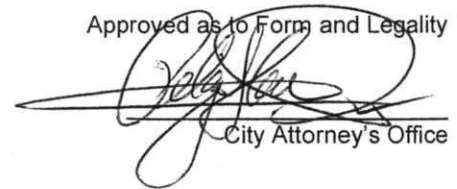


14 MAY 29 PM 4:52

Approved as to Form and Legality



City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS Kalb, Gibson McElhaney and Kaplan

RESOLUTION TO OPPOSE TRANSPORTATION OF HAZARDOUS FOSSIL FUEL MATERIALS, INCLUDING CRUDE OIL, COAL, AND PETROLEUM COKE, ALONG CALIFORNIA WATERWAYS, THROUGH DENSELY POPULATED AREAS, THROUGH THE CITY OF OAKLAND

WHEREAS, there is a new push by the fossil fuel industry to transport, export, and/or refine coal, crude oil and petroleum coke ("petcoke")—a byproduct of oil refining—on the West Coast and in California; and

WHEREAS, California refineries are in the process of securing permits to build rail terminals to import Canadian tar sands and Bakken crude oils from North Dakota, and existing rail terminals are securing permits to import tar sands and crude oil without public notice or CEQA review; and

WHEREAS, other refineries have similar projects planned to transport hazardous crude by rail through Oakland and other East Bay cities; and

WHEREAS, California public and private Ports are in the process of securing permits to build or expand export facilities for coal and petcoke; and

WHEREAS, the California Assembly passed, and Governor Brown signed, Assembly Joint Resolution No. 35 in September 2012 urging the President and Congress to enact legislation to restrict the export of coal for electricity generation to any nation that fails to adopt regulations on greenhouse gas emissions or hazardous air emissions that are at least as restrictive as those adopted by the U.S.; and

WHEREAS, New York Governor Andrew Cuomo also recognized the risk of transporting volatile crude by rail by passing Executive Order #125 directing New York state agencies to conduct a comprehensive review of crude rail transport safety procedures and emergency response preparedness and Albany County, NY, issued a moratorium on crude increases at the Port of Albany pending a public health investigation. In California, the cities of Berkeley and Richmond have passed resolutions concerning the safety of transporting crude by rail; and

WHEREAS, in Washington and Oregon, 27 communities have passed resolutions against coal transport and export, and hundreds of other public officials, including Governors Inslee and Kitzhaber, state and federal agencies, tribes, health entities, religious leaders and other community leaders, have recognized the harms of coal by making statements of concern

about coal transport and export. The State of Washington Department of Ecology, through its SEPA process, is requiring a comprehensive cumulative impacts analysis of proposed coal export facilities and rail transport from mine to port to plant spanning the Powder River Basin to Asia for the proposed Longview and Bellingham coal export facilities; and

WHEREAS, in Illinois, the State Attorney General, Governor and Chicago mayor are pursuing new legislation to better regulate petcoke storage or to ban new facilities due to residents' concerns about dust and health impacts; and

WHEREAS, the last few years have seen a dramatic rise in transport of crude by rail nationwide – the volume of crude by rail shipments in Northern California increased by 50 percent last year alone—accompanied by a similar rise in accidents, nearly 100 in 2013. More crude oil was spilled in U.S. rail accidents in 2013 than in the preceding four decades, amounting to more than 1.15 million gallons in 2013. In July 2013, 72 tanker cars loaded with 2 million gallons of flammable crude oil derailed in Lac-Mégantic, Canada, causing explosions that destroyed dozens of buildings, killed 47 people, and caused over \$1 billion in damages; and

WHEREAS, coal and petcoke are commonly transported via open-top rail cars and a large volume of those materials escape during transit. According to the BNSF Railway, each coal car in a 125-car coal train loses, on average, 500 pounds of coal per car in transit, for a total of up to 60,000 lbs lost per train on an average trip. Uncovered rail cars contaminate cities, towns, farmland, forestland, streams and rivers across California with coal dust, petcoke and chunks of coal; and

WHEREAS, a federal Surface Transportation Board proceeding regarding the transportation of coal by rail found that coal dust is a “pernicious ballast foulant” that can destabilize rail tracks and can contribute to train derailments, and between July 2012-2013, at least 40 coal trains in the U.S. derailed, causing four victims to lose their lives, large amounts of coal to spill, major delay to other rail users, and significant costs to repair the damage; and

WHEREAS, coal from the Powder River basin is explosive, and the transportation of coal in open rail cars and accumulation of coal on or near rail lines has been known to create public safety hazards, including train derailments, explosions and fires; and

WHEREAS, the National Transportation Safety Board and the Pipeline and Hazardous Materials Safety Administration recently acknowledged the failure to appropriately classify the contents of crude oil shipments to reflect the hazardous and highly flammable nature of the substances being transported by rail and the devastating consequences of a crude oil rail accident including loss of life, property and environmental damage, and thus made recommendations to avoid urban areas when transporting crude, and to improve rail safety regulations for crude oil transport, including worse-case scenario emergency response plans; and

WHEREAS, new coal and petcoke export terminals and crude by rail operations are expected to result in a massive increase in train traffic in California, causing concerns about blocked roads inhibiting the travel of emergency vehicles, pedestrians, access to waterways near the rail lines for fishing and other recreational use, and other vehicle traffic, and potentially catastrophic train derailments; and

WHEREAS, increased rail traffic in California from coal, petcoke and crude oil will lead to an increase in diesel emissions in communities along rail lines, and exposure to particulate

matter from diesel engines has been linked to impaired pulmonary development in adolescents; increased cardiopulmonary mortality; measurable pulmonary inflammation; increased severity and frequency of asthma attacks, emergency room visits, and hospital admissions in children; increased rates of heart attacks and strokes in adults; increased risk of cancer; and increased asthma and lung disease in children; and

WHEREAS, coal contains toxic heavy metals – including mercury, arsenic, and lead – and exposure to these toxic heavy metals in high concentrations is linked to cancer and birth defects; and

WHEREAS, petroleum coke contains Polycyclic Aromatic Hydrocarbons (PAHs) and heavy metals – including arsenic, copper, mercury, nickel, and zinc – at levels that are harmful to fish and wildlife as well as humans; and

WHEREAS, crude oil, like that coming from the Bakken shale reservoir, is known to be volatile, highly flammable, and contain elevated concentrations of benzene, a potent carcinogen; and

WHEREAS, trains delivering crude oil, coal and petcoke traveling through the Bay Area will follow routes adjacent to the San Francisco Bay Estuary and Oakland water front its tributaries, and routes adjacent to the Sacramento River and Sacramento-San Joaquin Delta posing a serious threat to these ecosystems, and to California's agricultural irrigation and drinking water supplies; and

WHEREAS, hauling crude oil, coal and petcoke into California involves traversing some of the most challenging mountain passes in the nation, areas laced with earthquake faults and numerous unsafe old steel and timber bridges over major waterways, greatly increasing the probability of serious accidents; and

WHEREAS, trains delivering crude oil, coal, and petcoke would travel on Oakland's existing train lines, which pass through our most vulnerable communities of East and West Oakland, which, throughout Oakland's history, have been exposed to significant environmental harm from industrial and commercial uses; and

WHEREAS, given the record of crude-oil and coal rail accidents in recent years, an event such as Lac Mégantic or a coal train derailment could have catastrophic effects if it occurred in any populated area; and

WHEREAS, historically, when environmental accidents do occur, oil companies spend years in litigation over damages as strategy to undercut payments to affected communities or deflect blame; and

WHEREAS, the cumulative impacts of the combined crude oil, coal, and petcoke train traffic through Oakland and other parts of California, in addition to the cumulative upstream and downstream greenhouse gas impacts of these fossil fuels, must be analyzed prior to the transport of any of these hazardous materials through our communities; now, therefore, be it

RESOLVED: That the Oakland City Council opposes using existing rail lines to transport hazardous crude oil, coal and petcoke along California waterways, natural habitats, through densely populated areas, through the East Bay and Oakland, through special districts and the Port of Oakland; and be it

FURTHER RESOLVED: That the City Administrator or his/her designee shall:

- Consider submitting comments in opposition to CEQA documents and any draft permit approvals, such as air permits or zoning changes for transport of crude oil, coal and petcoke, including a statement that any CEQA analysis must include a region-wide cumulative impacts analysis by a lead agency to fully account for the direct, indirect and cumulative impacts associated with multiple proposals for coal, petcoke and crude oil transport and export, and crude refining, in California communities;
- Submit a copy of this Resolution to Governor Edmund G. Brown, Jr. whereby the City Council of Oakland requests that he take executive action similar to New York Governor Cuomo's executive order directing state agencies to conduct a comprehensive review of safety procedures and emergency response preparedness related to shipments of volatile crude oil and a cumulative impacts analysis similar to the Washington Department of Ecology for coal mining, transport and burning;
- Submit copy of this Resolution to the Bay Area Air Quality Management District (BAAQMD) whereby the City Council of Oakland urges that the BAAQMD require public notice and CEQA review for all air permitting decisions made in connection with fossil fuel rail terminals, or port facilities, including change of use decisions, such as the BAAQMD's issuance of a permit to operate a crude-by-rail project without any notice to the public or environmental and health review;
- Address impacts to public health, safety, property, air quality and surface and groundwater caused by the transport of coal, petroleum coke, and crude oil through Oakland by actively enforcing applicable local public health, safety, building, electrical, nuisance, and fire codes and by actively enforcing applicable federal environmental statutes delegated to Oakland;
- Submit a letter to rail carriers involved in transport of crude oil, coal, and petcoke in California requesting:
 - that the rail carriers make public any plans for new or expanded rail facilities or significant rail traffic volume increases;
 - that the rail carriers provide representatives to meet periodically with local citizen groups and local government officials from Oakland to seek mutually acceptable ways to address local concerns;
 - that the rail carriers update its emergency response plan with the City of Oakland to account for the transport of crude oil, coal, and petroleum coke and the potential emergencies that could occur with accidents including these hazardous materials;
 - that the rail carriers conduct environmental monitoring in Oakland, including but not limited to groundwater and air monitoring, and submit environmental monitoring or testing information to local government entities on a monthly basis for 10 years; and
 - that the rail carriers implement measures to reduce community impacts including, but not limited to, drafting road improvement plans for grading, widening, or otherwise providing crossings at intersections that would be impacted by rail traffic increases to

prevent rail accidents and offset congestion; and require the railroad to pay in full for these upgrades in Oakland; and

- Submit a copy of this Resolution to the California Public Utilities Commission (CPUC) whereby the City Council of Oakland seeks assurances that the CPUC railroad safety program is adequately implemented in Oakland and other areas that may receive crude by rail shipments, including investigation, inspection, infrastructure improvement, detection and mitigation of risks or any other procedures or mechanisms available to the CPUC;
- Send a copy of this Resolution to the U.S. Department of Transportation, which is developing regulations for federal rail safety of shipment of fossil fuels by rail in DOT-111 cars;
- Alert and communicate opposition to other cities along the transportation route, and support their efforts;
- Work through the League of California Cities, California State Association of Counties, and other relevant organizations to articulate opposition;
- Alert our State legislative representatives and our lobbyists in Sacramento and enlist their help; and
- Lobby federal Senators and Representatives to enlist their help to engage the appropriate regulatory authorities at the federal level.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California