



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Testimony of

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Addressing unsafe practices in the railroad industry
Before the Senate Democratic Policy Committee

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Good morning, Chair Muth, Senator Williams, Senator Fontana, and members of the Pennsylvania Senate Democratic Policy Committee. My name is Brian Moore, and I am the Director of Emergency Response at the Pennsylvania Department of Environmental Protection (DEP). Thank you for the opportunity to provide testimony on unsafe practices in the railway industry, which as we now, is a regular occurrence. According to the Federal Railroad Administration, there were over 1,100 train derailments across the United States last year, some of which release toxic chemicals into the environment and community as we saw in East Palestine, Ohio, and Beaver County. Today, I hope to shed light on how DEP responds to these incidents and what can be done to avoid or minimize the impact of future incidents.

DEP Responses to Transportation Incidents involving Petroleum and Hazardous Substances

Under the Federal Emergency Support Function #10 for Oil and Hazardous Materials Response, DEP is the lead agency for oil and hazardous materials spills coordination under the Commonwealth's Emergency Operations Plan. DEP coordinates with the Pennsylvania Emergency Management Agency (PEMA) and other Commonwealth agencies during a hazardous materials spill to ensure public health and safety, and to respond to any environmental concerns.

DEP has an Emergency Response Team (ERT) made up of specially trained individuals who respond to a variety of incidents that immediately impact, or have the potential to immediately impact, human health and the environment. DEP sends Emergency Response Team members to all incidents where releases are reported of materials that could affect soil, water or air, and subsequently or coincidentally, human health. Emergency Response Team members respond to numerous highway, pipeline and rail incidents

ever year. These incidents can be as innocuous as a milk truck spilling its contents on the side of a highway or as serious as the recent train derailment in East Palestine.

When responding, DEP takes an “all-hazard” approach—expeditiously evaluating the spilled materials; identifying any contaminated soil and water, or air emissions; determining if there is a threat to public health or the environment; coordinating with local first responders to provide technical information if needed; and then working with the responsible parties to remove contamination from the environment. To carry out these tasks thoroughly and quickly, DEP needs, among other things, access to information from the transportation company and the ability to direct prudent actions that may prevent further contamination or immediate threats.

DEP relies on a number of different statutes to give Emergency Response Team members authority to get this critical information and direct appropriate action. These include, but are not limited to:

- Section 501(c)(2) of the Hazardous Sites Cleanup Act, 35 P.S. § 6020.501(c)(2), authorizes DEP’s emergency response to the release or threatened release of “hazardous substances” that presents a public health, safety or environmental emergency. (“Hazardous substances” is a defined term and not always the same as “hazardous materials.”) Further, Section 501(g) of the Hazardous Sites Cleanup Act, 35 P.S. § 6020.501(g), authorizes the emergency response to a release or potential release of non-hazardous substances based on the Governor’s determination that an imminent and substantial endangerment to the public health and welfare or the environment exists. In these situations, DEP uses money from the Hazardous Sites Cleanup Fund and seeks reimbursement from responsible parties.
- Several sections of the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.101-691.1001, authorize DEP to investigate releases that pollute or threaten to pollute “waters of the Commonwealth,” which include groundwater, streams, rivers and lakes. DEP may issue orders to responsible parties and property owners.
- Similar provisions in the Pennsylvania Solid Waste Management Act, 35 P.S. §§ 6018.101-6018.1003, authorize DEP to address the unpermitted disposal of solid waste, which is what materials spilled into the environment become when mixed with soil, water or other materials.

For significant emergency incidents like East Palestine, DEP’s Regional Emergency Response Teams (ERTs) travel to the incident location to assist local responders with technical information or provide regulatory authority to ensure containment and removal of spilled materials. ERTs coordinate onsite with local responders and the responsible party to identify spilled materials, discuss containment methods and identify any sensitive sites that may be threatened by the incident. Examples of such locations are private residences, schools, health facilities, public water supplies, or threatened or endangered species or habitat. Regional ERTs also coordinate with their Commonwealth Agency partners and then provide situational awareness information to DEP Central Office staff through the Director of Emergency Response or our Agency Representatives. Regional ERTs also coordinate with their regional program areas to issue field orders to perform cleanup or monitoring, if needed, or initiate the emergency contract process, if necessary to prevent or limit threats to public health or the environment.

The Director of Emergency Response and/or our Agency Representatives to PEMA coordinate with DEP’s executive staff and Commonwealth Agency partners have an active role during the response. For East Palestine, that was Pennsylvania Emergency Management Agency (PEMA), Pennsylvania Department of

Health (DOH), Pennsylvania Department of Agriculture (PDA) and, early in the incident, Pennsylvania Department of Transportation (PENNDOT) and Pennsylvania State Police (PSP). We provide information to those partners concerning the spilled materials; ongoing threats from the materials themselves; and, in the case of the fire, potential risks from the railcars or sudden releases. We also provide air monitoring data to our partners to assist with discussions on evacuations and identify threats to the public or responders involved in the incident. The Director also coordinates with regional ERTs to execute emergency procurement or contracts if needed to provide additional resources for the incident, to prevent or limit threats to public health or the environment.

Following the “emergency,” DEP ER transitions the site to the program staff in DEP’s regional offices for long term follow up, which can include sampling to determine the extent of spilled materials, identifying any threats to groundwater, and ensuring that the responsible party removes the contamination from the environment. DEP ER can also coordinate with executive staff, elected officials, and communications staff to provide timely updates on the incident and recovery in plain language (e.g., explaining technical terms and processes in ways that individuals without a technical background will understand).

Recommendations:

As indicated above, adequate and appropriate responses to transportation incidents, and the immediate protection of human health and the environment, depend on readily available and reliable information from the transportation industry that allows responders to quickly evaluate threats. Changes that could help expedite responses when derailments occur, include:

1. Requiring annual reporting from each company that transports hazardous materials in the Commonwealth, and/or from entities that own tracks or equipment used to transport hazardous materials, that provides the following information:
 - a. Each hazardous material transported;
 - b. The number of times and frequency each material was transported; and
 - c. The routes or locations where the materials were transported.
2. Extending or copying the provisions of the Federal regulation at 49 CFR Subtitle B Chapter I Subchapter B Part 130 to require provide emergency response plans and training records to be provided to Commonwealth agencies and require that regular emergency response exercises be held with Commonwealth Agencies and County Emergency Management personnel.
3. Many sidings and yards are being used to store hazardous materials “in transportation” without response plans or reporting to Counties and Commonwealth Agencies. For railyards or sidings where hazardous materials are stored for more than 10 days at a time, the Commonwealth should require Pollution Prevention Contingency Plans be provided to the Commonwealth detailing how railcars containing hazardous materials will be monitored/inspected to ensure leaks are prevented and detected as well as how emergencies and spills will be addressed for the location.

Thank you for this opportunity to provide testimony. We are happy to answer any questions you may have.