

Environmental Issues Affecting the North American Railroads

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Of: Association of American Railroads

For: Railroad Environmental Conference

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Outline

- DOT FRA Environmental Impact and Related Procedures
- USACE Nationwide Permits (NWP's)
- Draft NPDES General Permit for Stormwater Discharges From Construction Activities
- Crossties as Non-Hazardous Secondary Material
- Multi-Sector General Permit
- Global Logistics Emissions Council (GLEC)
- Railroad Sustainability Task Force
- US-CA Regulatory Cooperation Counsel
- Crystalline Silica Final Rule
- Oil Spill Response Plans
- Award Programs
- Other issues



DOT FRA Environmental Impact and Related Procedures: Docket No. FRA-2016-0052; 81 FR 37237

- AAR filed comments on July 11, 2016
- AAR believes that the procedures in 23 CFR Part 771 cannot be adopted wholesale:
 - The Part 771 procedural requirements were crafted with publically funded projects for the movement of automotive vehicles and passenger trains in mind, not freight railroads
 - AAR has concerns about the public involvement of the planning process
 - FRA should write its own regulations for implementing 23 USC 139



Expedited USACE Permits

- Expand the authority in Section 214 of the Water Resources Development Act to include railroad projects
- Section 214 authorizes the U.S. Army Corps of Engineers (USACE) to accept funds from non-federal public agencies -- including state and local railroad and transit agencies -- as well as certain private concerns with infrastructure interests to expedite the evaluation and processing of permits within the Corps' regulatory program



Draft NPDES General Permit for Stormwater Discharges From Construction Activities

- AAR supported comments submitted by the Federal Stormwater Association on May 26, 2016 on the EPA's proposed Construction General Permit (CGP)
- EPA is too specific with respect to site with multiple operators making it confusing when it is not needed
 - Subcontractor should not be required to file NOI's



Draft NPDES General Permit for Stormwater Discharges From Construction Activities (cont.)

- Using an example of paint and caulk containing PCB's is alarmist when discussing allowable non-stormwater discharges from limiting building washdown
- The permit should be consistent with the Construction and Development Effluent Limitations Guidelines (C&D ELGs)
 - controlling volume and velocity to minimize soil erosion (C&D)
 - directed to vegetated areas and maximize stormwater infiltration (CGP)



Draft NPDES General Permit for Stormwater Discharges From Construction Activities (cont.)

- EPA has proposed to expand its regulation of “stockpiles and land clearing debris piles” to dictate location, management, and to require covers or temporary stabilization of such piles – even if no possibility of off-site discharge
- No reason given for increasing the frequency of inspections from every 14 days and within 24 hours of a 0.25 inch rain event to every seven days and within 24 hours of a 0.25 inch rain event



Draft NPDES General Permit for Stormwater Discharges From Construction Activities (cont.)

- Snowmelt inspections should be limited to the beginning of snowmelt in spring to confirm that BMPs are in place and survived any winter weather
- The requirement to post Storm Water Pollution Prevention Plans (SWPPP's) to an URL to allow public access should not be required
 - Would allow parties with no knowledge of the local conditions to “surf” the permitting database resulting in an uptick in threatened citizen suits

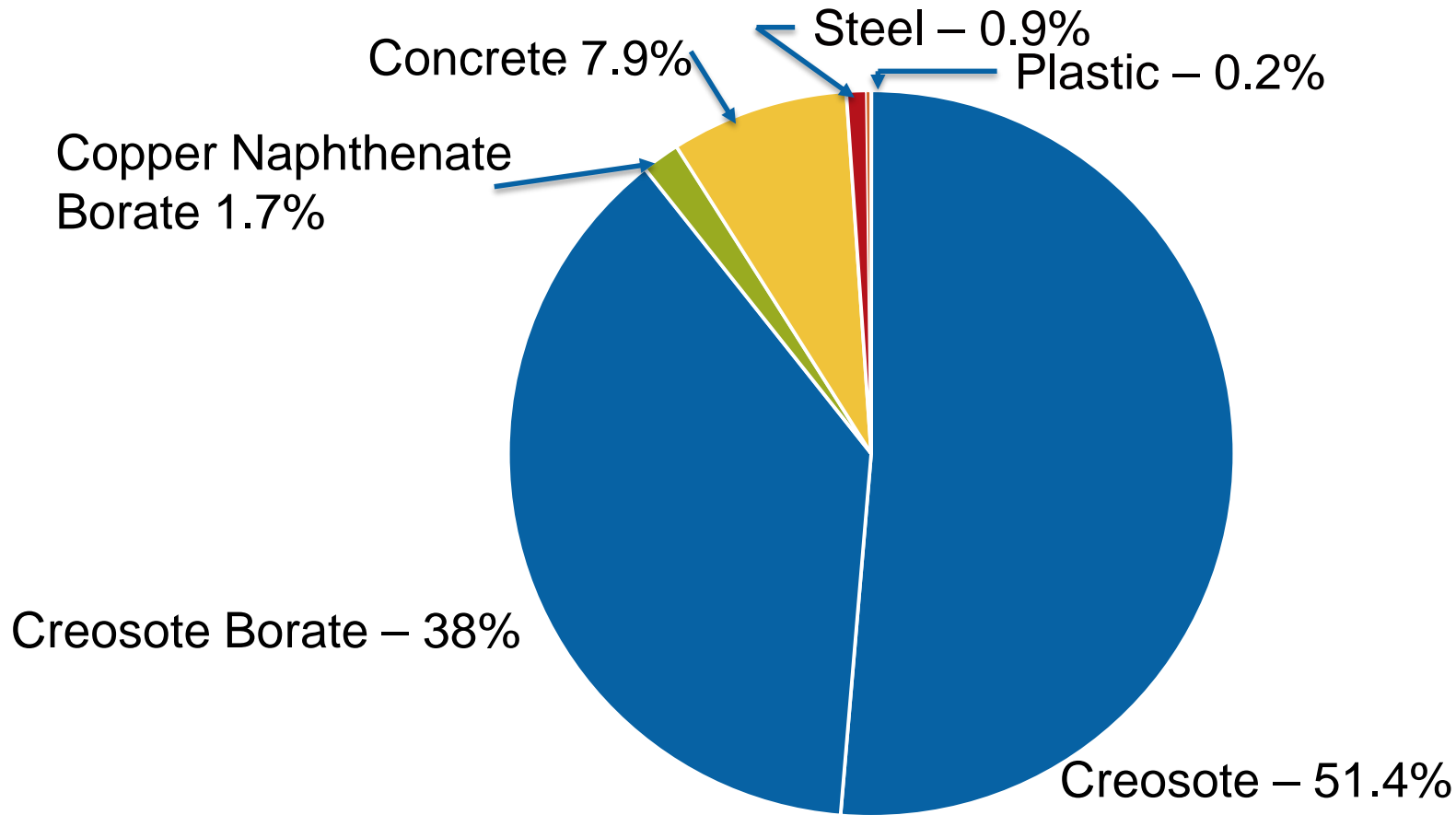


Definition of Non-Hazardous Secondary Material (NHSM)

- The final was published February 8, 2016
- The rule allows creosote treated crossties to be burned in cogeneration units as long as the boilers have the ability to burn fuel oil
- Unfortunately, more and more ties are treated with other preservatives:
 - Creosote – Borate
 - Copper Naphthanate
 - Copper Naphthanate - Borate



Type of Ties Purchased in 2013



Source: Railway Tie Association – AAR - ASLRRA 2014 Railroad Tie Survey - August 12, 2015



Definition of NHSM

- There is language in the preamble of the final rule indicating they intend to initiate a rulemaking to cover the other type of crossties
- EPA has indicated they will promulgate a rulemaking before the end of 2016 addressing other treated ties
- It appears only one boiler which has never burned fuel oil will be affected – have until January 2017 to fix that



Multi-Sector General Stormwater Permit

- AAR submitted detailed comments on EPA's proposed Multi-Sector General Stormwater Permit on December 26, 2013
 - Benchmark values were proposed which if exceeded, then the organization holding the permit would have to take action to lower their stormwater discharge with controls
 - The benchmark values EPA has proposed are so low that they would be exceeded in almost all cases
- The Multi-Sector General Permit was finalized and AAR's comments were incorporated
 - The rail industry avoided benchmarks again which could very well have led to escalating costs to meet them
 - Other good news concerns minimizing enforcing benchmarks that will help when a state imposes them



Global Logistics Emissions Council (GLEC)

- GLEC's vision is creating a universal and transparent way of calculating logistics emission across the global multi-modal supply chain
- This initiative is an effort to establish a framework for shippers to determine the most efficient way to transport, and is data driven
- AAR provided comments on their latest methodology on June 21, 2016



AAR Comments to GLEC Framework

- Clarify AAR is not a member of GLEC
- Support GLEC's use of weight based fuel efficiency (i.e. RTM/Gal.)
- AAR is willing to continue to provide input
- GLEC launched Framework 1.0 on July 21, 2016 in DC



Railroad Sustainability Task Force (RS-TF)

- The RS-TF was formed in mid-2015
- Mission: To broaden the understanding of sustainability issues within the railroad industry and to drive the case for incorporating sustainability and adaptability into company business practices and decision making
- Objective identified include:
 - Facilitate the **exchange of information and best practices** regarding sustainability focused strategies and practices
 - **Research** and evaluate sustainability issues relevant to the rail industry utilizing business case criteria
 - Bring in experience from **other companies** and industries
 - Identify **sustainability focused solutions** to company or industry challenges and problems
 - Identify opportunities for **minimizing risk and enhancing stakeholder value**



United States-Canada Regulatory Cooperation Council (US-CA RCC)

- On 2/4/11 President Obama and Prime Minister Harper of Canada announced a Regulatory Cooperation Initiative
- RCC has a mandate to work together to promote economic growth, job creation, and benefits to our consumers and businesses through regulatory transparency and coordination
- The Steering Committee has met several times in 2016



United States-Canada Regulatory Cooperation Council (US-CA RCC) (cont).

- Three options have been proposed:
 1. A 0.55% per year improvement in GHG intensity using 2013 as a baseline;
 2. A 10% improvement in GHG intensity by 2030 using 2013 as the baseline; or
 3. A 29.5% improvement in GHG intensity by 2030 using 2005 as a baseline
- New approach is seeking to account for the impact in traffic shift (carload – intermodal) in target
- Work plan was release at the end of June



US-CA RCC Work Plan

Canada-U.S. voluntary Action Plan to reduce greenhouse gas emissions from locomotives		
	<ul style="list-style-type: none"> Finalize targets and measures to be included in the voluntary Action Plan 	Fall 2016
	<ul style="list-style-type: none"> Finalize the voluntary Action Plan for implementation 	Early 2017
	<ul style="list-style-type: none"> Prepare and publish annual reports on progress made under the voluntary Action Plan 	Annually
Research on technologies and strategies to reduce greenhouse gas emissions		
	<ul style="list-style-type: none"> Joint research priorities to be determined as part of the voluntary Action Plan and opportunities will be sought to undertake joint research where appropriate 	Ongoing, starting in 2016
	<ul style="list-style-type: none"> Share research findings among governments and stakeholders to advance scientific understanding and collaboration 	Ongoing, starting in 2016
Stakeholder engagement on progress of Action Plan and research		
	<ul style="list-style-type: none"> Hold periodic teleconferences or webinars with interested stakeholders 	At least one per year
	<ul style="list-style-type: none"> Collaborate with industry experts to help finalize the voluntary Action Plan 	Throughout 2016



Crystalline Silica Rulemaking

- September 13, 2013 OSHA published new permissible exposure limit for crystalline silica of 50 ug/cubic meter
- AAR filed comments on February 11, 2014
- Final rule issued March 25, 2016
 - Limited to ballast dumpers and machine operators outside the cab of maintenance machines
 - No need to replace granite ballast
 - Employees should stand upwind
 - Written exposure control plan required
 - Railroads allowed to follow construction standards which are more flexible



Oil Spill Response Plans (OSRP's)

- NPRM published July 29, 2016
- Comprehensive OSRP's required for High Hazard Flammable Trains (HHFT's)
- AAR comments include:
 - The compliance time for comprehensive plans is no reasonable 60 days – vs 180 days
 - Proximity to a navigable water must be clarified – suggest < 0.5 mile



AAR Comments to Oil Spill Response Plan NPRM (cont.)

- Railroads Should not be Required to Determine What is an Environmentally Sensitive Area
- Applicable to routes with HHFT's only
- "Petroleum oil" needs to be clearly defined
- 12-hour response standard is not an enforcement standard
- Oil Spill Response Plans Should Not be Released to the General Public



AAR Comments to Oil Spill Response Plan NPRM (cont.)

- Monthly Reporting to SERCs and TERCs Should Only be Required When there Is a Material Change
- The Costs of Compliance Are Grossly Under-Calculated
- The Existing Federal Oil Spill Response Plan Rule Preempts State Plan Requirements



Award Programs

- Chafee Award

- 2016 Winner Michael Hoey of CSX for his work on reducing the impact of excavated soils on their National Gateway project by diverting soil, rock and other debris from the landfill through the creation of Excess Material Placement



on April 12 in the Mansfield Room of the US Capitol
Picture includes: AAR President Ed Hamberger, Michael Hoey, FRA Administrator Feinberg, and Senator Cory Gardner (R-Colo.)

- Professional Award

- Presented at Railroad Environmental Conference
- 2015 winner was Raghu Chatrathi of CSX Transportation for his successful work developing “rails-to-trails” projects, remediation projects and work in developing CSX’ Environmental Management Information System (EMIS)



Other Issues

- Waters of the U.S. final rule -The rule was stayed by the 6th circuit on October 9, 2015
- Sierra Club Lawsuit against BNSF for illegal discharge – STB preemption denied
- E-Manifest fees
- Natural Gas Fuel Tender TAG



Questions

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