



September 30, 2014

**VIA FACSIMILE, ELECTRONIC MAIL, &  
FIRST CLASS MAIL**

Secretary Anthony Foxx  
Department of Transportation  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

Administrator Cynthia L. Quarterman  
Pipeline and Hazardous Materials Safety Admin.  
Department of Transportation  
East Building, Second Floor  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

US DOT Docket Management System  
West Building Ground Floor, Room W12-140  
Routing Symbol M-30  
1200 New Jersey Avenue SE  
Washington, DC 20590

RE: Docket No. PHMSA-2012-0082 (HM-251); - Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains.

Dear Secretary Foxx and Administrator Quarterman:

The City of Vancouver, Washington (population 167,000), along with nearby Portland, Oregon, are the two largest cities on the Columbia River. The Burlington Northern Santa Fe main connecting the Bakken fields of North Dakota to Pacific Northwest ports and, ultimately, west coast refineries, travel for hundreds of miles along the Columbia River, including through the City of Vancouver. Each day, freight trains travel this line through Vancouver, carrying thousands of railcars, many of which carry hazardous materials, including a recent and dramatic increase in crude oil. The volume of crude could substantially increase even further with a proposed oil terminal in our City that would facilitate shipment of 360,000 barrels of Bakken crude oil daily.

Since the July 6, 2013 derailment in Lac-Mégantic, Canada, there have been other derailments across North America. Our City would be devastated by an event similar to these.

Consequently, the Vancouver City has made reducing the dangers of increased crude-by-rail transport a top safety concern. The improved standards for both new and existing USDOT Specification III rail tank cars proposed in the NPRM are essential to protect communities from the potential impacts of incidents involving hazardous materials shipped by rail.

In furtherance of that policy, the Council adopted Resolution M-3821 and Ordinance M-9040. The Resolution expressed its deep concern over additional oil facilities and Ordinance M-9040 imposed a moratorium on the location of such facilities in Vancouver. These documents are enclosed and their recitals highlight the potential specific impact and the danger on the City and its residents posed by increased crude oil shipments through our City.

In particular, the ordinance and resolution note the development of the Bakken oil field in North Dakota and that Bakken oil is more explosive than other petroleum products. Bakken development, in particular, has increased the demand for oil facilities on the west coast and is a direct cause of increased shipment of this dangerous commodity through the city. The Council's concern, however, is not limited to Bakken oil but all types of oil especially the most volatile. Proper classification of the volatility and flashpoints is essential.

Human error, acts of nature, and unforeseen disasters are beyond the control of measures proposed for the transportation of Bakken crude oil and would have a devastating impact on the entire community of Vancouver. The rail lines that will carry volatile crude oil run through and by City of Vancouver neighborhoods, parks, the Interstate 5 corridor, commercial and industrial areas, the Columbia River, creeks, other natural areas. (See the enclosed map showing the evacuation zones of a rail incident in Vancouver).

The rail lines carrying oil in unsafe DOT 111 cars run through the core of downtown Vancouver and within a few hundred yards of Vancouver City Hall. The City of Vancouver adopted the Vancouver City Center Vision Plan for redevelopment of its downtown area and waterfront. Following that plan, the City put millions of dollars of investment into redeveloping its downtown area including the development of a new Hilton Hotel, condominiums and apartments, affordable housing, parks, and offices. In addition, the City has spent millions of public dollars building infrastructure to allow development of its waterfront, connecting the waterfront to our downtown which historically has been cut off by the BNSF rail line. The waterfront area has attracted private investment and the increase in potentially hazardous transport of oil could cause headwinds for that development.

The City is concerned that increasing volumes of crude-by-rail would put the people of Vancouver at an increased risk of catastrophic human and environmental impacts. Thus, following the direction of the Vancouver City Council as reflected in the resolution and ordinance, the City strongly supports actions and measures that will help prevent incidents, mitigate the damage that might occur if an incident does take place, and the strengthening of resources for emergency response to a potential incident.

The City also calls for: (1) improved and accurate classification of hazardous materials; (2) safe container for shipment of hazardous materials; (3) increased investment in infrastructure and technology that supports safety, mobility and emergency response capacity; (4) increased investment in inspection, enforcement and emergency response preparation; and (5) requiring producers and shippers to carry adequate insurance against potential risks.

The costs of the changes proposed in the NRPM, both in the manufacture of new rail tank cars and the retrofit of existing cars, are modest compared to the costs that would result from an incident involving the release of hazardous materials. For example, in Lac-Mégantic, the cost of the environmental cleanup alone is estimated in the hundreds of millions of dollars. This figure does not begin to address providing for the people injured in the disaster, the survivors of the 47 people killed, and the extensive property damage to the devastated commercial center of the town, including 40 buildings and surrounding infrastructure. If such an incident ever occurred in Vancouver, a worse impact would result given our population magnitude, density and proximity to the rail corridor.

We are informed that the cost to manufacture a DOT Specification 111 rail tank car to the standard proposed in the NPRM represents a mere \$18,000 premium over the current standard, a relatively small margin given the potential benefits to public safety.

Accordingly, the City supports the most protective measures proposed in this NPRM, including the call for more protective railcar standards applicable to both new and existing tank cars, and urges PHMSA to incorporate all of the recommendations the National Transportation Safety Board ("NTSB") issued in response to its various accident investigations.

The NPRM provides an excellent opportunity to protect communities from potential disasters. Specifically:

*Improve DOT Specification III rail tank car safety.* The Administration should adopt the most protective construction standards for DOT Specification III rail tank cars carrying Packing Group I and II hazardous materials, including crude-by-rail, and require existing DOT Specification 111 rail tank cars to be retrofitted to meet the same standards. Option 3 is the most appropriate of the safety feature options proposed.

*Phasing out the DOT 111 cars for the DOT 117 cars should be expedited.* At a minimum, the finally adopted Rule should be the shortest option specified in the NPRM. Preferably, the phase-out of DOT 111 cars should be sped up by one year. Retrofitted DOT 111 cars should be viewed with skepticism. Adding the necessary 2/16 of an inch to meet the new DOT 117 standards is something that likely cannot be done in a cost-effective manner.

*Ensure that hazardous materials are properly classified prior to shipment.* The Administration should make permanent the emergency requirements it imposed in February 2014 mandating proper classification of crude-by-rail products before they are tendered for shipment.

*Limit the number of cars per train.* The proposed regulations should apply to any transport of oil, not just trains with 20 or more oil cars. Given the volatility of the crude oil emanating from the Bakken and other Midwest shales, an incident with a train composed of fewer than 20 cars could still be devastating. An arbitrary threshold of 20 cars could undermine the effectiveness of the regulation relative to community safety.

### **Additional measures to prevent catastrophic incidents**

In addition, the Administration should take the following steps to ensure that any safety measures realized through the rulemaking are deployed to the greatest possible effect by adopting across-the-board improvements to the regulatory regime for crude-by-rail and hazardous materials shipments. Specifically:

*Introduce a national freight fee to fund infrastructure safety improvements and emergency response.* To prevent incidents from occurring, the Administration should urge Congress to enact a national freight fee to support the construction of improved infrastructure and other operational safety improvements. This fee would proactively contribute to the prevention of accidents and incidents by improving the freight infrastructure over which hazardous materials shipments travel (potentially including rail, road, and barge), supporting the acquisition of best-in-class safety equipment, and providing resources for the proper inspection of rail infrastructure and equipment. A small, per-container or otherwise structured fee could fund infrastructure improvements nationally and could prevent the potential cost of a tragic incident in Vancouver.

The fee should also be adequate to fund critical emergency response capabilities in the form of training and equipment for local emergency responders.

*Require the timely implementation of positive train control technology on crude-by-rail lines.* The Administration should exercise the discretion granted by the Rail Safety Act of 2008 to require all lines carrying crude-by-rail to employ Positive Train Control systems to regulate the movement of trains and prevent derailments and collisions.

### **Additional measures to mitigate harm in the event of a release or catastrophic incident**

The Administration, through this rulemaking and through additional measures within its delegated authority, can significantly improve the ability of communities and railroads to mitigate the harm of possible rail incidents. Specifically:

*Require industry participants to demonstrate the financial capacity to address the risks of shipping crude-by-rail and other hazardous materials.* Requirements already exist for rail or motor carriers to demonstrate their financial fitness when seeking various forms of authority from the Administration for general common carriage. See 49 C.F.R. Part 387; 49 C.F.R. Part 1150. Where the transported goods are hazardous, the Administration should take a more aggressive approach to addressing potential harms in the event of an incident. In conjunction with a demonstration of financial fitness, firms engaged in transportation of hazardous materials should also be required to maintain levels of liability insurance that meet or exceed minimums established by the Administration.

*Impose fines.* To deter lax adherence to the proposed safety requirements, the Administration should impose significant fines for non-compliance with the requirements set forth in the proposed rule.

### **Additional measures to improve emergency response**

The Administration should also take the opportunity presented by the NPRM to impose requirements designed to improve the ability of communities and railroads to respond to incidents. Specifically:

*Require carriers to provide communities with written spill response plans.* The Administration should require carriers shipping crude-by-rail and other hazardous materials using unit trains or multiple tank cars of crude oil to submit detailed written spill response plans so that local emergency managers can be assured that carriers are fully prepared if an accident requires emergency response.

*Provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported.* To ensure that local emergency managers and first responders serving in "need to know" positions have the tools necessary to plan for and respond to any hazardous material accidents, the Administration should require carriers to engage with local government emergency responders to develop protocols and procedures for providing local governments with advanced information on hazardous materials being transported through populated areas, including detailed commodity data on the nature of shipments, and improved dialogue between local officials and railroad operations staff.

*Provide accurate real-time information about the materials being shipped.* In addition to requiring railroads to provide information to City emergency response officials prior to shipment, the Administration should also require railroads to provide additional identifiers on tank car placards so that local first responders can immediately identify the contents of each car. Under the current rules at 49 C.F.R. § 174.26, first responders must locate the waybill carried on the train to determine which cars carry what hazardous materials. The urgent need for first responders to be able to identify and properly handle hazardous materials following an accident has been a priority of the National Transportation Safety Board for years, and that urgency has only increased with the rapid expansion of crude-by-rail shipments through communities across the country?

*Increase Insurance Requirements.* The Lac-Megantic incident was covered to our understanding by only \$25,000,000 CAD of insurance. This is inadequate to come close to cover a similar incident in Vancouver. Minimum insurance requirements need to be established that assure coverage equal to the magnitude of risk.

### **Proven Regulatory Success Needed**

Many of the regulatory approaches under consideration are based upon today's knowledge of the volatility, behavior and resulting projected outcomes associated with a Bakken crude

by rail incident. However, it is clear that what has been considered "best available standard" in the past has proven to be insufficient to protect communities from the risks of transporting oil by rail in the quantities current seen and contemplated in the near future. Once rules are adopted, a multi-year track record of successful and safe operations through non-urban areas should be mandated prior to allowing full sale operations through urbanized areas.

### **Conclusion**

The City of Vancouver stands ready to assist the federal government in achieving these crucial public safety goals. We also are prepared to pursue all available options under federal and state law to protect our residents from the dangers associated with a dramatic increase in volume of shipments of crude oil by rail.

Thank you again for the opportunity to comment on the NPRM. We look forward to further participation as this rulemaking moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Holmes", written over a large, faint circular stamp or watermark.

Eric J. Holmes  
City Manager

EJH/ejh

Enclosures as referenced

Cc: City Council  
Senator Patty Murray  
Senator Maria Cantwell  
Congresswoman Jaimie Herrera-Buetler

06/02/14

RESOLUTION NO. M- 3821

A RESOLUTION expressing the deep concern of the Vancouver City Council about the threat to life, safety and the environment due to accidents, potential spills and explosions posed by the oil terminal proposed to be located adjacent to downtown Vancouver; requesting the Port of Vancouver to terminate its lease with Tesoro Savage; urging EFSEC to recommend against the siting of the oil terminal; urging the Governor to not approve a site certification agreement; and urging Congress, the Legislature, and regulators to adopt laws and regulations to increase the safety of the transportation of crude oil.

1. WHEREAS, the City values its ongoing relationship with the Port of Vancouver, Washington, and is committed to maintaining this partnership that is essential to the vitality and growth of our community and the region. The City recognizes that the views expressed in this resolution are specific to the proposed terminal project and are not intended to impact the broad and long-term working relationship between the City of Vancouver and the Port of Vancouver; and

2. WHEREAS, the Port of Vancouver approved a lease with Tesoro Corp. and Savage Companies, who propose to construct a terminal on Port property to handle the transport of Bakken crude oil by rail, and this proposal is currently undergoing review by the Washington State Energy Facility Site Evaluation Council (EFSEC); and

3. WHEREAS, human error, acts of nature and unforeseen disasters are beyond the control of measures proposed for the Vancouver oil terminal project and could have devastating effects on the entire community; and

4. WHEREAS, the rail lines that will carry this volatile crude oil run through and by the City of Vancouver neighborhoods, parks, the I-5 corridor, commercial and industrial areas, the waterfront, the Columbia River, creeks and other natural areas; and

5. WHEREAS, according to the Association of American Railroads ("AAR") the volume of crude oil shipped by rail has increased from 9,500 carloads in 2008 to 400,000 carloads in 2013; and

6. WHEREAS, the volume of petroleum transported by rail through Vancouver is expected to increase in the future, and the planned oil terminal in the Port of Vancouver will increase that volume by more than 360,000 barrels per day, with the potential for future expansion; and

7. WHEREAS, possible derailments, spills, explosions and fallout pose a serious threat to this community; and

8. WHEREAS, the primary source of the petroleum anticipated to be transported by rail through Vancouver is from the Bakken formation, which the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration ("PHMSA") has determined may be more flammable than traditional heavy crude oil; and

9. WHEREAS, the PHMSA's 2013 investigation into the transportation of Bakken oil, known as Operation Classification, showed that crude oil taken from cargo tanks en route to rail loading facilities was not properly classified on numerous occasions leading DOT to issue an

emergency order requiring shippers to test Bakken oil and classify it as a packing group I or II commodity; and

10. WHEREAS, the fatal incident in Lac-Megantic, Quebec, resulted in loss of forty-seven lives and buildings and required the evacuation of 1,000 resident; and

11. WHEREAS, in November 2013, a derailment of a unit train in Aliceville, Alabama, caused a crude oil spill when tank cars ruptured and caught fire; and

12. WHEREAS, Galveston Bay, Texas, recently experienced a maritime collision that emptied more than 150,000 gallons of crude oil into the bay, and the Columbia River would be used as the major shipping channel for the proposed oil terminal in Vancouver; and

13. WHEREAS, in December 2013, a derailment of a BNSF unit train carrying crude oil caused a spill and explosion causing the evacuation of most of Casselton, North Dakota; and

14. WHEREAS, in January 2014 a freight train carrying crude oil in New Brunswick, Canada, derailed causing a spill and fire resulting in the evacuation of 45 homes in a 1.25-mile radius surrounding the crash; and

15. WHEREAS, in April 2014, a freight train transporting crude oil in Lynchburg, Virginia, derailed causing a spill and fire and resulted in the evacuation of a portion of the downtown area and spill into the James River; and

16. WHEREAS, on May 9, 2014, a train carrying crude oil derailed near LaSalle, Colorado, resulting in a spill; and

17. WHEREAS, according to the PHMSA more than 1.15 million gallons of crude oil was spilled in U.S. rail incidents in 2013; and

18. WHEREAS, the increase in the production of Bakken crude oil has placed such a demand on tank cars that older DOT 111 cars are being used to transport Bakken crude oil; and

19. WHEREAS, according to the AAR, approximately 92,000 DOT-111 tank cars are used to move flammable liquids, such as crude oil and ethanol, with only approximately 14,000 (15%) of those tank cars being built to the latest industry safety standards; and

20. WHEREAS, in light of the incident in Lac-Megantic, Quebec, the Canadian government has ordered the phase out of the use of older DOT 111 tank cars that do not provide necessary protections against punctures, failures and explosions for the transportation of crude oil within three years; and

21. WHEREAS, while, PHMSA has not ordered the phase out of older DOT 111 tank cars; and

22. WHEREAS, oil tank cars built since 2011 are designed to the CPC 1232 standard and Tesoro Savage has indicated that it would only accept CPC 1232 cars. However, in comments to the PHMSA the AAR "now supports even more [than CPC 1232] stringent standards...retrofits of existing cars...and an aggressive phase-out of cars that cannot meet retrofit requirements"; and

23. WHEREAS, one of the tank cars that ruptured in Lynchburg, Virginia, was a CPC 1232 tank car and was travelling 24 mph, well below the recently agreed upon 40 mph speed limit for urban areas; and

24. WHEREAS, it will be at least five to seven years before new model tank cars ordered by BNSF could be delivered and, even after they are delivered, BNSF will have to accept older cars from shippers transporting crude oil so long as those cars meet minimum safety requirements; and

25. WHEREAS, even today, the design of those new cars is unsettled and does not have a proven record of safe utilization; and

26. WHEREAS, the oil terminal project will result in eight to twelve unit trains per day traveling through the city each being a mile and a half long which could cause delay in responding to emergencies at any of the four public and twenty-one private rail crossings; and

27. WHEREAS, in January 2014 the National Transportation Safety Board stated “Because there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden of remediating the environmental consequences of an accident on local communities along their routes”; and

28. WHEREAS, the City of Vancouver is just beginning the process to study the demands placed upon its emergency responders by crude oil unit trains traveling through the City and has not yet identified the risk posed nor training, manpower and equipment needed to respond to that risk; and

29. WHEREAS, in 2007, the City adopted the Vancouver City Center Vision and Subarea Plan and the City is concerned about the potential negative impacts the oil terminal project could have on the vision, principles and policies expressed in that plan; and

30. WHEREAS, in October 2009, the City unanimously approved the master plan for the Columbia Waterfront Development project, which calls for the development of 3,300 residential units and 1 million square feet of commercial space on 32 acres of riverfront property; and

31. WHEREAS, On November 4, 2013, the Vancouver City Council unanimously approved the Waterfront Park Plan that calls for a 7.3-acre park and trail within the Waterfront Development project; and

32. WHEREAS, the City has invested approximately \$45 million in transportation infrastructure to serve the Waterfront Development Project; and

33. WHEREAS, the Port of Vancouver has been a key partner in assisting the City to make the transportation improvements for the Waterfront Development project. The Port interrupted their construction schedule for the West Freight Access Project to facilitate the City's construction; the Port also allowed the City to use Port property temporarily for detouring rail traffic while the City constructed the new rail line; and the Port also engaged in land exchanges with the City for the new right-of-way within the site; and

34. WHEREAS, the Waterfront Development Project site is bordered by the BNSF railroad tracks that will be used to transport the oil to the terminal and could be impacted by the Project; and

35. WHEREAS, the City has concerns regarding the potential impacts of the oil terminal upon the residents of the adjacent Fruit Valley Neighborhood; and

36. WHEREAS, the National Transportation Safety Board in January 2014 recommended that unit trains transporting Bakken crude oil be rerouted to avoid populated areas where technically feasible; and

37. WHEREAS, the City has a paramount interest in the health, safety and welfare of its citizens and believes that the development of the proposed Tesoro Savage crude by rail oil terminal is contrary to the health, safety and welfare of its citizens and business community;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VANCOUVER:

Section 1. The City of Vancouver asks the Port of Vancouver Commissioners to terminate the property lease to Tesoro Savage which will result in Bakken oil being shipped through urban centers.

Section 2. The City of Vancouver strongly requests that the Governor of Washington, the Washington Department of Ecology, the Washington State Energy Facility Site Evaluation Council (EFSEC), and any other relevant state agencies decline to permit crude by rail oil terminal projects, and specifically the proposed Tesoro-Savage project.

Section 3. The City of Vancouver calls on municipalities, agencies and officials to deny all permits for new facilities that will result in an increase in the transportation of Bakken crude oil through Clark County until such time as there is a consensus among the industry and regulators as to the appropriate method of safely transporting Bakken crude oil and a proven track record that demonstrates the safety of the methodology.

Section 4. The City of Vancouver strongly urges Congress, the State Legislature and agencies with jurisdiction to adopt legislation and regulations related to rail transport requiring disclosure of the volumes, types of petroleum, petroleum products, and petroleum derivatives; transport routes; and the frequency and duration of transfers of petroleum, so the state and local communities can be fully informed of and plan for the risks posed by the transport of petroleum by rail.

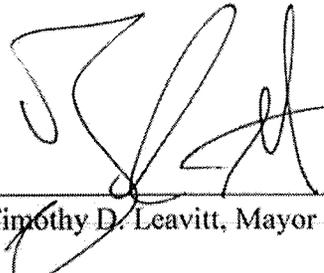
Section 5. The City of Vancouver strongly urges the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration to promptly adopt regulations to increase safety standards for tank car design and operations regulations for petroleum product shipments and aggressively phase out older-model tank cars used to move flammable liquids that are not retrofitted to meet new federal requirements:

Section 6. The City of Vancouver urges the federal government to follow through on rules jointly proposed by the U.S. National Transportation Safety Board and the Transportation Safety Board of Canada under which trains from the Bakken fields would be required to avoid populated areas and oil transported by rail would be regulated in the same way as other toxic or

explosive materials.

Section 7. The City of Vancouver wants transportation of crude oil by rail to meet all state, federal and local transportation rules and regulations and to exhibit a sufficient accident-free record for a sustained period of time. The City of Vancouver does not believe that there are sufficient answers to the important questions regarding environment and physical safety to proceed with any type of development at this time.

ADOPTED at a regular session of the Vancouver City Council this 3rd day of June, 2014.



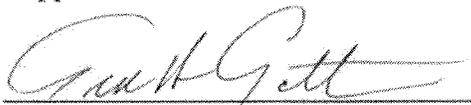
Timothy D. Leavitt, Mayor

Attest:



R. Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:



Ted H. Gathe, City Attorney

09/11/14

ORDINANCE NO. U-4090

AN ORDINANCE declaring an emergency and adopting a six-month moratorium on applications for permits for the establishment or expansion of all crude petroleum facilities that will accept crude oil except those vested or contingently vested as of the effective date of this ordinance, and providing that the moratorium will take effect immediately upon passage.

WHEREAS, on June 3, 2014, the Vancouver City Council adopted Resolution M-3821 that “calls on municipalities, agencies and officials to deny all permits for new facilities that will result in an increase in the transportation of Bakken crude oil through Clark County until such time as there is a consensus among the industry and regulators as to the appropriate method of safely transporting Bakken crude oil and a proven track record that demonstrates the safety of the methodology”; and

WHEREAS, the Vancouver City Council will use its power to deny such permits to the extent allowed under state law in accordance with Resolution M-3821; and

WHEREAS, as described in SR 113-14, City staff has received indications that applications for additional crude oil facilities or the expansion of existing crude oil facilities may be forthcoming; and

WHEREAS, the development of the Bakken oil field, mostly in North Dakota, has caused increased demand for oil facilities on the Pacific Coast of the United States, particularly in the Pacific Northwest; and

WHEREAS, the establishment of additional crude oil facilities will increase the transportation of Bakken crude oil and will result in an increase in the transportation of that commodity through the city; and

WHEREAS, human error, acts of nature, and unforeseen disasters are beyond the control of measures proposed for the transportation of Bakken crude oil and could have devastating effects on the entire community; and

WHEREAS, the Washington State Energy Facility Site Evaluation Council (“EFSEC”) provides state expertise in reviewing large petroleum facilities but the EFSEC has no jurisdiction to review facilities for the transport of fewer than 50,000 barrels per day over marine waters or facilities for processing petroleum with a daily capacity below 25,000 barrels per day; and

WHEREAS, the rail lines that will carry volatile crude oil run through and by City of Vancouver neighborhoods, parks, the I-5 corridor, commercial and industrial areas, the Columbia River, creeks and other natural areas; and

WHEREAS, according to the Association of American Railroads (“AAR”) the volume of crude oil shipped by rail increased from 9,500 carloads in 2008 to 400,000 car loads in 2013; and

WHEREAS, the volume of petroleum transported by rail through Vancouver is expected to increase in the future; and

WHEREAS, City staff has received information that indicates additional crude petroleum facilities are planned including the possible expansion of the Tesoro/Savage proposal now before EFSEC; and

ORDINANCE - 2

WHEREAS, this massive intensification of petroleum uses in Vancouver will increase the risk of possible derailments, spills, explosions and fallout and will pose a serious threat to the community; and

WHEREAS, the primary source of the petroleum anticipated to be transported by rail through Vancouver is from the Bakken formation, which the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has determined may be more flammable than traditional heavy crude oil; and

WHEREAS, PHMSA’s 2013 investigation into the transportation of Bakken oil, known as Operation Classification, showed that crude oil taken from cargo tanks en route to rail loading facilities was not properly classified on numerous occasions leading DOT to issue an emergency order requiring shippers to test Bakken oil and classify it as a packing group I or II commodity; and

WHEREAS, the fatal incident in Lac-Magantic, Quebec, Canada, resulted in the loss of forty-seven lives, as well as buildings, and required evacuation of 1,000 residents; and

WHEREAS, in November 2013, a derailment of a unit train in Aliceville, Alabama, caused a crude oil spill when tank cars ruptured and caught fire; and

WHEREAS, Galveston Bay, Texas, recently experienced a maritime collision that emptied more than 150,000 gallons of crude oil into the bay, and the Columbia River would almost certainly be used as a major shipping channel for any new crude petroleum facilities in Vancouver; and

WHEREAS, in December 2013, a derailment of a BNSF unit train carrying crude oil caused a spill and explosion causing the evacuation of most of Casselton, North Dakota; and

WHEREAS, in January 2014, a freight train carrying crude oil in the province of New Brunswick, Canada, derailed causing a spill and fire resulting in the evacuation of 45 homes in a 1.25-mile radius surrounding the crash; and

WHEREAS, in April 2014, a freight train transporting crude oil in Lynchburg, Virginia, derailed causing a spill and fire and resulted in the evacuation of a portion of the downtown area and a spill into the James River; and

WHEREAS, on May 9, 2014, a train carrying crude oil derailed near La Salle, Colorado, resulting in a spill; and

WHEREAS, on July 24, 2014, a BNSF oil train that was traveling only 5 mph derailed in Seattle, Washington; and

WHEREAS, according to the PHMSA more than 1.15 million gallons of crude oil was spilled in U.S. rail incidents in 2013; and

WHEREAS, the increase in the production of Bakken crude oil has placed such a demand on tank cars that older DOT 111 cars are being used to transport Bakken crude oil; and

WHEREAS, according to AAR, approximately 92,000 DOT-111 tank cars are used to move flammable liquids, such as crude oil and ethanol, with only approximately 14,000 (15%) of those tank cars being built to the latest industry safety standards; and

WHEREAS, in light of the incident in Lac-Megantic, Quebec, Canada, the Canadian government has ordered the phase-out within three years of the use of older DOT 111 tank cars that do not provide necessary protections against punctures, failures, and explosions for the transportation of crude oil; and

WHEREAS, while, PHMSA has not yet ordered the phase-out of older DOT 111 tank cars; and

ORDINANCE - 4

WHEREAS, oil tank cars built since 2011 are designed to the CPC 1232 standard, but the rupture of a tank car in Lynchburg, Virginia, when it was only traveling 24 mph indicates that this standard may be inadequate; and

WHEREAS, it will be at least five to seven years before new model tank cars ordered by BNSF could be delivered, and, even after they are delivered, BNSF will have to accept older cars from shippers transporting crude oil as long as those cars meet minimum safety requirements; and

WHEREAS, even today, the design of those new cars is unsettled and has no proven track record of safe utilization; and

WHEREAS, in January 2014, the National Transportation Safety Board stated “Because there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden on remediating environmental consequences of an accident to local communities along their routes”; and

WHEREAS, the City of Vancouver is studying the demands placed upon its emergency responders by crude oil trains traveling through the City and has not yet identified the risk posed nor the training needed to respond to that risk; and

WHEREAS, the City has concerns regarding the potential impacts of expanded crude petroleum train traffic upon the residents of neighborhoods adjacent to rail lines used to transport Bakken crude oil and all of its residents as well as visitors to the City of Vancouver; and

WHEREAS, the National Transportation Safety Board in January 2014 recommended that trains carrying Bakken crude oil be rerouted to avoid populated areas where technically feasible; and

WHEREAS, the City has a paramount interest in the health, safety, and welfare of its citizens, and the City Council believes that the development of additional and expanded crude petroleum facilities is contrary to the health, safety, and welfare of its citizens and business community; and

WHEREAS, pursuant to RCW 36.70A.390 and RCW 35.63.200, a public hearing shall be held within 60 days of the passage of this ordinance;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Legislative Findings. The recitals set forth above are adopted as the legislative findings of the City Council of the City of Vancouver in support of adoption of the moratorium imposed by this ordinance.

Section 2. Moratorium Imposed. Pursuant to the provisions of RCW 36.70A.390 and RCW 35.63.200, a moratorium is hereby enacted prohibiting until March 10, 2015, within the City of Vancouver any applications for permits for the establishment or expansion of all crude petroleum product facilities that will accept crude oil except those facilities that are vested or contingently vested as of the effective date of this ordinance.

Section 3. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35.63.200, the City Council sets the regular meeting of October 20, 2014, at 7:00 p.m. as the date and time for hearing on this moratorium. The City Clerk is directed to cause appropriate notice of such hearing to be given.

Section 4. Severability – Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

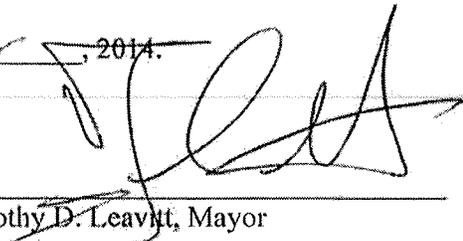
(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Vancouver Municipal Code, this ordinance is deemed to control.

Section 5. Effective Date and Notice. The City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare. This ordinance shall become effective immediately upon passage. The City Clerk is directed to publish a summary hereof including the title at the earliest possible publication date.

PASSED by the following vote: 7-0

Ayes: Councilmembers *Tapper, McEnerny-Oguz, Turley, Hansen, Brunner, Smith, Mayor Leavitt*  
Nayes: Councilmembers  
Absent: Councilmembers

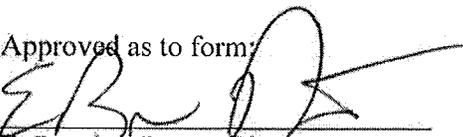
SIGNED this 11th day of September, 2014.

  
\_\_\_\_\_  
Timothy D. Leavitt, Mayor

Attest:

  
\_\_\_\_\_  
R. Lloyd Tyler, City Clerk  
By Carrie Lewellen, Deputy City Clerk

Approved as to form:

  
\_\_\_\_\_  
E. Bronson Potter, City Attorney

ORDINANCE - 7

Ex3044-0021-VAN

SUMMARY

ORDINANCE NO. M-4090

AN ORDINANCE declaring an emergency and adopting a six-month moratorium within the City of Vancouver on applications for permits for the, establishment or expansion of all crude petroleum product facilities that will accept crude oil except those facilities that are vested or contingently vested as of the effective date of this ordinance and providing that the moratorium will take effect immediately upon passage.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via [www.cityofvancouver.us](http://www.cityofvancouver.us) (Go to City Government and Public Records).