

May 30, 2017

Via U.S. Mail and Email

The Honorable Elaine L. Chao
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE, 9th Floor
Washington, DC 20590

Robert C. Lauby
Associate Administrator & Chief Safety Officer
Federal Railroad Administration
1200 New Jersey Avenue, SE, 3rd Floor
Washington, DC 20590

Re: 49 CFR § 225 – Railroad Accidents/Incidents, as Related to All Aboard Florida’s Passenger Train

Dear Secretary Chao and Associate Administrator Lauby:

I write on behalf of my clients, Martin County, Florida, and Citizens Against Rail Expansion in Florida (CARE FL). The County and CARE FL have significant public safety concerns related to the proposed All Aboard Florida (AAF)/Brightline passenger rail project.

Background

AAF/Brightline is proposed to run from Miami to Orlando, with Phase I of the project running from Miami to West Palm Beach. Phase II of the project—from West Palm Beach to Orlando, running through my clients’ communities—has not begun, is not permitted, and a Final Environmental Impact Statement (FEIS)-related Record of Decision (ROD) has not been issued. A U.S. District Court ruling from August 2016 determined that the National Environmental Policy Act (NEPA) applies if AAF receives the proposed Private Activity Bond (PAB) allocation from the U.S. Department of Transportation (DOT) for Phase II. Those bonds were subsequently withdrawn by AAF and DOT to avoid this prospect.

As AAF begins to test its recently delivered first passenger trains—including in Jonathan Dickinson State Park, located in Martin County—public news reports and press events by AAF have deliberately garnered public attention. In fact, AAF has used the delivery of its passenger trainsets in an attempt to create public support regarding the inevitability of the project.

AAF Passenger Train Derailment?

However, knowledgeable railroad insiders have described a derailment that occurred in late-February or early-March 2017 during which one of AAF/Brightline’s passenger trains was damaged. Based on these reports, we understand the passenger train left the tracks at a slow speed, in or near the storage facility where the passenger train is stored, on a curve. It is also our understanding, based on reports from individuals with knowledge of the situation, that a contributing factor to the derailment was the failure to use appropriate equipment to stabilize the track bed. Further, it is the understanding of the knowledgeable

individuals that the derailment resulted in monetary damages to the train many multiples above the threshold that would require the incident be reported to the Federal Railroad Administration (FRA).

AAF Had a Duty to Report Such Incidents to the Federal Government

Pursuant to 49 CFR § 225, which covers the reporting of railroad accidents/incidents, a rail equipment accident/incident is defined as:

“(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed;”

Under Part 225, the current reporting threshold in 2016 (the most recent year referenced) was \$10,500 for “...damages...to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material.”

Under Part 225, railroads are to submit a monthly report to the FRA of all railroad accidents/incidents, within 30 days after expiration of the month during which the accident/incidents occurred.

Upon information and belief, and pursuant to Part 225, the AAF/Brightline incident described above appears to meet the definitions requiring that the incident be reported to the FRA.

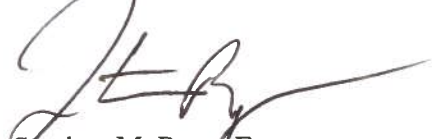
This letter serves to: (1) formally notify DOT/FRA of this possible incident; (2) inquire as to whether AAF/Brightline filed the required report under 49 CFR § 225 within the appropriate timeline; and (3) request that DOT publically address whether such a derailment occurred and should have been reported, so that the community will know the facts.

In addition, we respectfully request that DOT/FRA conclude any necessary review of this possible derailment and AAF’s possible failure to report such an incident before the Department makes any decisions with respect to providing federal financial support—whether in the form of a PAB allocation or Railroad Rehabilitation and Improvement Financing (RRIF) loan—for Phase II of the AAF project.

We look forward to DOT’s expeditious response to this inquiry regarding a public safety concern of great importance. While the easiest way to verify or dispel this information is to ask AAF, do not hesitate to contact us directly as we may be able to provide you with additional information, such as individuals who are whistleblowers and need statutory protection, but who can relate what they know about this derailment to the Department.

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Sincerely,

A handwritten signature in black ink, appearing to read 'S. Ryan', with a long horizontal flourish extending to the right.

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cc: The Honorable Bill Nelson (D-FL), U.S. Senator, Ranking Member, Committee on Commerce,
Science and Transportation
The Honorable Bill Posey (R-FL-08), U.S. Representative
The Honorable Brian Mast (R-FL-18), U.S. Representative
Ruth Holmes, Esq., Senior Assistant County Attorney, Martin County
Brent Hanlon, CARE FL