

# Oil-by-Rail Safety: A Primer

Wednesday, October 14, 2014

1:30 p.m. – 3:00 p.m.



# Presenters

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# Oil by Rail in California

This will be the first of at least three webinars on this subject. Today's webinar will focus on the following:

- Briefly outline federal law and the extent of state authority
- Discuss areas of California affected by transport of Bakken crude oil by rail
- Review recent state legislation and other state action
- Identify the key state agencies involved
- Review priorities for federal action that those agencies have identified

# Oil by Rail in California

The second webinar, scheduled for Thursday, October 23<sup>rd</sup> at 11 a.m., will provide guidance on federal law and the extent of federal pre-emption in this area. It will also touch upon federal case law involving challenges to railroads by state or local authorities.

The third webinar, tentatively set for Thursday, November 6<sup>th</sup>, and will share the League's policy recommendations, which are currently being developed based on ongoing research, and may guide local lobbying efforts.

# How to Ask a Question

- All phone lines have been muted
- For Questions - Use the Q&A window to the right side of your screen
- Please enter your **Name**, **Title** and **City** when you ask a question
- For verbal questions, raise your hand by clicking on the “hand” icon



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## Federal Law:

- Federal law generally pre-empts state and local regulation of rail traffic
- Two notable exceptions:
  - Set-back requirements from rail lines
  - States may adopt more stringent standards than federal law requires if three criteria are satisfied:
    - 1) No undue burden on interstate commerce
    - 2) The state standard is compatible with federal standards
    - 3) It is necessary to reduce or eliminate local safety hazards

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## Federal law (continued)

- Our research indicates that no court or federal regulatory body has yet recognized a state regulation under the local safety hazard exception, except under very limited circumstances.

Union Pacific v. California PUC (Ninth Circuit, 2003): After the 1991 Dunsmuir spill, the CPUC determined a local safety hazard to exist which was subject to more stringent state regulations. The court found that such regulations were pre-empted by federal law.

- Pre-emption and the railroads - it is easier for them to comply with a single federal standard, given that they operate in all 50 states.
- Last week, Union Pacific, BNSF, and the Association of American railroads filed suit against the state to challenge regulations in SB 861, a new law requiring their participation in a state oil spill clean-up program. The complaint cites federal pre-emption, although it does not challenge a new 6.5. cent per barrel fee in the law.

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## Putting Crude Oil by Rail into Perspective

- Shipment of crude oil/other hazardous materials by rail is not new – it is a decades-old practice
- Currently, there are significantly more hazardous substances than Bakken crude oil that are routinely transported by rail, although not in the same volume: chlorine, ammonia, ethanol, liquefied natural gas
- However, the concern over Bakken crude oil should serve as a catalyst for a host of additional preventive safety measures for dealing with all hazardous materials, including upgraded rail cars, provision of real-time information on certain shipments to first responders, and ongoing funding for related first response training and equipment.
- Shipment of crude oil by rail is safer and results in significantly fewer accidents than transport by tanker truck.
- But, due to dramatic increases in the volume of rail traffic in crude oil, railroads spilled more crude in 2013 than in the previous 37 years.



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## What is Moving Where

- This map (see separate attachment) is available on the website of the state Office of Emergency Services (OES).
- It shows the known route for the transport of Bakken crude oil entering California from the north (green line) and coming down through Modoc, Lassen, Plumas, Butte and Yuba Counties before entering Sacramento County.
- Some portion of Bakken crude is off-loaded at the former McClellan Air Force Base site, to be delivered to its ultimate destination.
- Pending approval of an EIR, the remainder will continue by rail through Yolo and Solano Counties to the refinery at Benicia.
- There are plans to also process Bakken crude oil at refineries in Bakersfield and San Luis Obispo, but according to the OES, no shipments are going to those locations currently. In future, there may be a rail route opened up entering California from the east, via San Bernardino County (red line).

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## What is Moving Where (continued)

- This information is based on the federal reporting trigger for notification to state authorities: Rail shipments of Bakken crude oil meeting the threshold of one million or more gallons, or 35 tank cars worth. One tank car holds nearly 30,000 gallons (29,400 gal.).
- Shipments under one million gallons are not required to be reported to state authorities.
- However, OES maintains that most shipments of Bakken crude are in the form of “unit trains,” which consist of 100 cars, well over the reporting threshold. Since pipelines travelling into California are not available, oil producers have significant economic incentive to ship petroleum by rail in fairly large quantities.

# Oil by Rail in California

## Recent State Legislation

### **AB 380 (Dickinson) Spill Response for Railroads.**

#### **Chapter 533, Statutes of 2014**

- Addresses the need for increased coordination of state and local emergency response capability re: oil spills
- Requires all rail carriers to submit to the Office of Emergency Services (OES) commodity flow data for the previous 3 months, by county and track route, for the largest hazardous material commodities transported through the state.
- Specifies that the data must include tank cars loaded with petroleum oil, and requires OES to disseminate information necessary for developing emergency response plans to each unified program agency, including local public agency first responders.

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## Recent State Legislation

### **AB 1476 (Assembly Budget Committee) Budget Act of 2014.**

#### **Chapter 663, Statutes of 2014**

- Allocates \$10 million from a telecommunications ratepayer fund under the control of the California Public Utilities Commission, for local agency first responder training and equipment purchases. Enhances local agency capability to respond to oil spills and hazardous materials accidents.

### **SB 861 (Senate Budget Committee) Budget Act of 2014.**

#### **Chapter 35, Statutes of 2014**

- Authorizes the Oil Spill Prevention and Administration Fund to be used for response to oil spills and accidents in inland areas, and expands the 6.5 cent/barrel fee to include all crude oil entering California. It also eliminates the fee sunset.

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## Recent State Legislation

**SB 1064 (Hill) Public Utilities Commission. Railroads. Natural Gas Pipelines. Safety.**

**Chapter 557, Statutes of 2014**

- Improves accountability and transparency re: California Public Utilities Commission (PUC) responses to rail safety recommendations made by federal agencies ((the National Transportation Safety Board (NTSB) and the Federal Transit Authority (FTA)).
- Requires the PUC to respond in writing within 90 days to NTSB safety recommendations and FTA safety advisories;
- Requires the PUC to detail in writing whether implementation of NTSB safety recommendations re: a PUC-regulated rail facility is appropriate, and if so, to approve it by majority vote;
- Explicitly requires the PUC to implement any NTSB safety recommendation or FTA action, once the PUC deems it appropriate or necessary

# Oil by Rail in California

## Recent State Legislation

### **SJR 27 (Padilla) Railroad Safety. Transportation of Crude Oil. Resolutions Chapter 114, Statutes of 2014**

- As a resolution this does not have the force of state law.
- It expresses the Legislature's opinion.
- Urges the United States Department of Transportation and other relevant federal entities to:
  - 1) Safeguard communities and environmentally sensitive areas from rail accidents related to transportation of crude oil;
  - 2) Prioritize safety considerations over cost-effectiveness;
  - 3) Mandate the best practices in the safety initiative announced on February 21, 2014 by Secretary Foxx and the railroad industry; and
  - 4) Partner with the Canadian Transportation Agency to improve the safety of the North American tank car fleet by adopting a stricter design standard for new cars, and retrofitting or phasing out non-compliant tank cars.

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## Additional State Action

**California Public Utilities Commission** July 2014 letter to U.S. Transportation Secretary Anthony Foxx outlined seven tasks that it urged federal action on:

1. Expedite phase-out of older tank cars: Urged faster phase-out or retrofitting of DOT-111 tank cars to make them more crash-resistant.
2. Consider moratorium on shipping non-stabilized Bakken Crude Oil by rail: Stabilization consists of removing volatile gases from the oil (such as liquefied propane) to make it less volatile, prior to shipment.
3. Identify priority routes for positive train control (PTC): PTC is an advanced technology incorporating GPS tracking to automatically stop or slow trains prior to an accident. Designed to prevent train-on-train collisions, derailments due to excessive speed, and unauthorized movement of trains.
4. Require electronically controlled, pneumatic brakes on trains transporting Bakken crude oil, and ethanol, in unit trains (trains of 100 cars or more)
5. Require railroads to provide the State of California broader accident and injury data: This references not just accident reports submitted to the federal government, but broader data also submitted to the Feds to determine accident and injury *rates and trends*.

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## Additional State Action (continued)

### California Public Utilities Commission July 2014 letter:

1. Insure railroad industry's compliance with Individual Voluntary Agreement: This agreement consisted of eight voluntary safety measures that the industry agreed with the federal government that it would adopt by August 1, 2014 (see slide 23, State-Agency-Identified Priorities)
2. Improve identifiers on Tank Placards for First Responders: Tank Placards are signs on tank cars allowing first responders to quickly identify the nature of the hazardous material these contain and other important data such as the flash point and vapor pressure of particular types of crude oil, which dictate the resources and equipment needed to effectively contain an accident site.



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## **Additional State Action (continued)**

### **League of Cities' Comment on Federal Rule Making**

On September 30, 2014, the League of California Cities submitted to the Department of Transportation's Pipeline and Hazardous Safety Materials Safety Administration its Comment on the Proposed Rulemaking on Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains.

In its Comment, the League joined in the CPUC' suggestions to Secretary Foxx in its July 14<sup>th</sup> letter, and specifically highlighted for consideration the provision of incentives to companies to remove the more volatile elements from Bakken crude oil, such as flammable natural gas liquids, prior to shipment by rail.

# Oil by Rail in California

## **Additional State Action (continued)**

### **League of Cities' Comment on Federal Rule Making**

In addition, the League made the following recommendations:

- Provide more information to first responders.
- Provide training and notification to emergency response providers.
- Use all available data to assess the risk and consequences of crude oil rail car accidents.
- Mandate speed limits in all areas.
- Study the risks of multi-car trains.
- Quickly phase out unsafe tank cars.
- Require enhanced tank car features.
- Regulate the transport and storage of crude oil on railroad sidings.

# Oil by Rail in California

## **Key State Agencies**

The three agencies with the highest degree of regulatory control over oil by rail are:

**Office of Emergency Services (OES)**

**California Public Utilities Commission (CPUC)**

**Oil Spill Prevention and Response (OSPR)**

## **OES**

Cal OES has responsibility for coordination of the state's response to major emergencies and disasters. It manages the State's public safety (fire, rescue and hazardous materials, law enforcement, EMS, and emergency management) mutual aid response network; the State Threat Assessment System; the state's 24/7 Central Warning and Notification Center; and statewide public safety communications/911 capabilities. As the state's Homeland Security Agency, Cal OES is also responsible for assessment and protection of the state's critical infrastructure and key assets, supporting/coordinating local governments in their emergency preparedness, response, recovery, and hazard mitigation efforts. The director of Cal OES serves as the governor's Homeland Security Advisor, as well as the chair of California's State Emergency Response Commission (SERC). SERC is referenced in the U.S. Department of Transportation's May 7, 2014, Emergency Order requiring notification by railroad carriers to SERCs of the transportation of one million gallons or more of Bakken crude oil through their respective states.

# Oil by Rail in California

## **Key State Agencies (continued)**

Note: Point of OES Concern – Certified vs. Non-Certified Hazardous Materials Team

- Certified HazMat Teams must agree to Mutual Aid compacts
- OES is considering linking Federal funding to Mutual Aid compliance

## **California Public Utilities Commission**

The agency performs its railroad safety responsibilities through its Railroad Operations and Safety Branch. The CPUC shares its jurisdiction with the Federal Rail Administration. The branch's 36 inspectors enforce FRA and Pipeline and Hazardous Materials Safety Administration regulations, as well as state safety rules. Branch personnel investigate accidents and safety complaints, make risk assessments and recommend safety improvements to the state, railroad and federal government. Inspectors cover five areas: operating practices, track oversight, signal and train control, hazardous materials and motive power and equipment.

# Oil by Rail in California

## **Key State Agencies (continued)**

### **Oil Spill Prevention and Response (OSPR)**

This agency within the Department of Fish & Game has the primary authority to serve as a state incident commander and to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in waters of the state. OSPR has preparedness and response requirements for industry encompassing oil spill contingency plans, pollution insurance, and drills and exercises, has enforcement authority, and ensures restoration and remediation of natural resource injuries. OSPR works directly with the U.S. Coast Guard or the U.S. Environmental Protection Agency and other state and local agencies in the Unified Command established for cleaning up oil spills in waterways. In 2014, the governor expanded the OSPR program to cover all state surface waters at risk of oil spills from any source, including pipelines, production facilities and the increasing shipments of oil transported by railroads.

# Oil by Rail in California

## State –Agency-Identified Priorities for Federal Action

The relevant state agencies and first responders have identified a series of actions they believe the federal government should make a priority. They are:

- 1) Increased federal funding for training and equipment purchases for first responders (OES).
- 2) Mandate that producers of petroleum and railroads other hazardous materials shipped by rail make available to first responders, via a secure access portal on their websites, cargo manifest information on trains containing these substances. This information ideally should also be accessible via mobile applications, allowing rapidly access cargo manifest information in real time, particularly in accidents where the manifest is not available on the train (First responders).
- 3) Request or mandate that railroads and producers of petroleum and other hazardous materials shipped by rail provide at their expense an appropriate number of foam trucks and pumping equipment, to be stationed at strategic locations by OES and maintained by the producers (OES).

# Oil by Rail in California

## State –Agency-Identified Priorities for Federal Action (continued)

- 4) Require, via the Federal Railroad Administration, electronically controlled pneumatic brake technology on all crude oil trains (CPUC).
- 5) Lower the threshold for the number of tank cars in a train that triggers a reporting requirement under which petroleum producers and railroads must report to state authorities, from 33 tank cars to 20 tank cars (OES).
- 6) Mandate compliance with the voluntary safety measures that the railroads agreed to in negotiations with federal authorities, to be completed by August 1, 2014 (CPUC):
  - Reduced speed for crude oil trains with older tank cars going through urban areas
  - Analyses to determine the safest routes for crude oil trains
  - Increased track inspections
  - Enhanced braking systems (electronically controlled pneumatic brakes) ECP
  - Installation of wayside defective bearing detectors along tracks
  - Better emergency response plans
  - Improved emergency response training
  - Working with communities through which oil trains must move to address community concerns

Questions?



# Upcoming Webinars

## **Oil-by-Rail: Federal Issues**

Thursday, October 23 11:00 a.m. – 12:30 a.m.

## **How Long Until Our Local Streets & Roads System Crumbles?**

Thursday, October 23 2:00 - 3:00 p.m.

## **AB 60 Implementation: What Law Enforcement, City Officials Should Know Webinar**

Wednesday, November 5 2:00 - 3:30 p.m.

## **Oil By Rail: League Policy, Advocacy Efforts**

Thursday, November 6 10:00 a.m. – 11:30 a.m.

## **2014 Legislative Briefing Webinar**

Wednesday, November 12 2:00 - 3:30 p.m.