



To: MAYOR AND COUNCIL

Agenda Item #: IV. L.

From: Scott H. Neal, City Manager

Action

Discussion

Date: December 3, 2013

Information

Subject: Resolution 2013-127: Approval of Official Comments to the Pipelines and Hazardous Materials Safety Administration (PHMSA)

Action Requested:

Adopt Resolution No. 2013-127

Information / Background:

In response to the findings stemming from the National Transportation Safety Board's (NTSB) investigation of a June 2009 Canadian National Railway (CN) freight train derailment outside of Rockford, Illinois, the Village of Barrington and the Illinois-based TRAC Coalition jointly filed a petition on April 3, 2012 with the Pipelines and Hazardous Materials Safety Administration (PHMSA) asking that it promulgate rules that will make the fleet of new and existing tank cars that carry ethanol and crude oil by rail in North America more crashworthy in derailments and accidents. PHMSA released its notice of proposed rulemaking on September 6, 2013 and is seeking input from local governments by December 5, 2013.

The 2009 accident investigated by the NTSB involved a train containing 74 cars of ethanol that derailed after the rail bed underneath the train had washed away. One person was killed and nine others injured when several of the derailed tank cars split open and started a massive fire that took over 24 hours to burn itself out. Since 1991, the tank cars involved in the accident – DOT-111 tank cars – have been known by federal regulators and the freight rail industry to have high failure rates in accidents because they puncture easily.

In response to the Rockford derailment, industry convened a working group made up of the Association of American Railroads (AAR), freight railroads, and shippers to set manufacturing standards for new cars and asked PHMSA to adopt those standards in 2011. However, the industry request explicitly asked that the existing fleet of tank cars not be retrofitted to make them safer due to the cost of a retrofit program. The AAR calculated that a retrofit of a tank car would cost \$15,000, but with an average life span of over 30 years for the existing fleet, that amounts to less than \$500 a year.

Backed by NTSB expertise, the April 3, 2012 petition by Barrington & the Illinois TRAC Coalition made the case that improved construction standards for only newly manufactured tank cars is not sufficient for protecting public safety. *As the NTSB experts recognized, while the improved AAR standards would make new cars safer than the existing cars, communities would be no safer if old and new tank cars are comingled when these tank*

cars derail. With an eight-year average age for the existing tank car fleet, failure to require a retrofit program would allow tank cars that are filled with ethanol and crude oil – and known to be dangerous – to roll freely through American communities for the next three decades.

This issue goes far beyond the daily challenges of dealing with freight rail operations in our communities. According to Federal Railroad Administration safety statistics, between 2000 and 2011 there has been – on average – a *reportable* freight derailment in this country over five times every day. Given inadequate insurance protection across the rail industry, it is unclear as to who will be paying the bill when it comes to paying the catastrophic costs associated with a major tank car derailment. For these reasons, it is way past due for federal regulators to prioritize the concerns of local governments to remedy the known safety flaws with the DOT-111 tank car.

The comment period for the PHMSA's consideration process closes on December 5, 2013. If the City Council wishes to comment on this issue, it is necessary to approve official comments at the December 3 Council meeting. Staff have adapted a resolution provided to us by Council Member Bennett that has been used by a number of other cities across the country. Council Member Bennett can provide additional context about the issue at the Council meeting.

Attached:

Resolution No. 2013-127

**RESOLUTION NO. 2013-127
CITY OF EDINA, MINNESOTA
SUPPORTING THE RETROFIT OF EXISTING DOT-111 RAIL TANK CARS
THAT TRANSPORT PACKING GROUPS I AND II HAZMAT
BEFORE THE PIPELINES AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
IN DOCKET NO. PHMSA-2012-0082 (HM-251)**

Whereas, rail freight operations impact thousands of villages, towns, cities and counties across all regions of the United States of America; and

Whereas, safe rail operations are of critical interest to local units of government based on (1) the need to prevent catastrophic accidents like the one that occurred in Lac-Megantic, Canada in July 2013; and (2) the responsibility local governments have to provide emergency response units to manage the impact of rail accidents and derailments in communities across the country; and (3) significant costs associated with clean-up, environmental remediation, medical expenses, other personal injury damages or wrongful death claims for community residents that have the potential to surpass the rail industry's ability to pay for them; and

Whereas, ethanol and crude oil are a large and exponentially growing segment of hazardous materials being shipped across the nation via freight rail, which will continue to be a preferred transport mode of choice for this hazmat; and

Whereas, since 1991, it has been known to industry and federal regulators that there are safety-related defects in the DOT-111 tank car that serves as the primary tank car used in the shipping of these hazardous flammable materials via freight rail; and

Whereas, the federal Pipelines and Hazardous Materials Safety Administration (PHMSA) regulates the safe transport of hazardous materials by railroads in the United States; and

Whereas, the business decisions of railroad companies and hazardous material shippers impact the safety, environment, and emergency response system in the communities in which the freight railroads traverse, but state and local governments have no ability to regulate railroad operations; and

Whereas, industry has failed to act in the last two decades to correct the known defects in DOT-111 tank cars, and waited until 2011 to seek government approval to upgrade safety standards for newly manufactured DOT-111 tank cars; and

Whereas, a tank car expert from the National Transportation Safety Board testified in 2012 that a retrofit of existing tank cars is necessary because co-mingling existing unsafe DOT-111 tank cars with newly manufactured ones "does nothing to improve the safety in an accident"; and

Whereas, the petition for rulemaking submitted to PHMSA on April 3, 2012 by Barrington, Illinois and the Illinois TRAC Coalition reflects the point of view of local governments, which is supported by recommendations of the National Transportation Safety Board, that changes are needed in federal regulations and/or law to better protect public safety relative to DOT-111 tank car safety and train consist dissemination; and

Whereas, the April 3, 2012 petition provides a compelling rationale for making long overdue changes in safe rail operations vis-a-vis retrofitting existing DOT-111 tank cars; and

Whereas, the April 3, 2012 petition demonstrates that the cost of a DOT-111 tank car fleet retrofit for existing cars would be of nominal expense over the remaining average thirty-year lifespan for the existing fleet, and

Whereas, PHMSA issued on September 6, 2013 (78 Federal Register 54849-54861) an Advance Notice of Rulemaking seeking by November 5, 2013 the input from local and state governments on the issue of retrofitting the DOT-111 tank car.

Therefore, Be It Resolved by the City Council of the City of Edina, Minnesota as follows:

Section 1: We support the April 3, 2012 petition of Barrington, Illinois and the Illinois TRAC Coalition seeking new regulations to retrofit existing DOT-111 tank cars used to transport Groups I and II Packing Materials.

Section 2: This Resolution shall take effect from and after its passage and approval as provided by law.

Section 3: This adopted Resolution shall be sent to the Pipelines and Hazardous Materials Safety Administration in Docket No. PHMSA-2012-0082 (HM-251) urging expeditious action on the joint Barrington and Illinois TRAC Coalition April 3, 2012 Petition No. P-1587.

Dated December 3, 2013

Attest: _____
Debra A. Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)
CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of December 3, 2013, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____,
_____.

City Clerk