



Investigation Report

BNSF Railway Company

TR-160912

Betty Young
Rail Safety
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TABLE OF CONTENTS

Purpose, Scope and Authority.....	3
Background.....	4
Investigation.....	6
Staff Findings and Recommendation.....	8
Appendices.....	9

PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation was to determine if BNSF Railway Company (BNSF) failed to timely report an event that occurred in March 2016, connected to the operation of the railroad, involving the release of a hazardous material as required in Washington Administrative Code (WAC) 480-62-310 – Accident reports.

Scope

The scope of the investigation focuses on information obtained by staff of the commission relating to BNSF's operations.

Authority

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 80.01.040(2) and 81.01.010. RCW 81.04.070 makes it clear that the commission is authorized to conduct such an investigation. RCW 81.04.380 and 81.04.405 authorize the commission to assess penalties against companies for violation of the statutes, rules, orders, decisions, or directives of the Legislature or the commission. Appendix A includes copies of the appropriate laws and rules.

BACKGROUND

The Washington Utilities and Transportation Commission (commission) requires railroad companies to provide detailed reports for any event connected to the operation of the railroad company that results in an accident per WAC 480-62-310. Specifically, railroad companies must report:

- Release of a hazardous material (i.e., a material that is corrosive, flammable, explosive, reactive with other materials, or toxic).
- Death of any person.
- Injury to a person involved in a railroad-highway crossing accident that requires medical treatment in addition to first aid.
- Property damage amounting to fifty thousand dollars or more to property.

Railroad companies must make a telephone report of such events, within 30 minutes of learning of the event, to the to the commission’s designee, the Washington State Emergency Operations Center (EOC) 24-hour duty officer at (800) 258-5990. The report must provide detailed information of the event to the duty officer as outlined below. After receiving the telephone report from the railroad company, the duty officer identifies the necessary critical response and remediation resources and agencies on an initial and continuous basis through the completion of the response to the event. The duty officer notifies the commission, the affected county or city emergency management office and other appropriate agencies of the event report.¹

Each event report by a railroad company must state, to the extent known, the:

- a. Name of the railroad(s) involved;
- b. Name and position of the reporting individual;
- c. Time and date of the event;
- d. Circumstances of the event;
- e. Number and identity of persons suffering injuries;
- f. Number of fatalities and the identities of the deceased;
- g. The type and amount of hazardous material spilled; and,
- h. Other details that will assist in identifying the necessary response, as prompted by the duty officer.

Prior Enforcement – Docket TR-150284

The commission previously took enforcement action against BNSF for violations of this same rule. In March 2015, the commission filed a formal complaint against BNSF alleging numerous violations of WAC 480-62-310 related to 14 incidents of hazardous material releases. The

¹ These provisions must be carried out in accordance with the state’s 24-hour duty officer standard procedures and the Washington Emergency Management Act, chapter 38.52 RCW.

enforcement proceeding resulted in a settlement agreement between commission staff and BNSF, which the commission approved with conditions. The commission imposed a penalty of \$71,700 for 239 violations, which BNSF paid in December 2015.

As part of the settlement agreement, BNSF adjusted its policy and practice related to hazardous material reporting and made changes to its compliance program to maximize compliance with WAC 480-62-310, including the creation of a software application for its personnel. To facilitate effective communication with commission staff, the company identified a primary point of contact for hazardous material questions and concerns, and provided staff with the company's hazardous material team email distribution list in the event that the primary contact was not available.

INVESTIGATION

March 2016 Diesel Spill

On March 16, 2016, commission Motive Power and Equipment Inspector Matt Arnold inspected freight cars in the BNSF Elliott Yard in Ferndale, Washington. During the inspection, Mr. Arnold noticed a BNSF tank car (BN875110) leaking fluid from the manway cover and puddling on the ground. The tank car's hazardous material placard indicated UN1202–Diesel fuel (gas/oil/combustible liquid).² Mr. Arnold contacted commission Hazardous Material Inspector Cal Stocking at approximately 3:30 p.m. and explained what he found during the inspection. Mr. Stocking provided Mr. Arnold the contact information for Ed Lutz, BNSF's trainmaster in Blaine, Washington. Mr. Arnold contacted Mr. Lutz by phone at 4:42 p.m. and described the leak found during the inspection. Mr. Lutz indicated to Mr. Arnold that he would take care of it. As Mr. Arnold concluded his inspections, he observed the tank car being repaired.

On March 21, 2016, when Mr. Arnold returned to commission headquarters, he informed Betty Young in Rail Safety enforcement of the March 16 incident.³ Ms. Young reviewed the commission's incident notification records from the EOC for March 16 and found no incident report from BNSF relating to the diesel spill.

On March 22, 2016, Ms. Young contacted the EOC regarding BNSF hazardous material incident reports for March 16. EOC staff confirmed it had received no report from BNSF related to the incident.⁴

On March 23, 2016, Ms. Young emailed Justin Piper, BNSF's Director of Hazardous Materials and staff's point of contact for hazardous material incidents, and provided information about the March 16 incident. Mr. Piper indicated he would look into the matter and provide a response.⁵ That same day, Mr. Piper contacted the EOC and reported the March 16 incident.⁶

On March 28, 2016, Mr. Piper provided a response to commission staff related to the March 16 incident.⁷ Mr. Piper confirmed that Mr. Arnold identified the leaking tank car on March 16 and informed the BNSF trainmaster of the leak. The BNSF trainmaster contacted the shipper of the materials, Energy Logistics, regarding the situation. Energy Logistics inspected the car and found that the manway swing bolts had not been properly tightened, which allowed for diesel fuel to be released between the manway lid and the sealing surface as the liquid sloshed during the tank car

² Title 49, CFR Part 172.101 Hazardous Materials Table.

³ March 21, 2016, report and photos from Matt Arnold at Appendix B.

⁴ March 22, 2016, email from EOC at Appendix C.

⁵ March 23, 2016, email exchange between Justin Piper and Betty Young at Appendix D.

⁶ March 23, 2016, email from EOC regarding BNSF spill report at Appendix E.

⁷ March 28, 2016, email from Justin Piper at Appendix F.

movement. Energy Logistics later secured the manway and cleaned the sides of the tank car. Mr. Piper stated that the local BNSF trainmaster made a mistake and did not follow the company's internal notification procedures by contacting the BNSF Service Interruption Desk in Ft. Worth, Texas. This would have initiated the timely notification to the EOC on March 16. Mr. Piper indicated that BNSF has since provided additional support and counseling on proper spill notification procedures and the company's policy to the Bellingham trainmaster. Additionally, BNSF reiterated its spill reporting policy and procedure to its operations employees in its Northwest Division. Commission staff appreciates Mr. Piper's responsiveness and cooperation.

STAFF FINDINGS AND RECOMMENDATION

Commission staff has determined that BNSF violated WAC 480-62-310 when it failed to timely report the release of a hazardous material as required to the EOC within 30 minutes on March 16, 2016. The requirement to notify the EOC of any hazardous material release is a serious matter. When BNSF fails to notify the EOC that such an incident has occurred, the EOC will not know to identify the necessary critical response and remediation resources and agencies to respond to the incident, causing potential harm to the public. BNSF is well aware of the reporting requirements related to hazardous material. The commission has provided more than adequate technical assistance to BNSF regarding WAC 480-62-310 and penalized the company for its failure to comply with those requirements in the recent enforcement proceeding.

RCW 81.04.010(11) states that a common carrier "... includes ... railroads, railroad companies..."

RCW 81.04.010(16) states that a public service company "... includes every common carrier."

RCW 81.04.380 Penalties – Violations by public service companies states, in part:

"Every public service company ... shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense ..."

Recommendations

Commission staff recommends the commission file a complaint on its own motion setting forth any act or omission by BNSF Railway Company that violates any law, or any order or rule of the commission, as provided by RCW 81.04.110.

In addition, staff recommends that the commission impose penalties of up to \$1,000 each for seven violations of WAC 480-62-310, as provided by RCW 81.04.380. For each day that BNSF did not report to the EOC within 30 minutes as required (March 16 through March 22, 2016), staff counted one violation. Each day that the violation continued is considered a separate and distinct violation.⁸

⁸ RCW 81.04.380.

APPENDICES