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State of Washington Rail Transport Crude Oil Volatility Rules: U.S. Pipeline and Hazardous Materials Safety Administration Issues Preemption Determination

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The United States Pipeline and Hazardous Materials Safety Administration (“PHMSA”) announced on May 11th, its determination that the Federal Hazardous Materials Transportation Act (“HMTA”) preempts the State of Washington’s vapor pressure requirements for the transportation of crude oil by rail.

The states of North Dakota and Montana submitted a request for a PHMSA administrative determination that the HMTA preempted State of Washington’s rules applicable to crude oil transportation.

The Secretary of the United States Department of Transportation (“DOT”) has delegated authority to PHMSA to make determinations of preemption except for those concerning highway routing, which has been delegated to the Federal Motor Carrier Safety Administration.

The Federal HMTA provides in Section 5125 of 49 U.S.C. express preemption provisions that are applicable to certain state activities. A requirement of a state, political subdivision of a state, or Indian tribe is preempted – unless the non-Federal requirement is authorized by another Federal law or DOT grants a preemption waiver under Section 5125(e-f):

1. Complying with the non-Federal requirement and the Federal requirement is not possible; or
2. The non-Federal requirement, as applies and enforced, is an obstacle to accomplishing and carrying out the Federal requirement.

North Dakota and Montana applied to PHMSA for a determination that HMTA preempts the State of Washington’s engrossed substitutes Senate Bill 5579, Crude Oil by Rail-Vapor Pressure. The states argued that the Washington law regulating volatility of crude oil transportation in Washington state for loading and unloading amounts to a de-facto ban on BAKKEN crude.

PHMSA’s Chief Counsel issued the administrative determination of preemption. The basis for the determination was stated to include:

1. The Washington State’s vapor pressure requirement constitutes a scheme for classifying a hazardous material that is not substantively the same as the hazardous materials regulations;

2. The Washington state vapor pressure requirements impose requirements on the handling of hazardous materials that are substantively the same as the requirements of the hazardous materials regulation;
3. The Washington state vapor pressure requirement is an obstacle to accomplishing and carrying out the HMTA.

A copy of the PHMSA Notice of Administrative Determination can be downloaded [here](#).