Memorandum of Support

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

Title: An act to amend the environmental conservation law, in relation to global financial surety

Purpose: This bill requires petroleum bulk storage facilities to provide proof of adequate funds to be used in the case of a necessary cleanup and decontamination.

Statement of support: The extraction of Canadian tar sands and North Dakotan Bakken shale oil has sparked a firestorm of controversy in New York as oil companies have begun using the nation’s 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 that 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. Following Lac Megantic, there have been major crude-by-rail accidents in Aliceville AL, Casselton ND, Vandergrift PA, Lynchburg VA, Mount Carbon WV, Galena IL, Gogama Ontario, Heimdal ND, and Culberson MT, involving derailments, spills and fires - endangering communities and water ways with toxic smoke and tens of thousands of gallons of crude oil. New York could be next on the list.

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 Wall Street Journal calculated that a single tank car of sweet crude carries the energy equivalent of two million sticks of dynamite.

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. Reforms to DOT 111 construction and cargos have been recently implemented but the new regulations are anemic and will not be fully implemented for a decade or more. To date, only 225 DOT 111 retrofits have been completed, with tens of thousands more to go.

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.

One of the most concerning aspects 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. To compound the problem, the railroads are often grossly underinsured against catastrophic spills and accidents - potentially putting billion dollar burdens on taxpayers and communities after an accident.

A review of Securities and Exchange Commission filings of the two major carriers of crude oil in New York state – CSX Corporation and Canadian Pacific Railway Limited – revealed that CSX is self-insured at a level of $25 million per occurrence for what it terms as “non-catastrophic” property damage, such as that caused by a train derailment, and for catastrophes such as floods or hurricanes at a level of $50 million per occurrence. Canadian Pacific’s filings do not include information on the levels of insurance per occurrence.

If an incident such as the catastrophic train disaster in Lac-Mégantic, Quebec, where cleanup costs and damages are estimated to exceed $2 billion, were to occur in New York, it would quickly exhaust the state’s resources for emergency responses and victim compensation. The U.S. Department of Transportation estimates that 10 “higher consequence” events with oil trains may occur in the United States within the next 20 years.

A.7625 proposes to require those that store or transport tarsands oil or Bakken crude disclose whether that they have the financial security to meet all responsibilities for cleanup and decontamination costs associated with the release of such oil. Demanding adequate insurance from those that transport shale oil may not only save the state’s emergency oil spill fund, but incentivize real safety reforms where exorbitant insurance premiums may be more compelling than pressure from federal regulators.

The Sierra Club Atlantic Chapter urges your support of this important legislation.