



August 5, 2019

Docket Operations Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Ave SE
Washington, DC 20590

RE: Docket No. PHMSA-2019-0149

This letter is being submitted in support of the application by the State of North Dakota and the State of Montana for an administrative determination that Federal hazardous material transport law preempts the State of Washington law relating to the conditioning of crude oil received in the state.

On May 9, 2019, Washington Governor Jay Inslee signed Washington Senate Bill 5579 into law. The bill arbitrarily limits the vapor pressure on Bakken crude oil loaded or unloaded into or from a rail tank car. This bill will have negative consequences for the States of North Dakota and Montana, specifically targeting the rights of North Dakotans and Montanans to engage in interstate commerce.

Approximately 10 percent (120,000 BPD) of North Dakota's daily Bakken crude production is transported by rail to Washington refineries. The infrastructure necessary to comply with Senate Bill 5579 would add hundreds of millions of dollars to the cost of conditioning and transportation. At the same time, the requirements of Senate Bill 5579 would significantly reduce the value of Bakken crude oil without any proven safety benefit. Refineries desire Bakken crude for every component. Reducing to 9.0 psi would necessitate the removal of all the ethane, most of the propane and some of the butane. Senate Bill 5579 will jeopardize North Dakota's and Montana's access to the West Coast market while reducing the value of our commodities.

The standard (9.0 PSI) in Washington Senate Bill 5579 is based upon an unsupported, erroneous assumption that Bakken crude oil poses a higher transport risk than other crude oils. The State of North Dakota was the first to study the production, conditioning and transportation of this commodity. The North Dakota Industrial Commission (NDIC) issued Order No. 25417 on Sept. 23, 2014, to establish oil conditioning standards for Bakken, Three Forks, and Sanish crude oil. In addition, a new rail inspection program was created in the North Dakota Public Service Commission, and Department of Mineral Resources staff were directed to inspect facilities for compliance. In total, over 60,000 samples have been collected since 2014, 99.5 percent of which fully complied with, or exceeded, national oil conditioning standards.

North Dakota advocates for states' rights within a model of cooperative federalism. In some circumstances, abuse of this model by one state infringes on another state's right to engage in interstate commerce. Such is the case here. The burdensome standards imposed on Bakken crude oil in Washington Senate Bill 5579 infringe on the right of North Dakota and Montana to engage in interstate commerce. Moreover, the standards in Washington Senate Bill 5579 are preempted by federal standards in 49 CFR 107.202 and 49 USC 5125.

For reasons explained above, the State of North Dakota respectfully requests that PHMSA issue a determination that Washington Senate Bill 5579 is preempted.

Regards,

A handwritten signature in blue ink, appearing to read "Doug Burgum".

Doug Burgum
Governor