictions or control vessel traffic entering its waterways. Nonetheless, the study proposes several recommendations to mitigate marine-based risks, largely through partnership efforts with federal and industry counterparts to improve spill prevention and preparedness measures:

- Recommendation 12 calls for Ecology, the Washington Pilotage Commission, and the Oregon Board of Maritime Pilots to continue to support maritime safety programs in place at the international, federal, state, and industry levels, and act as a catalyst for continued training, drills, and vigilance at all levels.
- Recommendation 13 presses Ecology to continue to develop marine safety, industry oversight, and inspection criteria to reduce human error and increase situational awareness.
- Recommendation 14 encourages the use of the initial permitting processes for new or expanded facilities to implement ship vetting procedures or contractual agreements

with shippers calling at their docks to meet the IMO Convention for Prevention of Marine Pollution (MARPOL) Annex 1, Regulation 12A, Oil Fuel Tank Protection requirements for independent from the hull fuel tank construction standards required for new vessel builds after 2010.

- Recommendation 15 calls for railroads to participate in existing Harbor Safety committees.
- Recommendation 16 would expand tug escort requirements for vessels with a potential to impact Washington’s navigable waters.
- Recommendation 17 encourages Ecology, the USCG, and Harbor Safety committees to evaluate the effectiveness of adding additional emergency tow/rescue tugs.
- Recommendation 18 calls for Ecology, the USCG, and Harbor Safety committees to define and develop tug escort requirements and standards for “high risk” vessels based on the probability of human error or mechanical failure.
- Recommendation 19 asks the USCG to establish a long term waterways management plan and an appropriate vessel traffic service for the waterways of Grays Harbor, Columbia River, and the outer coast.
- Recommendation 20 calls for Ecology, the USCG, and Harbor Safety Committees to evaluate limiting or moving bunkering activities to more secure locations.
- Recommendation 21 calls for Ecology, the USCG, and Harbor Safety Committees to evaluate speed restrictions for container ships (and other large vessels) to reduce the likelihood of collisions in congested areas.
- Recommendation 22 asks the USCG to eliminate the current industry practice of multiple berthing/partial discharging/anchoring of tankers carrying foreign crude oil.
- Recommendation 28 directs Ecology to undertake a program to certify the financial responsibility of vessel and facility operators.
- Recommendation 32 asks the USCG to consider designating the Columbia River and Grays Harbor as High Volume Port Areas.

***12. Comment: Oil trains contribute to climate change through impacts from engine exhaust and by making the crude oil available for subsequent processing and use. Crude oil should be left in the ground.***

**Response:** The final study acknowledges and responds to comments linking oil extraction and transport to climate change in a narrative on page 74. As noted in the study, “[t]his issue is not within the scope of this study, which does not lessen the importance of the concerns.” Climate change impacts are an environmental concern best considered and

managed under State Environmental Policy Act which was discussed in the response to Comment 7.

**13. Comment: *Quantitative risk analyses should be conducted as part of the study.***

**Response:** Several comments requested that the study undertake and include detailed, quantitative risk analyses of projected increases in trains and vessels transporting crude oil across Washington State.

While the timeline mandated for delivery of the final study to the Governor and the Legislature was not sufficient to collect and analyze data necessary to develop a quantitative risk analysis, the study team concurs with this comment and has proposed that this work be conducted in the future (Recommendation 42).

**14. Comment: *Secondary track and any other rail lines used for oil train transport in the state of Washington must be brought up to the same standards as primary track, before any such transport occurs.***

**Response:** This comment was expressed in several forums, but was most often heard in reference to the rail line that would be used to transport oil to the proposed terminals at Grays Harbor.

The final study presents a very detailed explanation of federal and state regulatory roles over railroads on pages 84-90 and in Appendix A. Regulation of railroads is largely under exclusive federal jurisdiction, which limits the state's authority to implement regulatory standards for secondary track or other rail lines. The FRA has jurisdiction over railroad safety at the federal level. The FRA has authority over regulatory areas concerning safety of track and movement of hazardous materials. The UTC's railroad safety program supports and assists the FRA by performing inspections and issuing notices and violations for non-compliance with federal railroad safety regulations. In this capacity, the UTC may identify defects or violations in the areas of hazardous materials; signal and train control; track and operating practices; submitting notice of these defects; and violations to the FRA. The UTC is a strong proponent of rail safety and gives Washington some capacity to ensure that federal safety regulations are implemented within our state. The final study presents several recommendations (Recommendations 2, 4, 5, 6, 7, 8, and 10) intended to increase

UTC's ability to protect the interests and safety of Washington's citizens and limit risks posed by oil train traffic in our state.

Several other recommendations in the final study are directed at identifying and managing risks associated with rail traffic:

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- Recommendation 11 presses PHMSA, FRA and UTC to form and co-lead Railroad Safety committees for Class I railroads and for short-line railroads to foster communication and cooperative approaches to promote safe practices on Washington railroads.
- Recommendation 40 calls for permitting agencies to require crude by rail facility permit applicants to conduct a thorough evaluation of specific locations of risk for train and/or vessel incidents related to the permitting proposal.
- Recommendation 42 calls for development of a rail traffic risk assessment to assist in identifying specific risks and areas of concern within the rail transportation system in Washington.

***15. Comment: Railroad companies are currently making local communities and private citizens bear the financial burden for incident responses and cleanup costs. Railroad companies should be required to demonstrate proof of financial liability, sufficient to cover all expenses for oil train emergency and spill responses.***

**Response:** The state acknowledges these concerns on pages 75-76 of the study, which also presents two recommendations intended to address this issue.

Study Recommendation 26 supports multi-agency comments submitted to the FRA and PHMSA on proposed rulemaking for Oil Spill Response Plans for High-Hazard Flammable Trains. This comment letter (refer to Appendix J of the final study) was submitted on September 17, 2014, and requests that the agencies require a minimum amount of demonstrated financial resources to pay for response, cleanup, remediation, natural damage assessment, and restoration costs, based on the reasonable worst-case spill volume of a train carrying oil as cargo. The agencies will continue to support this position as this federal rulemaking action continues through the final issuance process.

Study Recommendation 28 calls for a modification to statutory authority to extend financial responsibility requirements to rail and mobile facilities, and enable Ecology to modify the regulations on financial responsibility requirements. Both the federal government and

Washington State have laws and rules that require certain oil handlers to demonstrate evidence of their financial ability to pay for the removal of oil spills, natural resource damages, and other expenses related to spill responses. However, Washington State has not yet established a level of financial responsibility for oil handling facilities, including rail, a situation which represents a gap in response planning. By modifying the underlying statutory authority, and allowing Ecology to issue Certificates of Financial Responsibility, the state will ensure that those transporting oil can pay for cleanup costs and damages resulting from oil spills.

The state is committed to pursuing these and other opportunities as they become available, in order to ensure that its citizens do not have to bear the costs of oil spills within our borders.