

From: [Hellman, Johan](#)
To: [Ashley Ubil](#)
Subject: Testimony regarding railroad financial responsibility requirements, for Planning Commission meeting on 6/25
Date: Thursday, June 25, 2020 1:50:34 PM
Attachments: [Letter -- Financial Responsibility -- 6.25.20.docx.pdf](#)

Ashley:

I am forwarding testimony for the Planning Commission meeting this evening. The attached comments are intended to inform commissioners about financial responsibility requirements railroads must comply with in order to move crude oil.

My understanding is there have been some questions about this topic. Please share these comments with the commission members as testimony for tonight's meeting.

Thank you for your assistance.

- Johan

Johan Hellman | Public Affairs | BNSF Railway



Johan Hellman
Executive Director of Public Affairs

BNSF Railway Company
2454 Occidental Ave. South, Bldg. 1A
Seattle, WA 98134

June 25, 2020

Planning and Development Services Department
5280 Northwest Drive
Bellingham, WA 98226

Sent electronically to Ashely Ubil at aubil@whatcomcounty.us.

RE: Questions regarding oil spill financial responsibility

Dear Commissioners:

The purpose of this letter is to address questions regarding financial responsibility associated with mitigation related to response and cleanup efforts following hazardous material releases on or near rail lines.

Regulatory authority over railroad finances is the sole jurisdiction of the federal government. In passing the Interstate Commerce Commission Termination Act ("ICCTA"), Congress conferred exclusive jurisdiction for economic regulation of interstate railroads on the Surface Transportation Board ("STB"). In considering public convenience and necessity of interstate railroad operations, the STB may consider "the applicant's financial fitness" among other factors. This authority is absolute and has been affirmed by every court that has examined it.

As common carriers – responsible for moving a variety of hazardous materials including chemicals used to treat municipal drinking water, cleaning products used to sanitize medical equipment, and fertilizers which help agricultural products grow more verdant and abundant – interstate railroads rely on regulatory consistency across multiple jurisdictions in order to ensure safe and efficient transport of essential goods. Congress and the federal government recognize safety is diminished by a patchwork of independent regulations, which is the reason why the federal government plays an exclusive oversight role in regulating railroad finances.

Each year, BNSF and other Class I railroads submit an annual report to the Surface Transportation Board which includes detailed financial information. The information included in this report informs the STB's decision making regarding a railroad's financial fitness. At the state level, railroads provide an annual financial assurance report to the Washington State Utilities and Transportation Commission ("UTC") in accordance with WAC 480-62-300, which requires railroads to annually provide "information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a worst case spill of oil."

This state regulation was enacted following a multi-year effort by the Washington State Legislature to pass comprehensive legislation regarding the transport of crude oil by rail. In 2015, following more than

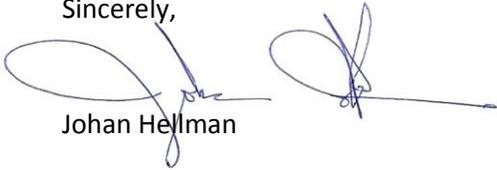


a year of study and discussion, the legislature passed landmark legislation requiring railroads to plan, coordinate, and perform simulated oil spill drills in accordance with state regulations. This legislation included provisions that serve as the basis for the UTC's financial assurance reporting requirement.

As we have previously shared with the Whatcom County Council, BNSF has a strong track record of financial responsibility. The railroad has never asked taxpayers to assume the expense of cleanup following a derailment. Furthermore, BNSF works closely with local first responders and state agencies to ensure prevention, training, and response programs meet the highest level of excellence. When mitigation is necessary, the railroad works aggressively to ensure cleanup is swift and thorough from the beginning of the response until the ultimate conclusion when the state Department of Ecology certifies all cleanup efforts have been satisfactorily completed.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Johan Hellman". The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end.

Johan Hellman