



August 19, 2015

Hon. Andrew Cuomo  
Governor  
The Capitol  
Albany, NY 12224

**Re: Proposed Storage of DOT-111 Tank Cars in the High Peaks, Adirondack Park**

Dear Governor Cuomo:

We write on behalf of *Adirondack Wild: Friends of the Forest Preserve* to urge your administration to take immediate action to assert jurisdiction over the ill-conceived proposal by the Saratoga and North Creek Railroad, LLP (“SNCR”) and Iowa Pacific Holdings, LLC (“Iowa Pacific”) to store hundreds of hazardous discarded oil tank cars near Tahawus in the High Peaks region of the Adirondack Park. The proposed storage of old, potentially leaking DOT-111 oil tank cars in the High Peaks region would pose a significant threat to the natural resources of the Adirondack Park and be a glaring disfigurement of a scenic landscape. In addition, it would undermine the state’s recent investment of nearly \$50 million of public funds to acquire the former Finch Pruyn lands. You lauded these lands for their “unparalleled beauty” in your April 23, 2015 press release announcing the state’s purchase of the McIntyre East tract – one of the tracts that border the proposed oil tank car storage area.

Iowa Pacific claims that it can unilaterally transform one of the most treasured and popular areas of the Adirondack Park into an oil train junkyard without any state review or approval. However, as discussed below, we believe that Iowa Pacific’s proposal is, in fact, subject to the permit jurisdiction of the Adirondack Park Agency (“APA”) and the Department of Environmental Conservation (“DEC”), and that storage of discarded oil tank cars on state-owned Forest Preserve lands would violate the “forever wild” clause of the New York State Constitution.

Because Iowa Pacific recently claimed that its oil tank car project is not subject to state review or approval and that storage of the cars may begin within weeks, we ask that your administration take immediate action to inform SNCR and Iowa Pacific that (i) they must apply for and obtain required APA and DEC permits before storage of oil tank cars may occur on privately owned lands within the Adirondack Park, and (ii) under no circumstances will the state allow the storage of oil tank cars on Forest Preserve lands.

## **Background: Iowa Pacific's Proposal**

The proposal by Iowa Pacific to degrade the Adirondack Park by using it as an oil train junkyard is notable for the lack of detail provided. As far as we have been able to determine, the only information regarding the proposal was provided in a July 28, 2015 presentation by Ed Ellis, president of Iowa Pacific, to the Warren County Public Works Committee. In that presentation, Mr. Ellis stated that Iowa Pacific plans to move DOT-111 oil tank cars along the Sanford Lake section of the SNCR for storage at Tahawus; that it plans to store 300-500 DOT-111 cars along the Tahawus rail spur; and that the cars will be stored on the tracks for at least one year. Mr. Ellis acknowledged that the oil tank cars would contain "a few gallons" of oil and other petroleum product residue, but was unable to specify how much product would remain in the cars.

Ellis further stated that while it is possible that cars may be returned to service if the recently promulgated federal regulations requiring the phase-out of DOT-111 cars are changed or overturned in court, it is more likely that the cars will ultimately be sold for scrap metal. In response to a question from a member of the Public Works Committee, Mr. Ellis claimed that no APA or DEC permits are required for this proposed activity. According to Ellis, Iowa Pacific is now actively soliciting prospective customers for DOT-111 storage, and storage of the oil tank cars may commence within weeks.

## **Geographic Setting**

The tracks at Tahawus are located at the southern border of the High Peaks Wilderness Area. The northernmost portion of the tracks is located on privately owned lands that are classified Industrial Use and Rural Use by the Adirondack Park Land Use and Development Plan Map. As the tracks exit the private lands to the south, they enter the 6,200-acre McIntyre East tract and run adjacent to the Hudson River, which was purchased by the state for 4.25 million in April 2015 and added to the Forest Preserve. As the tracks continue southward, they pass through the Vanderwhacker Wild Forest Area and along the eastern border of the recently classified Hudson Gorge Wilderness Area.

The northernmost portion of the railroad tracks borders the Opalescent and Hudson rivers, which are designated along this stretch as wild and recreational, respectively, under the New York Wild, Scenic and Recreational Rivers Act ("WSRRSA"). To the south, the tracks run for miles along the Boreas and Hudson rivers, both designated along this stretch as scenic under the WSRRSA. In short, the route the DOT-111s will take through the Adirondack Park, and their ultimate storage destinations, are located in or directly adjacent to a variety of legally protected lands and waters that contain precious and irreplaceable natural and scenic resources.

## **Environmental Risks and Impacts of the Plan**

Iowa Pacific's plan poses the risk of a spill or leak of crude oil residue from "empty" DOT-111 tank cars onto lands or waters of the Adirondack Park, and the severe degradation of the scenic and aesthetic resources of this important region of the Park.

As you know, in April 2014, DEC and four other state agencies submitted a comprehensive Crude Oil Report to you that examined public safety and environmental risks posed by the rail transport of crude oil in New York State. The Crude Oil Report concluded that DOT-111 these tank cars pose a significant risk to public safety and environment due to their propensity to rupture and spill their contents. It is these outdated and unsafe tank cars that Iowa Pacific is proposing to move through the heart of the Adirondack Park, through Forest Preserve lands and along designated wild, scenic and recreational rivers. Given that Iowa Pacific has conceded that an unspecified amount of petroleum product will remain in the tank cars, the movement of DOT-111 cars through and adjacent to some of the most sensitive ecological resources in the Park is cause for serious concern.

The long-term storage of rail cars also poses serious risks. Iowa Pacific intends to store the DOT-111 tank cars outdoors, exposed to the elements during all four seasons. It is entirely possible that the structural integrity of these aging tank cars may deteriorate when exposed for a long period to the harsh Adirondack environment, resulting in leaks of product remaining in the cars. It is reasonable to ask whether and with what frequency – if at all – Iowa Pacific intends to inspect the hundreds of tank cars it proposes to store. In addition, vandals could easily access the miles of track where the tank cars will be stored and cause untold environmental damage, either intentionally or unintentionally, by releasing the contents of the cars.

The aesthetic damage to the Park's resources posed by the long-term storage of unsightly oil tank cars along miles of Adirondack track would also be significant. As noted above, the tracks where Iowa Pacific apparently intends to store the DOT-111 cars are located in some of the most scenic and historic areas of the Adirondack Park, including the southern doorstep to the High Peaks region, one of the most visited areas in the Park. The stored cars will occupy miles of track and be easily visible from neighboring Forest Preserve lands and protected rivers.

## **Adverse Economic Impacts**

Storage of oil tank cars in the High Peaks region of the Adirondack Park could also have adverse economic impacts by discouraging tourism. Industrializing the Tahawus rail spur by parking hundreds of oil tank cars for an indefinite period of time will likely deter visitors from coming to and staying in the region. The presence of a large and visible oil train junkyard will almost certainly deter would-be paddlers, hikers and campers. It would be ironic, to say the least, if after spending nearly \$50 million on new Forest Preserve acquisitions in this area and touting their scenic beauty as a tourism draw, the State simply stands by while the area's scenic beauty is scarred by Iowa Pacific's oil train storage plan.

## **State Permit Jurisdiction**

Contrary to Iowa Pacific's claim, both APA and DEC have permit jurisdiction over this proposal. Iowa Pacific's proposed storage of discarded, unused oil tank cars, most if not all of which are destined to be sold as scrap metal, is a Class A regional project because it constitutes a new junkyard in areas classified as Industrial Use and Rural Use.<sup>1</sup> See N.Y. Exec. L. §810(f)(7) and §810(d)(17). Consequently, Iowa Pacific must apply for and obtain an APA permit for those portions of the oil car storage project occurring on those lands.

In addition, the proposed storage of disused tank cars containing petroleum products is subject to DEC permit requirements as a solid waste management facility. See 6 NYCRR §§ 360-1.2(a)(1), (2) (defining "solid waste" as including "discarded material," which in turn is defined as material that is "accumulated" or "stored"); *id.* 360-1.2(b)(158) (defining a "solid waste management facility" as including "storage areas or facilities," "rail-haul facilities," and "used oil storage" facilities); *id.* 360-1.7(a) (1) (prohibiting operation of a solid waste management facility without a DEC permit). Accordingly, Iowa Pacific must also apply for and obtain a DEC permit for its oil car storage project.

### **Illegal Use of Forest Preserve Lands**

Iowa Pacific apparently believes it is legally entitled to store DOT-111 tank cars on tracks located on Forest Preserve lands because of the purported existence of a railroad right-of-way ("ROW") across those lands. However, as set forth in detail in a March 26, 2012 letter from John W. Caffry, Esq. to Attorney General Eric Schneiderman and DEC Commissioner Joseph Martens ("Caffry Letter," attached hereto), the ROW across Forest Preserve lands was extinguished due to the 22-year period, commencing in 1989, when the railroad was abandoned:

[U]nder State law on abandonment and on termination of easements, the easements on both the Forest Preserve and the private land expired and reverted to the fee title owners of the land underlying the ROW, including the State of New York . . . Reversion has resulted from abandonment of the rail spur, as "abandonment" is defined in State law and regulations. Under the common law of easements, abandonment results in termination of the easement and reversion . . . By any definition, the Tahawus rail spur has been abandoned for 22 years or more and termination or expiration and reversion of the easements has taken place as a result.

Thus, as concluded in the Caffry Letter, the rail spur constitutes an illegal occupation of Forest Preserve lands. Consequently, Iowa Pacific's proposed use of the rail spur to store discarded DOT-111 tank cars on that portion of the line within the Vanderwhacker Wild Forest would violate the "forever wild" clause of the New York State Constitution.

### **Conclusion**

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<sup>1</sup> A "junkyard" is defined by the APA Act as "any open lot or area for the dismantling, *storage* or sale, as parts, scrap or salvage, of used or wrecked motor vehicles, machinery, scrap metals, waste papers, rags, used or salvaged building materials or other discarded material." N.Y. Exec. L. § 802(26).

For the reasons set forth above, we urge you to take all necessary action to enjoin Iowa Pacific's proposal to store discarded DOT-111 oil tank cars in the Adirondack Park. We would be happy to meet with members of your staff to further discuss the issues raised in this letter.

Respectfully submitted,

*Chris Amato*

Christopher Amato, Acting Chair

*David Gibson*

David Gibson, Staff Partner

*Dan Plumley*

Dan Plumley, Staff Partner

Enc.

Cc: Hon. Marc Gerstman, DEC Acting Commissioner  
Hon. Leilani Ulrich, APA Chair  
Basil Seggos, Executive Chamber

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