

September 10, 2015

Miriam Kloeppel
Staff Director
Risk Reduction Program Division
Office of Safety Analysis
Federal Railroad Administration
1200 New Jersey Avenue S.E.
Washington, DC 20590

**Re: Risk Reduction Program; Public Hearing and Reopening of Comment
Period [Docket Number FRA-2009-0038]**

Dear Ms. Kloeppel:

In February 2015, the Federal Railroad Administration (FRA) published a notice of proposed rulemaking that would require freight railroads to develop a risk reduction plan for the purposes of railroad safety. Risk reduction is a comprehensive approach to safety that requires railroads to identify their level of risk and develop plans to mitigate that risk. As a part of this rulemaking, the FRA has proposed limiting the discoverability of related safety information. More specifically, the FRA has proposed protecting any information compiled or collected solely for the purpose of developing, implementing or evaluating risk reduction programs from discovery, admission into evidence, or consideration for other purposes in a Federal or State court proceeding involving personal injury, wrongful death and/or property damage. We believe that this limitation on using such information in court proceedings will be detrimental to the public because it will allow railroads to hide unsafe conditions and will reduce the rights of individuals injured in railroad accidents.

Limitations on the discoverability or admissibility of safety analyses in court will either severely limit or deny persons injured in rail accidents the right to obtain compensation from railroads. Internal safety analysis is often the critical piece of evidence necessary to show that a railroad knew or should have known of a hazard. To limit access to such information would drastically hinder the ability of individuals injured in rail accidents to pursue any claims, but particularly in Federal Employers Liability Act (FELA) cases. Because negligence is an essential prong in establishing a FELA cause of action, rail workers will be extremely hampered in bringing FELA actions.

Furthermore, limiting or eliminating disclosure of safety documents would severely restrict pre-trial discovery. It is important that discovery remain as broad as possible so that claims can be fully evaluated. If discovery is restricted, many meritorious claims will never be fully heard, and countless injured parties will go without redress. In addition, if people injured in rail accidents are unable to hold the railroads accountable, they are more likely to turn to government programs, such as Medicare and Social Security, to cover the cost of, thereby transferring costs to the government.

Limitations on discovery also allow railroads to hide knowledge of safety hazards and to delay correcting known or suspected hazards. The possibility of disclosure, whether in court or before the general public, creates an incentive for railroads to mitigate hazards quickly. Without disclosure, railroads may take the more economical approach of simply hiding information about rail safety hazards from the public, rather than fixing hazards.¹

Although the limitation on discovery was proposed to facilitate more robust safety analyses, it will actually have the opposite impact. Ensuring that railroad safety programs are subject to scrutiny is essential to safety. Issuing a rule that protects safety information from discovery will only empower railroads to hide evidence of wrongdoing.

Sincerely,

Alliance for Justice
Bay Area Refinery Corridor Coalition
Blue Ridge Environmental Defense League
Center Effective Government
Center for Justice and Democracy
Citizens Acting for Rail Safety
Citizens for a Clean Harbor
Crockett-Rodeo United to the Defend the Environment
Benicians for a Safe and Healthy Community
Delaware Riverkeeper Network
Forest Ethics
Friends of Grays Harbor
Friends of the Earth
Idaho Conservation League
Milwaukee Riverkeeper
Mountain Watershed Association
Protect All Children's Environment
Public Citizen
United Steelworkers
US PIRG
Sciencecorps
Sierra Club
The SunFlower Alliance
Yolo MoveOn
Youghiogheny Riverkeeper

¹ The New York Times, *In Deaths at Rail Crossings, Missing Evidence and Silence*, Walt Bogdanich, July 11, 2004.