Brotherhood of Locomotive Engineers and Trainmen
Washington State Legislative Board
Workplace Safety, Health, and Education
Shahraim C. Allen - Chairman

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Scott Ferguson,
Prevention Section Manager
Department of Ecology
300 Desmond Drive
Lacey, WA 98503-1274

RE: 2014 Marine & Rail Oil Transportation Study

Dear Mr. Ferguson:

Thank you for the opportunity to participate in the rail portion of the 2014 Marine & Rail Oil Transportation Study at the Lacey Community Center. While we were able to get a few of our safety and risk concerns on record, time constraints precluded us from voicing all of our safety concerns germane to this important topic. Therefore, please allow this letter to further document Rail Labor's safety and risk concerns regarding Crude by Rail (CBR). Also, please be advised our concerns listed here are all of equal importance.

There is an imminent risk to public health and safety by the number of inexperienced, "new hire" railroad employees entering the railroad workforce inadequately trained and/or familiarized with the workplace environment.

The risk is multi-faceted, as the railroads are desperate to replace Baby Boomer employees, now reaching retirement age, to satisfy today's manpower needs. That were created by the exponential increase in CBR shipments, and "qualify" as many new hire employees in the shortest amount of time, as possible. That's a very tall order and, frankly, the railroad continues to "lower the bar" of an education system, that has been in decline for over forty (40) years. Far too much reliance has been placed on Computer Based Training (CBT), and way too little on traditional railroad "apprenticeship" programs. Why? Because it is more cost effective for the railroad to use CBT than traditional apprenticeship and "On-The-Job" training methods. Far, far too many new employees are being rushed into service in order to meet operational needs of the railroad. Adequate OJT and apprenticeship tutor-ledge, has taken a backseat to profits. Also, Route-Familiarization trips, essential for building competency and train-handling skills on the various subdivisions, have been reduced. In order to get new Locomotive Engineers and Conductors "route qualified" and into the "revenue workforce," as soon as possible. The current training model/route familiarization, provided by the carrier is minimal at best. Due to the high-volume of new hire employees rushed into service, the Locomotive Engineers and Conductors, tasked with overseeing the OJT process, are overwhelmed. The amount of new hire employees in training, has doubled from the previous year, with no slow down in sight. What you are left with is a senior-crew base that are literally 'burned out', who will no longer train new hire employees. The responsibility is proving too much for a workforce,

that is experiencing task overload, with longer work days. There is little to no consideration given, to the train crew, if a rule is violated by the new hire employee. The result is 'newly hired employees', training the 'new hire employee', that have limited knowledge of the rail-industry. With rail-traffic volumes projected to increase, double the current amount, by the year 2016. It is a recipe for disaster, especially with CBR cargos.

At the end of the day, production and profit margins win out over safety. The railroads have resorted to using the bare minimum standard as defined by Federal Railroad Administration (FRA) regulation for Route Familiarization and are calling that "good enough." That FRA minimum standard is grossly below what should be considered adequate, and is exactly why additional regulatory oversight by both FRA and Washington Utilities & Transportation Commission (WUTC) is necessary, to ensure public safety and health are maintained in CBR operations. One final comment on the education/training topic, most of the Class I railroads have gone to a centralized model for education/training. While more cost-effective than traditional methods, this model is dangerously inadequate, if for no other reason than, not all railroad operating geography is created equal. Even filmed routes, used in conjunction with mock locomotive simulators, are grossly inadequate compared to real world, train-handling experience. Back in the day of manpower staffing where a Fireman (Locomotive Engineer Apprentice) worked alongside a senior Locomotive Engineer, the craft of operating the locomotive, as well as controlling the various tonnage trains on the various territorial conditions, was learned over time and the skills passed from generation to generation of Locomotive Engineer. The railroads claim technology has eliminated the need for "hands on" apprenticeship-style training but they are flat wrong on this point. The states and the federal government must take action to ensure adequate, state-level, region-centric, Workforce Development style, education, training, route familiarization, and re-certification of railroad employees occurs. To allow anything else, compromises public safety and invites disaster on par with Lac Megantic, Quebec, Canada.

<u>There is an imminent risk to public health and safety by the proposed use of Single-Person Train Crews in freight rail operations</u>.

Up until 1966, Washington State had state-level minimum crew law in place to ensure for railroad safety. But special interest funded a "featherbedding" Initiative campaign to undermine this important state-level railroad safety law thus allowing industry to whittle away at reasonable train crew sizes. Rail Labor's collective bargaining agreement has, since that time, provided the public with some level of protection against the "race to the bottom" of common sense safety practices by the railroad industry. But those contractual protections will expire in upcoming years allowing the railroad industry to its own profit-driven devices. Industry is quick to tout technology as the reason for reducing crew size. In reality, it is their greed driven agenda to achieve full automation of train operations to further maximize profits. Transport Canada took steps to bridle the North American rail industry's "profits first" approach to safety by requiring all trains carrying hazardous materials in Canada to have a minimum Two-Person Crew. The Canadian government has also put a strict timeline of three years on the phasing out of the aging DOT-111 tank cars. For a country that is

supposed to be setting the example for the rest of the world, so far, the USA still has not taken the sensible safety steps our neighbors to the north now require of railroads operating in their country.

There is an imminent risk to public health and safety by both chronic and acute fatigue in the railroad industry.

Rail Labor has fought for years for fatigue abatement but, to date, the railroad industry has refused to adequately address the problem. Train line-ups, central to employee's management of their rest, have become worse, instead of better. Draconian Availability Policies designed to "build a jacket" on employees jeopardize safety by forcing workers to remain "marked up" for work when they should be taking time off to recover from 24-7 work schedules. Further, scheduled jobs and trains that provide some semblance of routine are frowned upon by management as "inefficient" and "inflexible." The Class I railroad business model is tied to train tonnage. That means trains do not run unless a pre-established tonnage threshold is reached. This fact, along with poor locomotive power management and crew management, are some of the key factors that further aggravate poor scheduling, inadequate train lineups, and ultimately crew fatigue.

During a National Association of State Legislative Board Chairman conference in New Orleans, LA, in 2012, then National Transportation Safety Board Chair Deborah Hersman flat said everyone has known about the fatigue problem in the railroad industry for over twenty years but still nothing substantial has been done to remedy the problem. The Washington State Legislative Board of the BLET wrote a White Paper as to the "how to" of fatigue abatement and presented that paper to BNSF railroad management several years ago. Unfortunately, Rail Labor's improved Crew Management model for fatigue abatement was summarily rejected by management.

There is an imminent risk to public health and safety by track maintenance not commensurate with the number of heavy tonnage trains operated on rail lines in Washington State.

Over the past three years, Washington State has seen a dramatic increase in heavy train traffic, associated with energy trains. Unit coal and Bakken crude oil trains, many in excess of 100 cars and 15,000 tons, have increased exponentially. These heavy tonnage trains accelerate wear and tear on the mainline infrastructure. While it behooves the railroad to invest more money into capacity infrastructure, it is equally important for commensurate investment in Maintenance of Way to ensure track and roadbed infrastructure remain safe for all rail operations. Crude oil trains pose an additional maintenance challenge due to the fact the product is transported in liquid state. Sloshing associated with rail transportation of product can create "asymmetrical forces" to the track structure and road bed beyond what is experienced by other non-liquid commodities. Combine that phenomenon with heavy tonnage and there is exists the potential for additional wear and tear of the infrastructure.

An additional consideration in the maintenance category is train length and speed. In the seemingly never ending quest for "more efficiency," the railroad industry has increased train lengths substantially over the past seven years. Prior to 2007, some trains were "sectioned" into two trains, keeping train lengths at or below a mile. The economic recession brought "belt tightening" to unprecedented levels to ensure for "efficient" rail operations. Today the railroad industry continues to favor the longer train lengths, even after we are well into the economic recovery. Further, the have deployed Distributed Power (locomotive power located other than on the lead locomotive consist) thereby using the same numbers of train crews to move more freight tonnage. This profit driven model has increased delays at public railroad crossings-at-grade and, especially in Washington State, has added to wear and tear on infrastructure. Distributed Power does have its advantages for safer operations - especially on grade. But there is a point of diminishing safety returns. Curving, undulating territory can cause complications and, unfortunately, the Class I railroads insist upon a "one size fits all" operational model. Washington State's railroad territory is unique, and the Class I service model seems to ignore this important point. Case in point, during the Spring of 2008, a BLET Locomotive Engineer reported for work on his Seattle Subdivision job to find a "monster" Distributed Power train of over 10,000 feet! When this engineer advised management that the train was too long for the territory, they asked him, "Are you refusing service?" He replied that he was not but only advising them of his safety concerns regarding the extreme length of the train for the territory to be traversed. That safety experiment in train length went on to derail three times between Seattle and Vancouver, WA.

Finally, track speeds have been increased on many existing subdivisions in Washington State. One reason industry has done this is to squeeze more "relative capacity" out of existing track infrastructure without actually having to build new track infrastructure. Unfortunately, this is nothing more than a smoke and mirrors stunt that further compromises worker and public safety. Increased speeds (from 50 mph to 60 mph) on the BNSF Seattle Subdivision without substantial signal upgrades, from Three (3) Aspect Signaling to Four (4) Aspect Signaling, is borderline reckless. Three (3) Aspect Signaling, only affords the Locomotive Engineer and Conductor one, single signal prior to a 'Stop' Indication (i.e. red signal). With Four (4) Aspect Signaling, train crews are afforded an Approach Medium (flashing yellow), and then an Approach (solid yellow), before the 'Stop' Indication. This provides an additional 1.5 miles to 2.0 miles of preparation for complying with signal indication. Considering crew fatigue, vegetation obstructions, train speed, signal trouble, and other factors that can affect the train crew's ability to see, recognize, and comply with signal indications, Four (4) Aspect Signaling is greatly preferred. Related to the signal issue discussion, was a recent gaff by the railroad when installing a new Control Point on the Seattle Subdivision. Rather than set the "approach" signal a reasonable distance (traditionally 2.0 miles ahead of the Control Point), the railroad installed the approach-signal at a significantly shorter distance! Imagine operating a heavy train with weight of between 6,000 to 9,000 tons (98 tons per operative brake), at maximum track speed of 60 miles per hour, after getting only 3 hours of sleep due to poor train line-ups. Then after traversing the territory for 100-plus miles on "Clear" signal indications (i.e. green), receiving an "Approach" signal (solid yellow) without any additional warning and having to come to a full stop in less than two miles! To say the least, this can be a hair raising experience. Throw in equipment

limitations such as smaller wheels on autorack cars or heavy fog conditions and the margin for any error increases exponentially. As a sidebar comment, the average passenger train weight is 1000 to 1100 tons.

Uniformity of operational practices and procedures, used in the negotiating trains over the given territory, are relied upon 100% by the train crews in order to operate safely and efficiently. Any deviation from this can lead up to an unforeseen and potentially disastrous mishap. Wear forces on track infrastructure, as well as in-train forces, increase with train speed, train length, and train tonnage. Adequate Maintenance of Way manpower should be considered as well as all other maintenance factors when budgets for the various subdivisions are contemplated. To do anything less is yet but another recipe for disaster.

There is an imminent risk to public health and safety by inadequate regulatory oversight and cumbersome rulemaking by the Federal Railroad Administration.

The Federal Railroad Administration (FRA) is touted as the agency providing regulatory oversight of our nations Class I Railroads. However, there appears to be a clear disconnect between the various Regional Offices and the National Office of the FRA. For example, when fine penalties are issued to railroads for regulatory violations by field inspectors, there appears to be a pattern of allowing violation fines to be “negotiated down” to a lesser amount at the National Office. Apparently, this is a common practice and “standard operating procedure” at FRA. This “common practice” undermines safety and can have the added adverse effect, of discouraging detailed field inspections as a waste of time, because the fines will be reduced or waived by the National Office in D.C. This is a particularly hard-pill to swallow for rail labor as the safety of the public and of our members should not be open to negotiation. The railroad holds its employees to a “100% compliance, 100% of the time” standard. Yet, when the railroads are found to be in violation of federal regulation, fines are negotiated down. Clearly, a double standard and a detriment to safety. If the multi-billion dollar railroad companies are not held to full financial accountability, how can there be improvement in the manner in which they place importance on these safety issues? The answer is: There can not. In fact, the railroad simply “budget” fines into their business model.

Turning the discussion to signal and track maintenance practices on the railroads. The railroad Track Inspectors, who inspect the rail lines, have had their territories expanded. To the point that makes it is nearly impossible, to adequately inspect all track placed in their responsibility, as needed to ensure safety. These crucial inspections by railroad personnel are happening less frequently thus increasing the potential for mishaps associated with failed infrastructure to occur. The railroad’s business model of “maximum train tonnage/maximum train length” of freight trains, with a average weight ranging from between 10,000 tons to 18,000 tons and lengths running anywhere from 6,000 feet to 8,800 feet, continues to push the limits of safety and common sense. Add in the increase, to the volumes of rail traffic traversing the mainlines on a 24/7-365 day schedule, and it becomes clear we can afford no short cuts to be taken. So, when FRA assesses fine penalties for violations, those fines must remain at the highest possible levels. The primary rail

carrier in Washington State, operates with the mindset, of doing whatever they can get away with. Washington State provides the means for many industries to reach international markets, with the railroad being the "common carrier" vehicle, to those international markets. Safety truly is job one. Therefore, no exceptions should be afforded the railroad regarding compliance with FRA regulation and fines associated with non-compliance. The railroad has received federal High Speed Rail monies in the amount of $800 Million for the upgrade in the existing infrastructure associated with improving passenger rail performance. Be rest assured, the railroad benefit handsomely by this huge infusion of taxpayer funds. This substantial financial benefit to the privately owned railroad corporations should require more return to the public than what amounts to a few minutes improvement to passenger train on-time performance. Recurring maintenance upkeep (i.e. removal of vegetation blocking signals,etc.) of all aspects of the railroad physical plant should be required. No component of rail safety should be overlooked and, as such, the Washington Utilities and Transportation Commission (WUTC) should be empowered with a larger role in the enforcement and compliance of railroad physical plant inspections affecting safety.

With regards to the WUTC, there are currently two full-time positions for State Participate Program for Railroad Safety Inspectors unfilled. Apparently, the reason for this is the State of Washington is not able to provide adequate funding and/or commensurate pay commensurate with federal inspectors or industry. This creates a "weak link" in the safety process in Washington State and a solution to this problem must be found immediately. All state-level rail inspector positions associated with the State Participant program need to be filled and, once personnel has be trained and qualified, pay levels brought up to industry standards to retain inspector personnel.

<u>There is an imminent risk to public health and safety due to the lack of accountability in all area of operations management within the railroads.</u>

As centralized operations have become the "model of choice" for the efficiency obsessed railroads, there appears to be breakdown in management accountability. This is, in part, directly related to the industry's "behavior based" approach to safety. In short, when something goes wrong railroad management immediately looks to the front line employee (i.e. train and yard crews) as being the root of the problem. Train, Yard, and Engineer (TY&E) personnel have become the scapegoats for an inadequate physical plant and poor management decisions (case in point, the 2008 "monster" Distributed Power train previously mentioned). Another way of looking at the problematic behavior based safety culture on the railroad is it allows management free reign with, essentially, no consequences. TY&E employees are routinely called to personnel investigations to "assess their level of responsibility." Invariably, the employee is almost always deemed "responsible" for whatever rule violation they are charged with. This accountability discussion connects back to the points made above on education,training, and familiarization being inadequate. When reports are made, that will hinder the on time departure of the train or a create a substantial reduction in tonnage, there is a question of disbelief, more than an understanding of what is being reported. The employees that encounter the bulk of the workplace risk, and who have firsthand knowledge of what factors

influence workplace risk, oftentimes are ignored or, even worse, intimidated to remain silent. For example, when a train crew makes a request for reduction in train tonnage, due to a lack of required and/or reliable horsepower associated with the locomotive consist, management invariably chooses to abide by "theoretical" numbers, flashing on a computer screen versus anecdotal information derived by train crews, who actually operate the locomotive equipment over the various mainline territories.

The most valuable tool, the railroad should be relying upon, is the input derived from the train crews operating the locomotives and trains. The railroad spends millions to purchase the locomotives, but do the absolute bare minimum to maintain them adequately. The Mechanical Department forces, that have traditionally maintained locomotive power and other rolling stock, at numerous locations across the vast network of rail lines, have been whittled down to an astonishingly low number or canvassed out completely. Consequently, the availability for inspection, by properly qualified Mechanical Department personnel, is few and far between. Again, the railroad's centralized model has been applied to the locomotive maintenance facilities. Today, most "locomotive shops" are in reality no more than a fuel, water and oil stop. The carriers are relying way too much on "state-of-the-art" electronic inspections via satellite upload, than on a "hands on" maintenance facility, where qualified mechanical personnel conduct essential physical inspections of locomotive equipment. As a sidebar comment, the railroad relies upon Locomotive Daily Inspections performed by the Locomotive Engineer in the course of his/her regular duties, as established by Federal Railroad Association, far too much. These daily inspections were only intended to be a "cursory," at-a-glance inspection similar to what most military pilots perform of their aircraft before taking flight. The railroads have exploited this regulatory loophole, and have now placed the locomotive engineer in the dubious position, of being the person responsible for any defect on the locomotive. A thorough locomotive inspection should be conducted by trained Mechanical Department personnel on a regular basis, not via electronic upload. Currently, FRA is allowing the railroads over six months between Mechanical Department inspections. This is unacceptable and compromises public and worker safety.

Not so long ago, every train entering a given terminal had an opportunity for the Locomotive Power to be removed from the train, taken to the Roundhouse, and inspected by Mechanical Department personnel qualified and trained for such purposes. This allowed for an additional layer of safety in finding and correcting defects associated with: Wheel-Flange, Traction Motors, Dynamic Brake Grids, Locomotive Cab Conditions, Radios, Radio Handsets, and more. Currently, any given train will change crews, over several hundred miles of territory three (3) to five (5) times before the Locomotive Power is physically taken to a Mechanical Facility. Then, only the most minimal of maintenance and Cab Condition upkeep is performed. Again, this can be greatly attributed to the railroads fondness of the centralized model, and to downsizing of Locomotive Mechanical Department personnel, trained and qualified to perform these tasks. As it stands today, any delay in the release of Locomotive Power for service is highly frowned upon by railroad management, thus further exacerbating the deterioration of overall safety on the railroad.

Additionally, the railroad has a policy stating that train crews are to be out of the door and on their train, within 30 minutes of being on duty. This "time ultimatum" is not in keeping with prudent trip preparation and sound safety practices. Experienced train crews know it may be necessary to take more time in preparing for a trip, that in many cases will last twelve hours. When considering just the hazardous material paper work associated with a certain cargos or the need to ground inspect a train (other than unit bulk commodity train) prior to departure, a 30 minute requirement to be on-board the train borders on recklessness. For example, mixed-freight "manifest trains" carrying numerous types of hazardous materials must have the proper placards in place corresponding to the Conductors paperwork. This is essential for first responders should their be a derailment or commodity spill. New hire and Inexperienced crews, are often intimidated by management to rush out of the office, get on the train, and take it "as is." A very dangerous practice, indeed. With the vast majority of the experienced workforce retiring, the 'new hire employee', is afforded little in terms of resources for understanding, when railroad production demands are infringing on their responsibilities, in preparing for a safe trip. These intimidation tactics by management are solely to maintain an on-time departure.

There is an imminent risk to public health and safety by crew fatigue caused by inaccurate train line-ups, and poor or improper crew lodging conditions.

By way of computer access, Locomotive Engineers, Conductors, and Brakemen, rely solely upon the railroad's scheduling of trains (i.e. line-ups) to plan their rest in preparation for their work assignment. Unlike Passenger Trains, the airline, or bus Industry where scheduled arrivals and departures are very predictable, based on a uniformed schedule. The railroads run freight trains based on tonnage thresholds. This means trains crews are subject to call 24-7, around the clock with no set call times, when reporting to work. The distance a train crew might travel, can range from 135.0 miles to 234.0 miles respectively, with the tour of duty lasting up to 12 hours of actual train operations. The one consolation is a board line-up, that is held by those working a Pool, or performing what is known as Chain Gang Service. Those assigned to this Class of Service, are on a rotating-board which displays what position they are in, on this particular board and what train they are assigned. The business model of the Carrier, is the continuous movement of freight, to the overall destination. The call time of the trains is ever changing. Never with a guaranteed call time, once a train is assigned to the board, until the train is called. The only mitigation the pool service employee has, is that the Federal Hours of Service Law. This law requires that each railroad employee will have no less than ten (10) hours of uninterrupted rest off work between calls, to perform service for the railroad. Once ten (10) hours off is achieved, the carrier has the ability to call the employee to perform service. This is the guideline set for all railroad employees working in TY&E crafts. However, the "on duty time" for a train can fluctuate widely. It is not uncommon for a TY&E employee to be projected by railroad crew management, train "line-ups" to be scheduled to work the next calendar day. Then, without warning, the railroad will call the employee to work. This scenario has been happening for many years, creating both chronic and acute fatigue conditions, for many railroad employees operating trains in Washington State.

With the train line-up, being the one tool a TY&E employee can access, to gain an understanding of how to prepare for work and manage their rest. The railroads must be compelled, to provide reasonably accurate information in these train line-ups. As it stands today, that is not happening. Again, Rail Labor offered a possible solution to this age-old problem, in the form of a union-assisted crew office, but the railroad rejected the proposal. As Deborah Hersman pointed out, we have all known about the fatigue problem in the railroad industry for over twenty years but have failed to resolve it.

Within the last twenty (20) years, there were once assigned crews in through-freight "Chain Gang Service" operating trains over a given territory (i.e. Seattle Subdivision, Lakeside Subdivision, etc.). This business model allowed for some semblance of a regular call schedule for work, which provided TY&E employees better opportunity for managing their rest and personal lives, around unconventional railroad operations. Unfortunately, this model was not efficient enough for the railroads.

When train crews are at the "away from home terminal" (or AFHT) waiting for a train to "work back home," there are additional concerns that affect fatigue, and ultimately, safety. Over the years, Rail Labor has seen AFHT lodging improve from the days where railroads maintained large dorm-type sleeping rooms for "mass lodging" to today's standard where a train crew member has a private room. Unfortunately, the quality of some of the lodging vendors now utilized for AFHT lodging has deteriorated. With the ability to receive proper rest closely linked to fatigue abatement, and ultimately, safety, more needs to be done regarding adequate AFHT lodging for train crews. Today, the common practice of the railroad seems to be locating the cheapest form of lodging, in close proximity to the AFHT, and go with it - regardless of factors that may hinder crew rest. The Rail Labor unions have attempted to collectively bargain for improved AFHT lodging, but they have only had limited success. Considering the safety sensitive nature of TY&E personnel, and the connection of fatigue to railroad accidents and mishaps, it would seem prudent for the railroads to take the high road and ensure AFHT lodging was at a higher standard than we have today.

When TY&E personnel were asked, what the biggest factor inhibiting meaningful rest at the AFHT was, the answer heard most often was: The ability to have a noise free environment both inside and outside of the place of lodging. Providing for true undisturbed rest, in preparation for operating the train safely and efficiently, is imperative. If train crews are not properly rested, it inhibits their ability to be alert and attentive. Anywhere from 70% to 80% of the movement of freight trains, can be during hours of darkness and each trip can last up to twelve (12) full hours of on-duty time. Therefore, It is not uncommon for a train crew to attempt to sleep through the day in order to be, again, prepared for work during hours of darkness. Generally, the human body is conditioned from birth to exactly the opposite, in terms of a work schedule. For this fact alone, it is imperative that an environment conducive to achieving adequate rest be provided. Connect the fatigue issues to the Crude by Rail concerns and the gravity of the fatigue situation becomes apparent.

With the very basic foundation of understanding on the topic of fatigue and its effects on safe train operations, there is an even greater concern associated with the implementation of Positive Train Control (PTC) technology. This form of "fail safe" requirement upon industry, is being looked upon as a 'fix-all' solution, for a myriad of safety issues. While Rail Labor supports the implementation of PTC, it is merely an additional layer of "safety insulation." It is not an end all means to safety as the railroads would like the public to believe. The railroads fought PTC for years not wanting to provide the additional layer of safety without some other type of "efficiency" gain. That "gain" is the reduction of another crew member and the move toward One-Person train operations and, at some future date, No-Person train operations. When considering just the few critical safety issues mentioned in this paper, the idea of "one or none" train crews is complete madness. At least, two set's of eye's and ears, are warranted. A crew concept to safety has always been the preferred method in providing back-ups, added reminders, and alerts to what lies ahead throughout a trip.

There is an imminent risk to public health and safety due to inadequate Whistleblower protections afforded railroad employees.

While the Federal Railroad Safety Act of 2007 afforded railroad whistleblower much needed protections, much more needs to be done to strengthen existing law to protect workers who are retaliated against for their workplace safety activity and/or for sustaining a workplace injury. Currently there are at least four known cases involving Washington State railroad whistleblowers pending in either the Occupational Safety & Health Administration (OSHA) process or before Federal District Court. There are several problems with the current whistleblower system for railroad employees which include: Years of backlogged cases at OSHA due to lack of adequate investigative resources, lack of subpoena authority by OSHA investigators over railroad companies, a "de novo" process that essentially allows the railroads to further delay justice by simply rejecting OSHA's findings and allowing them to take their case to federal court "beginning anew," and capped punitive damage awards of $250, 000.00, maximum. For the public to be adequately protected against unsafe railroad operations, there must be broader whistleblower protections and greater punitive penalties for violators. Additionally, the statute of limitations for filing a whistleblower case is set at 180 days. This is a very narrow time frame and should be increased to a minimum of at least three (3) full years. Whatever authority the State of Washington has to act in enhancing whistleblower protections for railroad workers, they should act in doing so immediately.

Finally, the railroads have their own private police department with sworn officers having, in some cases, more authority than city, county, and state police. In recent years, the railroads have taken to using their railroad police to intimidate the workforce and/or meddle in labor/management disputes. The law associated with the railroads use of police power should be carefully examined to ensure any abuses by management in the use railroad police is dealt with accordingly. Railroad police do serve an important Homeland Security function but should not be utilized by management to intimidate the workforce.

While there is a lot of information to be considered here, it is all vitally important and critical to the safe movement of Crude by Rail in Washington State. If you have additional questions or need clarification on any part of this paper, please do not hesitate to contact me. Thank you

Sincerely,

Shahraim C. Allen, Chairman
Washington State Legislative Board
517 S. 45th Street
Tacoma, WA 98418
(253) 961-1021