

## **DOT's Emergency Order Limits Crude Transport**

**By**

**Lynn L. Bergeson<sup>1</sup>**

The growing number of rail mishaps involving oil is attracting much press attention and now regulatory attention as well. On May 7, 2014, the U.S. Department of Transportation (DOT) issued an Emergency Order requiring all railroads operating trains containing bulk quantities of UN 1267, petroleum crude oil, Class 3, that either originates or is sourced from the Bakken formation in the Williston Basin (Bakken crude oil) to notify State Emergency Response Commissions (SERC) about the operation of these trains through their states. This article discusses this important topic.

### **Background**

In May 2014, an oil train accident in Lynchburg, Virginia, sent oil into the James River. Last summer, 47 people were killed in Quebec when an oil-carrying train exploded. These and other incidents have caused alarm in the U.S. and Canada, are sending shock waves through the transportation community, and are inspiring regulatory and related measures to ensure such events do not happen again.

In the U.S., DOT's Federal Railroad Administration (FRA) and Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a joint Safety Advisory (Safety Advisory Number 2014-01) strongly urging those shipping or offering Bakken crude oil to use

tank car designs with the highest level of integrity available in their fleets. In addition, PHMSA and FRA advise offerers and carriers to avoid using older legacy DOT Specification 111 or CTC 111 tank cars for the shipment of Bakken crude oil. The Safety Advisory is available online.

### **Emergency Order**

The Secretary of Transportation has found, based on a review of recent incidents, that an “unsafe condition” or an “unsafe practice” is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials -- in this case petroleum crude oil originating from the Bakken and being transported by rail. Under the Order, this constitutes an imminent hazard under 49 U.S.C. Section 5121(d).

Under the Emergency Order, each railroad operating a single train containing 1,000,000 gallons or more (approximately 35 tank cars) of Bakken crude oil is required to notify SERCs in the states through which the shipment will travel. The notification must include estimated volumes of Bakken crude oil being transported per week through each county within the state, frequencies of anticipated train traffic, and the route through which Bakken crude oil will be transported, including identification of each county of a particular state or the equivalent state commonwealths’ jurisdiction.

The Emergency Order also requires the railroads provide contact information for at least one responsible party at the host railroad to the SERCs. The Emergency Order advises

railroads to assist the SERCs as necessary to share the information with the appropriate emergency responders in affected communities.

The Order is backed by stiff administrative and criminal penalties. Failure to comply with this Emergency Order could result in civil penalties of up to \$175,000 per violation, per day. Any person willfully or recklessly violating the Emergency Order could also be subject to potential criminal prosecution.

In Canada, regulators announced in April that the government was setting a mandatory three-year deadline for older model tank cars to be retired or retrofitted. These and other measures are in direct response to the Quebec tragedy.

### **Discussion**

The steep uptick in the rail transport of oil is bound to enhance the statistical probability of rail mishaps. This is exactly what has happened. With increased media attention -- virtually all of it negative -- the government has responded quickly and emphatically. Industry can expect similar, harsher measures if the number and severity of incidents does not diminish. The hope is the Order will succeed in reigning in these regrettable incidents that have caused much adversity and damage.

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<sup>1</sup> Lynn L. Bergeson is Managing Partner of Bergeson & Campbell, P.C. (B&C<sup>®</sup>), a Washington, D.C. law firm focusing on conventional, nanoscale, and biobased industrial, agricultural, and specialty chemical product regulation and approval matters, environmental health and safety law, chemical product litigation, and associated business counseling and litigation issues. She is President of The Acta Group, with offices in Washington, D.C., Manchester, UK, and Beijing, China, and President of B&C Consortia Management, L.L.C. (BCCM) with offices in Washington, D.C.