Memorandum of Support

A.7625 (Fahy) / S.5751-A (Avella)

Title: An ACT to amend the Navigation Law, in relation to requiring evidence of financial responsibility and ability to pay from major facilities, vessels, pipelines and railroad companies in the event of a discharge involving the transport of crude oil

Statement of support: The extraction of Canadian tar sands and North Dakotan Bakken shale oil has sparked a firestorm of international protest over the threat that this emerging source of crude oil could destabilize the Earth’s climate. To date, the Keystone XL pipeline—the fuse by which this climate “bomb” would be lit—has been blocked by the Obama administration.

But while the focus has been on stopping pipelines, oil companies have been quietly looking to the railways to transport this dirty fuel from the North American heartland to its coastal refineries thousands of miles away. New Yorkers are now living in fear of the hundreds upon hundreds of crude oil rail cars rumble from Buffalo and the upper reaches of Lake Champlain to Albany and points south every day along some of the state’s most important waterways and city centers. This “pipeline-on-rails” has never received an environmental review, yet represents apocalyptic risks.

In July of 2013, a train carrying 74 tanker cars of this crude oil derailed and exploded in the tourist town of Lac Megantic, Quebec, killing 47 people and incinerating 30 homes and businesses. Since then more oil was spilled in North America by rail car in 2013 (1.15 million gallons) than in the previous 40 years combined. In 2015, there have been 5 major crude-by-rail accidents involving derailments, spills and fires endangering communities and water ways with toxic smoke and tens of thousands of gallons of crude oil.

If any of these accidents had happened at the Port of Albany or any other point along the state’s rail corridor, including Rochester, Syracuse, Utica, Plattsburgh, Schenectady, Binghamton, Newburgh, West Point or Nyack, it would have threatened the lives of tens of thousands of people, including those at the state Capitol, state agency buildings and extensive neighborhoods and housing developments. The problem is two-fold:

- Fracked crude oil from the Bakken shale is much more volatile than traditional crude oil, and
- DOT-111 cars or “bomb trains,” as rail engineers call them, are prone to derailment and structural failure. The use of DOT-111 cars has increased dramatically over the past three years from 10,000 cars in 2009 to more than 400,000 in use by the end of 2013. In late 2013, the Pipeline and Hazardous Materials Safety Administration determined that Bakken crude had a much lower flashpoint than other forms of crude, making it a significantly more dangerous cargo for the defective DOT-111 cars to carry.
Currently, 1.2 billion gallons of Bakken crude move through the Port of Albany annually, in thousands of DOT 111 railcars. Crude shipments from Albany are expected to grow, as state permits allow terminals operated by Global Partners LLC and another company at the port, Houston-based Buckeye Partners, to handle up to 2.8 billion gallons annually.

Each day, as many as 120 railroad tanker cars arrive at the port and pump crude oil into double-hulled ships and barges that ply the Hudson River. Global says it has the capability to offload two 120-car trains in a 24-hour period. In December, 2012, one of the first ships to haul this crude oil wrecked only a few miles down-river from the port, but the tear in the hull did not pierce the inner skin of the vessel, narrowly avoiding disaster.

The most frustrating aspect of the crude by rail/ship transport phenomenon is that New York State and local communities are assuming enormous risks with little economic benefit—all in a regulatory environment where the vast majority of jurisdiction rests with indifferent federal agencies. Simply put, because of the interstate commerce clause and preemptive laws governing rail transportation, there’s not much we can do at the state level to control or block these Bakken bomb trains from rolling through our communities.

Because New York State controls the permitting of petroleum bulk storage facilities, A.7625 proposes to require those that store tarsands oil or Bakken crude demonstrate that they have the financial security to meet all responsibilities for cleanup and decontamination costs associated with the release of such oil. In the wake of the Lac Megantic disaster all responsible parties were grossly underinsured and either declared bankruptcy or shifted liability to subsidiaries. In the end the Canadian Government was left with the clean up costs that could exceed 2 billion dollars. This scenario should not be allowed to happen in NY.

**The Sierra Club Atlantic Chapter urges your support of this critical legislation**