

July 21, 2015

Edward Hamberger
President and CEO
Association of American Railroads (AAR)

Dear Mr. Hamberger:

As defined in U.S. Department of Transportation (DOT) regulations (49 CFR 179) and referenced in the AAR Tank Car Committee (TCC) charter, the TCC is authorized under the Hazardous Materials Transportation Act to review proposed changes in or additions to specifications and make recommendations to DOT for consideration. This authorization is commonly referred to as AAR's "delegated authority." The TCC does not have the authority to establish tank car specifications. As stated unequivocally by DOT, "final policy judgments lie with the Department."¹ DOT has made its final policy judgments on tank car standards for flammable liquids, and the TCC has no authority to override them. Furthermore, the pending petitions for judicial review and for administrative appeal must be resolved before further action can take place.

Accordingly, the undersigned shipper organizations represented on the TCC ask you to withdraw the proposed *Requirements for Tank Cars Used for the Transportation of Class 3 Flammable Liquids* from consideration during the July 22-23 TCC meeting. The shipper organizations instead suggest that the TCC comply with federal regulations by limiting any action that may be taken on this matter to recommending changes to the DOT that satisfy the concerns of all stakeholders regarding the recent rulemaking (HM-251), as authorized by federal regulations. Our members comprise a large segment of the customers that are served by the railroads and who own or lease a majority of the rail tank cars. We strongly oppose any attempt by the TCC to exceed its delegated authority by making inappropriate use of the interchange standards to impose requirements that were either considered and rejected by DOT or are expressly outside of the scope of DOT's recent rulemaking.

The interchange standard would:

- Require top-fittings protection that DOT expressly rejected in its rulemaking.
- Mandate a layer of thermal protection that DOT did not impose.
- Phase-out the use of an approximate additional 40,000 tank cars on the same timeline that DOT established. While we agree that such a phase-out may be a natural consequence of the recent rulemaking, that is why it is the subject of challenge in both the pending petitions for judicial review and for administrative appeal, given that such a phase-out would render an already impossible timeline even more incapable of fulfillment.

The relationship between DOT and the TCC has been described by DOT "as a relationship between a policymaker and a counselor."² To unilaterally impose these requirements within

¹ *Delegations of Authority: Concepts of Stewardship*; DOT White Paper (2006); Phemister, Thomas A.

² Ibid

weeks of DOT's final rule conflicts with the TCC's charter and is contrary to the role the DOT has defined for the TCC.

Not only are the proposed requirements outside of the TCC's authority, but there is no consensus among key stakeholders for this action. AAR's delegation of authority (by way of the TCC) is premised on bringing together expertise from rail carriers, car builders, lessors and tank car users. If any one industry attempted to ignore the lack of consensus among the other stakeholders and make a unilateral decision that usurps the authority of the regulator, such action would seriously undermine the ability of the TCC to continue its essential, collaborative work and would call into question the legitimacy of the current TCC.

We believe that the best course of action is for the TCC to comply with federal regulations by limiting any action it may take on this matter to making recommendations to DOT and Transport Canada to amend their respective regulations.

Sincerely,



Cal Dooley
President and CEO
American Chemistry Council



Chris Jahn
President
The Fertilizer Institute



Jack Gerard
President and CEO
American Petroleum Institute


Rep US CATA

Michael Richardson
U.S. Clay Producers Traffic Association, Inc.



Frank Reiner
President
The Chlorine Institute



Robert W. McBride
President and CEO
The Sulphur Institute