



North Dakota Emergency  
Response Commission  
PO Box 5511  
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State Emergency Response Commission Minutes

**Commission  
Members**

Office of the  
Governor

Division of  
Homeland Security

Office of  
the State Fire  
Marshal

Division of State  
Radio

ND Health  
Department

State Highway  
Patrol

Office of  
Management  
and  
Budget

Office of  
The Attorney  
General

Workforce Safety  
& Insurance

Department of  
Agriculture

Department of  
Transportation

Office of the  
Adjutant General

Oil & Gas Division  
of Industrial  
Commission

ND Insurance  
Department

Dakota Plains  
COOP

Tesoro Refinery

ND Motor Carriers  
Association

The 103rd meeting of the State Emergency Response Commission (SERC) was called to order by the State Emergency Response Commission (SERC) Chairman, Greg Wilz, on Wednesday, June 25, 2014 at 1:32 pm in the North Dakota Department of Emergency Services-Division of Homeland Security Conference Room, Building 35 Bismarck, North Dakota.

As the roll call was conducted, Chairman Wilz asked each member to introduce themselves and to identify the agency they represent. It was noted that a quorum was achieved; but the, Office of Management and Budget (OMB), Division of State Radio, and Dakota Plains Coop, (private industry) were not represented.

Chairman Wilz asked for a motion to accept the 102nd SERC Meeting minutes, held March 19, 2014 which was made by Jeff Bitz and was seconded by Lt Col David Hall. Motioned passed.

Secretary Ray DeBoer distributed correspondence consisting of a State Emergency Response Commission (SERC) Contact List and he identified all items in the folder setting in front of each SERC Member.

Committee Reports

Secretary DeBoer provided copies of the ND Department of Emergency Services (NDDDES) Reporting, Planning & Outreach Activities Quarterly report which was discussed.

Renee Loh, representing the ND Firefighters Association (NDFFA) presented information regarding training scheduled for North Dakota.

Renee then provided the dates for Transportation Community Awareness and Emergency Response (TRANSCAER) for crude oil railcar training in the state. They will be in Wahpeton on June 25, Dickinson, July 2, Mandan on July 7, 8 and 9, New Rockford on July 17, Minot on July 22, 23 and 24 and in Trenton on July 29, 2014.

She also related that 585 firefighters had received hazardous materials training in approximately 32 cities across the state.

Ms. Loh went on to relate that the North Dakota Firefighters Association (NDFFA) was celebrating its 130<sup>th</sup> year. She also stated that the NDFFA was organized on June 4, 1884 and incorporated on February 3, 1891. The objective and importance of this association was to promote the safety and welfare of the North Dakota Firefighter's Association members through uniform and established national training standards.

Debbie LaCombe from the Grants Section presented information on the Homeland Security Grant Program. In 2011, the Homeland Security Grant Program was provided \$5.1 million dollars in grant funding. The 2011 grant is 88% expended and the agency has until the end of August 2014 to use those funds. In 2012, the Department of Emergency Services was provided with \$2.8 million in funding. That grant is about 65% funded and that grant also ends at the end of August of this year. In 2013, the agency had approximately \$3.5 million in funding. That grant is 73% extended with the funding having to be spent ending in August 31, 2015. The ND Department of Emergency Services has applied for the 2014 Homeland Security Grant which is for \$3.7 million in funding and we expect to get that federal award sometime around August or September of this year.

As always, 80% of the funding goes to local jurisdictions. A priority set this year by the DESAC, Department of Emergency Services Advisory Committee, deals with regional response capabilities by physical protective measure, capabilities, public and private partnership capability, as well as operational communication capability.

#### **Old Business**

Chairman Wilz then moved on to Old Business. The Chairman related that the Hazardous Materials Emergency Preparedness (HMEP) Grants Specialist, Karen Hilfer could not be at this meeting so she provided him with two bullets about the HMEP Grant Program. She sent just a couple of notes, so beyond what is in the agency report on HMEP Grants here is that information. Everyone who has a planning grant is in the process of scheduling events for this summer. They have all signed on with contractors so she expects all of the funds will be expended for training. Then she had a conference call with HMEP personnel this week and they indicated that North Dakota is not scheduled for a monitoring visit this year. There was one last year so it'll probably be next year. So those are the only other two things that she had added and if you recall I think last meeting or maybe it was the meeting before there was an idea that we were able to get additional grant dollars through HMEP so they can conduct some flow studies.

Secretary Ray DeBoer then presented information on the number of hazardous

materials incidents that have been placed on maps showing the region of the state that the incidents are occurring in. The northwest section of the state sees that vast majority of the incidents as the oil boom is occurring there.

Chairman Wilz then related that it's fairly significant the number of spills that have occurred and they are not declining. If anything, they are staying even and I think the state agencies charged with monitoring these incidents has helped. Wilz then gave kudos to the agencies that monitor these incidents. "All agencies involved are doing as great a job as can be done with getting this information and getting it out there. It's just, it's the environment that we're in and it's going to continue this way for I'm afraid quite a while and we'll see what the next legislative session brings."

Secretary DeBoer then presented information on the upcoming 2014 Hazardous Materials Conference. We're making great strides. We've got three vendors that have already signed up for the conference. We are obtaining the information for a description of what each presenter is going to discuss. We haven't opened up registration yet as we're waiting to get all of our presenters, especially with the General Session speakers. Brenda Vossler from our training section is developing those so that when we do open up registration for the conference, when you register, there will be another pop up menu and you'll be able to select the breakout sessions that you'd like to attend. That's a change for this year. Two years ago we had to figure out by hand all of the courses attendees wanted to participant in. It was very difficult and time consuming. This time we want to have computers do the work for us. We are receiving numerous calls from people that have heard about the conference wanting to be added to our distribution list. We've got a crew of about six people, our finance section, training, myself, operations section, PIO, and we get together about every 2-4 weeks and check status. We are also receiving biographies from our presenters.

As mentioned previously, we average about 200 people or more each conference and we are anticipating a lot more this year because the interest is higher. We indicated our first guest speaker is the McAllen County Texas Emergency Manager who responded to the West Texas Fertilizer Plant. He's already confirmed his attendance. For the second day we have contacted Mark Ploen, who is a contractor for BNSF that responded to the Lac Magnetic, Quebec trail derailment where 47 people died. He's going to talk a little bit about the difference between Canada and the US on some of their response issues. And there's other things, you can go on our website, or if you want to know what the agenda is, send me an email and I can forward you a copy of the agenda so you can see what we've have.

Chairman Wilz then mentioned that this will be a premier event and we're trying to make sure, or ensure, that registration can open up as early as possible so we're close. So look for that to be a great event this year and a draw for many of the folks that are in or around the hazardous materials business.

Chairman Wilz then related next on the agenda is the US Department of Transportation (USDOT) grant. If you recall he had briefed at the previous meeting that it looked like DOT was going to get into their budget and provide about \$3 million for additional training and various grants tied to training responders who deal with oil trains. That has not made it through the system and we'll keep you posted. It would be our intent that if it comes to fruition, we will apply for a significant amount of that grant and work with our various stakeholders and associations that are in the business to again bolster training and see what other equipment needs to be potentially served.

### **New Business**

US DOT emergency order for crude oil trains. What I'd like to do is to give you a little bit of a background here. Many of you have been monitoring this in the news and seeing what's going on. In your packet, you actually have a copy of the Executive Order. This, I believe was signed 7-May. We received a copy very shortly thereafter and I read it and first thing that came to my mind was okay, they're going to use the SERC. This made sense to me on the surface. The SERC's primary mission is to implement the federal Emergency Planning and Community Right-to-Know (EPCRA) law. So, I'm thinking, okay, this is a good thing. This will be information that will come and go and it will allow our communities to fully understand what's going on out there and more importantly, in my perspective, is that our responders now will have a good feel for what is the increased risk of the additional oil train traffic that they are seeing through their communities that they have to protect. So a couple weeks after the Executive Order came out, USDOT published a second document, which is called the FAQ, Frequently Asked Questions. I don't believe we provided you all with a copy of that, but this is it, (presented to each member) and while within the Executive Order, they did not discuss anything about this information that would be provided by the railroad through the SERC. The FAQ gave you the impression that this information now, is to be confidential and it was based on security and proprietary information. That's pretty much clearly articulated in the second page that the DOT has put out. This was really frustrating to me, not only in my position as the Homeland Security Advisor, but also the Chair of the SERC because you've got an agency or an organization giving direct orders to an agency whose sole mission is right to know and

public information. This just did not make sense. So we have gotten a lot of requests for this information. We have spent the better part of a week or so getting ready for this day. Researching what state laws will allow. Researching what is the right thing to do. So we have gotten information from the three railroads that are pulling the oil trains through the state and at this time, just so that you all get a feel for what this information looks like, I'd like you to pull out the BNSF form. We have actually gotten three reports from BNSF.

The first one goes back to the 6<sup>th</sup> of June, then an update on the 13<sup>th</sup> of June, and then an additional update on the 20<sup>th</sup> of June. With any of these, if you get through the letter, which is you know, still a concern because they are basically telling the states that they are considering this data sensitive and so we are in odds, I guess, in what we believe the information really is, as opposed to what the railroads believe it is. We did have a conference call with one of the railroads yesterday and we articulated our intent and so if you would get to about page three, they're not numbered. On the first one, or it's probably easier to read on one of the updates, I'm just grabbing the first updated letter dated the 13<sup>th</sup> of June, pretty much the same letter was provided in all reports but you will be able to see the train traffic associated with each of the counties in the lines that they serve. In some regards you may say that's a significant number, in other regards, you may say well, I kind of knew that anyway. It would appear from what was provided to us to share with first responders, that it's really information that I think, quite frankly, most of the first responders already know. They watch the trains move through their communities each and every day and I'm sure none of them are sitting out there counting the actual trains, but it doesn't take a rocket scientist to say hey, that's the second train today, or that's the third train this week, right? So based upon the information that we've received, based upon the fact that even though, well, let me restate that, based upon the fact that the SERC is a state entity, and there are state laws that it must follow. We are going to, discuss four separate motions today that allow us, in my opinion, to do the right thing, which is to release the information and secure a process that makes this a little bit easier into the future. So before I get into the specific motions that I'd like to discuss before we would call for any one motion, I would open it up to any questions or thoughts or concerns you may have after you kind of peruse this document and would like to discuss. I will add that the media has been extremely patient in that, I think our earliest request came a couple weeks ago. But the mere fact that the SERC is an agency that meets on a quarterly basis, and the information does belong to the SERC, the media has exercised great patience in waiting for this meeting to occur because it's a decision of the body, not by its chair.

An unidentified SERC member related that it seems that the railroad has put a lot of restrictions on who can access and who can have privilege to this information, and if we decide, how does the Attorney General's office feel?

Chairman Wilz then responded, excellent question, wonderful segway. Wilz then related that he would let the next SERC member introduce herself. Mary Kay Kelch from the Attorney General's office, is now the SERC attorney, and will hopefully be present at these types of meetings in the future. We've had a lot of dialog over the last week, week and a half, and she's done research on the state law, and has provided me, at least as your Chair, with the appropriate guidance and counsel. I will tell you that even prior to our second discussion, I think we were probably in sync with our thoughts on how this information needed to be handled. Please understand, I come from a background that dealt with confidential and classified information in the military. I continue in that regard today, you know, having the federal top secret clearance with classified information. I also deal each and every day with law enforcement sensitive information because of the job. I really struggle to understand the level of security that they thought would be breached upon the release of this information because in layman's terms, what was provided to us could pretty much be captured by any person who really wanted to, just by standing on the street corner. Okay, this information does not provide numerous points which would really serve, in my opinion, confidential or classified as the military would call it. They don't provide point of origins, they don't provide times of traffic, and they don't provide sideline times, any of that. The Executive Order did not require them to do that. They have met the requirements of the Executive Order by the information they have provided and so Mary Kay would you care to add anything into that?

Mary Kay Kelch representing the ND Attorney General's Office responded, yes. They do sound very threatening in their letters, but under North Dakota Open Records law, we have to have a law in our century code or federal law that specifically protects the records that are in our possession. So once we reviewed the records they provided to us, it's my opinion it doesn't fit into any of our state laws that would protect anything like this or the federal laws. That's not to say that they may not in the future provide us something that would meet there standards. There are a few statutes in our century code that might protect something in the future depending upon what it was, but what they have provided us so far, I don't think meets any of the protection either federally or state wide and so we just have no legal basis to protect what they've provided us at this point. And we discussed that with BNSF and they did have a lot of good arguments,

Chairman Wilz then asked if there were any other questions, thoughts, concerns before we get into discussing what I think will be some motions to remedy?

Gary Haberstroh representing the ND Department of Health (NDDOH) then asked; were all the railroads on the same page as far as they all thought the same way?

Chairman Wilz responded, we have not, I have not talked to the short line, nor Canadian Pacific (CP). By comparison, they're small operators compared to Burlington Northern Santa Fe (BNSF). If you look at the packet, CP's telling us the same, that they believe it is sensitive information. You know, there is some dissention, quite frankly, even at the federal level between national DOT and the Federal Railroad Administration (FRA). I haven't seen anything formal in writing, but you know, one is basically saying they don't really see this as sensitive information based upon a security issue so you know, there will be more to come. BNSF did tell us yesterday that the feds have asked for all of their reports to date because they want to go back in and analyze if this stuff really within what their FAQ said is sensitive information based upon security or proprietary information. So I think there's more to come on this, I really do. But we have what we've got and we need to basically react based on that.

Kathleen Spilman representing the ND Motor Carriers Association asked, just for clarification, it's your interpretation? I'm reading the BNSF letter that they are claiming that it's from a security standpoint or from a business proprietary confidential standpoint. Which one?

Wilz responded, actually both.

Spilman then responded, I mean, the way I'm reading this, specifically the second bullet item, the way I'm reading this is that they are considering this business proprietary and confidential trade secret business information, not necessarily from a security standpoint.

Mary Kay Kelch responded that doesn't meet our requirements either. I mean, the fact that BNSF tells us that, doesn't mean anything.

Spilman responded that she understood.

Mary Kay Kelch relayed, so yes, they've argued both those points, and it doesn't meet either of the criteria for our state law to protect it.

Spilman then related, okay, then the other thing I need to point out is, we don't know what we don't know. We're not railroaders. So I don't know if I was a railroader seeing this what insight this would give me to my competitor.

Chairman Wilz responded yes, and we kind of talked about that and at the end of the day, you know, if CP rail really wanted to know what BNSF was doing, I think they could just put that same person on the street corner and check it out.

Mary Kay responded, I know, but understand this is state wide information and to gather that information could be a serious undertaking by a competitor. This way you're handing it to anybody who looks at it.

Mary Kay continued, another thing would be is in our law to protect proprietary and commercial information. It cannot be previously publically disclosed. Right now the federal government is telling them they have to publically disclose it and other states have already disclosed information that they've given out. If they have a problem with the information that they have to submit to us, they really have to have the federal government protected through their statues and then maybe we could do something but right now they don't meet our criteria.

Kathleen Spilman then related, Well, I mean, I disagree that it's currently in the public domain to know how many average train counts there are in Burke County. Do you know of any publication or record where that currently exists?

Wilz responded, I cannot tell you that there is one, but I can tell you that Joe can stand on a street corner and figure that out within a week's time period.

Spilman responded, and I don't challenge that. I'm just saying to have all this information compiled in three sheets of paper, maybe very enticing to their competitors and the only fairness of it all is their competitors are also having to disclose it.

Chairman Wilz responded with, and the larger argument that BNSF made on the phone with us was the security issue, not the proprietary information issue, so it seemed to me that that was a little bit even of a reach for them when we had their attorneys on the phone yesterday.

Katherine Herr representing the media related, correct. Their larger concern was, and not so much with what they've provided, they're concern is cumulatively if this is repeatedly given out and repeatedly provided that over time, a long period of time, someone could look at these and start putting together certain patterns and certain things like that and so long term they have more concerns security wise than what we're looking at right now which is the three reports that have been turned over.

Spilman responded, the other thing is that they have to be seen to be protecting the information involving hazardous material as required under federal law, they are required to protect and to discourage and whatever they can do to prevent things like a terrorist

opportunity to disrupt their operations, whether it's from the material standpoint or the fact that railroads are deemed a critical infrastructure of the United States.

Kelch related, I don't blame them. I mean, they have to make these arguments, of course. They're a private company so it's understandable they're going to make these arguments.

Fred Anderson representing the Oil & Gas Division stated, I guess I would offer some comments that I think there is opportunities for sensitivity on both sides of this. Arguments could be made that this information could be found readily through other means, arguments could be made that putting it together and assembling it makes it much easier for someone to take it and use it out of context. I think there is probably 2 or 3 levels of information within this, within the intent of this construct that maybe need to be explored more and then maybe discussions can be brought forth about what actually gets shared and what doesn't. As an example, certainly it's in the best interest of everyone in the state to know where, which is probably not difficult to figure out, where sensitive materials are being, or hazardous materials are being transported through the state, and through, and how it's being done. However, the data that supports that, meaning the load on that system, the timing of that load, maybe that doesn't need to be considered, could be shared with all, but certainly with those that need to, that have a need to know in the emergency response community. What's interesting to me in this is that when I look at the fourth paragraph down I believe I'm looking at the second follow up for BNSF. The comment that's made here is that the key purpose of the emergency order is to ensure local responders are aware of when crude oil is being routed through their county and the potential volumes for the purposes of developing emergency response planning and look at being better informed and prepared to respond. To add to that, my comment here is, a question that we probably should be asking is, does this really meet the requirements that we need? I think that's fair to ask and discuss.

Chairman Wilz stated, I think those were good comments Fred. As I look at this information, once the Executive Order was published, I asked myself, okay, so we're going to get the information. And I think I remember telling you all last meeting that CSX has started a new initiative of where they are now giving state's access to various computer programs to monitor at that level. You know, the traffic going through their states. We don't have that obviously, but I asked myself, okay, so now what? The reality is, is any one train in any one community can be a catastrophic event. Now that we know how many trains are coming, are we going to do anything differently and the answer, quite frankly, is largely probably not. We're

not going to meet the trains as they come through town and escort them through. We're not governing their speeds, any of that. So at the end of the day, I still asked myself, so what does this mean? It means, to me, that we A) really need to take this stuff very seriously because when something does happen, it can happen in a big way, so we've have to make sure we've got absolutely the best possible plans that deal with a likely or probable catastrophic level event. We've have to have well trained responders to know and recognize when not to go in and when to cordon off an incident. We've have to have people trained to do such things as get people out and how do you do that within an environment that may be a little unsafe because of smoke plume and all that kind of stuff so the reality is, is what we need to do based upon this until these trains magically go away is largely work with the local communities and responders to understand what truly can and cannot be done and what they need to train and plan for and in my mind. This information, which I believe does meet the minimum requirements of the EO, does that. It is that awakening for the local communities.

Kathleen Spilman then said, let me try a different perspective. Back to your comment about having Joe Public stand on a corner and count the number of crude oil trains, unit trains running through Bismarck, North Dakota. Probably matches with high certainly the number that was provided here. Think in terms of not North Dakota and not be so arrogant to believe everybody's in our situation because we are the epicenter of crude. Bakken crude by rail, so let's step back and look at it from the overall picture, this equivalent report to, I'm probably wrong, I'll pick on New Mexico. They might find out that they have all of four railcars going through their entire state in a given week, and it hasn't been such a big deal that it has been noticeable by Joe Blow Public. It would be important for those people to understand that while not a big threat, they need to have at least thought through and be prepared should one of these incidents occur in their backyard. I don't think the Executive Order was intended for North Dakota. I think it was to help those people who for whatever reason are unaware and typically because they don't have anywhere near the volume of trains rolling through that North Dakota does, because they might be completely unaware that this is a change in their lifestyle.

Kathleen continued, so, you know, take in the bigger picture that BNSF is answering this question on a nation-wide and isn't picking on North Dakota and not attempting to withhold information which most people are already, can count the number of trains, a hundred in a row, these big black cars, you know, they are going through their town, so I can see their perspective. It might not be as important for North Dakota to have that restriction because we can stand on the corner and it's pretty hard not to miss, you know, 18 cars a

week, or 18 trains a week going through their hometown but from the bigger perspective, I mean, I can certainly understand why the railroads are a bit hesitant to help people along when there is something to be said on security of it remote and kind of flying under the radar. Not to become a bigger issue than it is. The information does need to be provided to the Emergency Responders, absolutely no challenge to that, but there may be some individuals who are unaware that some of these rail cars are being routed through their hometown, but I don't think this is intended for North Dakota, because I think we've known this all along.

Wilz responded, yes. And I would tend to agree with that part of the statement that it was not intended for North Dakota. It obviously was intended for Bakken crude because it's singled out within the order, but it was not intended purely for North Dakota.

Kathleen then responded with, right, I mean, is there really anything in here that surprised you?

Chairman Wilz replied, no.

Spilman then asked, so is the President of the United States in the habit of doing things that has no value? She went on with, just the idea there are going to be townships and municipalities, governmental areas that may, prior to this point in time, may have been unaware, and so certainly this fills that need.

Chairman Wilz then stated, any other discussion?

Lt Col Dave Hall representing the ND National Guard then related that he had just one question on the interest of public disclosure of this information. How do we accommodate that federal statute, CFR 49 11-9-04 (inaudible) on the third- bullet, is the executive order circumventing that?

: Wilz then asked Lt Col Hall, which one was he referring to?

Lt Col Hall replied 16-June, 16-June report, second page,

Mary Kay Kelch then responded that she looked at CFR49 11-9-04, I don't have that with me, but it, in my opinion, I mean, generally, there not saying anything false here, but when you look at it a little deeper, what they've given us doesn't quite fit. I didn't feel it meant that well enough for us to use that, if they would have included a little bit more information, it might have. But given what they provided, I was not comfortable using CFR 49 to deny the entire records.

Chairman Wilz then asked if there were any other comments, questions or concerns. Hearing none he asked that the SERC members look at a document he had just passed out. He related that he took a few minutes to put some draft motions together that, what I think will

do is help us move forward from this point on as a SERC, so I will read each of the motions and discuss with you what my intent behind each of the motions is. The first one is, is to move to endorse, by vote, the recommendation that the SERC Chair, representing the SERC, not sign the confidentiality agreement requested by BNSF and those that may be received by other operators. We did not agree, or at least, I should say 'I' did not agree with the confidentiality agreement because it required us to be responsible for retaining that information as confidential at levels below the SERC. So if we were to release it, based on their letter and agreement, we would release it to LEPC's and first responders, and we were held responsible for them holding it as confidential as well and we don't have the ability to do that. The LEPC's do not work for us and we have just zero control over any of it. So the reality is, is that is an action that has been requested by the railroads and so my first motion would be we don't. We decline to sign that confidentiality agreement. Any questions on that, if not I'll move on to the second one.

Kathleen Spilman then asked, is it really the role, is the SERC being placed in a situation to interpret law, which is not our, or do we not rely on an opinion or recommended action on behalf of the Attorney General's office on whether or not to do it or not. I don't feel comfortable making a judgment call on the legal implications, ramifications, of signing a confidentiality agreement I haven't seen because I'm not a lawyer and I don't know what those ramifications are.

Chairman Wilz replied, well our opinions, our reasons for declining may be slightly different. I believe the Attorney General's (AG's) office is in agreement with not signing the confidentiality agreement.

Mary Kay responded, right, as your legal counsel for SERC, we have no legal authority to sign a confidentiality agreement. State agencies cannot enter into confidentiality agreements unless there is a state law that clearly marks the information confidential, which we do not have here. It would be void under North Dakota law. We have Supreme Court cases that have disallowed state agencies who have tried to go into confidentiality agreements and we just can't-we legally can't.

Kathleen Spilman asked, then why is the motion necessary?

Chairman Wilz replied, I've included it purely because the railroads have requested us to do it.

Spilman responded, I understand, and based on the advice that you're getting from our lawyer, don't sign it. But I don't know that you want to place the SERC members in a situation

by signing off on it. If the Attorney General's office said that you can't sign it, then don't sign it. Kathleen continued, but I am objecting to the fact you're placing us in a situation that should be left to someone else.

Wilz responded, I am just overly sensitive to the fact that I'm just a Chair, I am not the body of the SERC. So at the end of the day, I don't feel I can act independently as the Chair for the SERC so that's an additional reason, why I included the motion.

Spilman then asked, Can I offer an alternate? Spilman then related, I move that the SERC accept the recommendation of the North Dakota Attorney General's office and act as recommended by that department.

Chairman Wilz stated, we have a motion on the table. Is there a second?

Gary Haberstroh then related, I'd like to go through the motions. Can we just amend Motion #1 to say as recommended by the Attorney General's office?

Wilz then related, the motions at the end of the day, and he then asked Spilman are you willing to table your motion, we didn't get a second on it yet. Spilman agreed.

Okay, Motion #2. Move to release all information currently in the possession of the SERC provided by the rail operators subsequent to the Federal Department of Transportation Executive Order. I don't think that takes a lot of initial explaining. Pretty much I've talked through most of it but we have three rail operators that have provided their reports. We have them. We have one operator that has given us two additional updates. In and of itself, coming from the Homeland Security background, I believe that it does not constitute significant risk to release this information. That's why that motion exists. Any discussion on that?

Curt Zimmerman representing Workforce, Safety & Insurance (WSI) then asked a question, who is the author of the Frequently Asked Question (FAQs) Chairman Wilz responded with Federal DOT, then continued on to Motion #3 which would be the basis that the SERC move forward.

Gary Haberstroh then asked a question on Motion #2 which was, is this intended to be a blanket statement now and going forward or is this just basically based on information?

Chairman Wilz replied, "No", and went on to indicate that the other two motions lead to a more permanent process.

Mary Kay Kelch responded with, yes, we want you just to address the Open Record request on the records we have right now at this point in time. We don't want any, we'll discuss the other ones because things may change, circumstances change.

Chairman Wilz went on to Motion #3. On the basis that the SERC, if organized under

law and meets on a quarterly basis and it may not be practical to call a special or emergency meetings on a timeline consistent with the frequency of updated reports from all rail operators, I move that, and this is again draft, I'm not making the motion, I move that in accordance with the Executive Order that the SERC Chair request from the rail operators that the information be released to Mr. Wilz in his capacity as the Homeland Security Director with the Department of Emergency Services. Now 3 and 4 kind of go together, so let me just jump to that then we can discuss that.

Motion 4 would be to move that the SERC authorize Mr. Wilz in his capacity as the Homeland Security Director provide information to First Responders as required by the Executive Order and to release significant changes to the public so long as the information received is general in nature and would not by its release constitute a security risk to the public or the rail operator.

So, basically what we're saying is, I don't know how frequently these reports are going come through, but the SERC meets quarterly and currently, right now, the Executive Order allows this information to be sent to the SERCs. However it also provides and allows for the information to be provided to other state entities, to include FUSION Centers and Homeland Security Advisors and so we're looking at creating a process here which with your concurrence allows us to receive this information and then quite frankly act accordingly with the SERCs blessing in releasing it. So they're all up for discussion and if there are any questions within the last 2, I'd be happy to further expound, if not, we'll go back to Kathy's motion #1. Kathy?

Kathleen Spilman responded, I'd just like to point out, just for a thought process until we get to Motion #4, again the way I'm reading this is, you're being placed in a position to make a judgment call so just as, I'll probably propose as an amendment when we get to that one, to stop the motion at the word public and drop off 'so long as the information received is general in nature and would not by its release,' blah blah, constitute, because that's asking you to make a judgment call. I'm uncomfortable with this.

Mary Kay Kelch from the ND Attorney General's office stated, another problem that we need to consider on these last 2 motions is under the North Dakota Open Records Law, records have to be released within a reasonable time, and we have several opinions that state that. For instance if you ask for a record from a county, Burleigh County for instance, the auditor can't wait until the next Burleigh County Commission meeting to give out those records. She needs to consult with her legal counsel and if they're an open record, has to provide them and so the problem here is that these records are coming in and they're being addressed to

SERC and we meet quarterly and so under the Open Records Law, as your legal counsel, I cannot advise you that you can just wait four times a year to hand out records without being in violation of the Open Records Law and so these are trying to address that. Now obviously when they get open records requests, as I am assigned as the attorney, they can always consult with me if it is something that is protected by law, we will be able to protect it. If it's not, they will have to release it. However you, as the SERC, you certainly, if you have a concern over, you know, you want to see at our meetings what has been released or you want to keep a record of it for our information, we certainly can do things like that. It's completely up to you. I guess my overall concern is being timely in providing records that need to be released under the public records law.

Curt Zimmerman replied, well, we certainly want to have information known to the body here on a quarterly basis.

Mary Kay agreed with Curt.

Curt continued with, of those records that have been released, you know, something that's, you know, documented. I'd like to see a combination of Kathy's motion along with the one before. Where you know, Mr. Wilz, as Chairman, can consult with the Attorney General's office on as needed basis when the information's coming in.

Wilz responded with, that's good discussion.

Response from unidentified SERC member, on Motions #3 and #4, when it talks about giving you as the, in capacity as Homeland Security Director, the ability to determine who to release this to, is there anything within the requirements of the SERC verses you as the Homeland Security Director that would cause different levels of release. Is this just giving you the authority to react to these in a more timely manner or is in your capacity as the Homeland Security Director is there additional abilities or authorities or something that you would have to disseminate or to retain?

Chairman Wilz responded, The Department of Emergency Services has a couple cites in law that allows it to protect confidential information. If it's related to security plans etc., etc. So there absolutely is. At the end of the day, what the EO is pushing out right now in my opinion doesn't get there. Now, can it in the future? Maybe. I don't know. We would have to cross that bridge as we come to it but clearly, I'm in the Homeland Security business. Okay? And I understand what a threat is and what a threat is not. And I understand what a target is and what a target is not. Okay? At the end of the day, you know, if BNSF was going to tell us the train is going to originate here, it's going to have this many cars, it's going to pass this town

at this time, this town at this time, it's going to be sidelined here for an hour, and then it's going to move through this town, this town and this town, it will be sidelined here for another hour. As a Homeland Security advisor, I would have real problems with releasing that information. Okay? Because now it becomes a target. Alright. As is, it is much less of a target given the information they provided and it's the same target we see each and every day driving through our communities. Does that make sense? I mean, I would not be an advocate to Homeland Security if I had that level of information before us and was looking to release it. But that's not what we have.

Mary Kay Kelch stated, and just to, we do have a state law that protects security systems. It's called, but it's a very broad law that protects a lot of infrastructure. So even, he's correct, there's some protection that Department of Emergency Services has that SERC necessarily doesn't have, but SERC would have the same protection that any state agency would have under that general law, which where the information moves into the area that we're really now uncomfortable that we're revealing something that makes our infrastructure vulnerable to something and so we would always have that protection. But like the Chairman said, the information we have right now is not at that level, but that's why each open records request that comes in has to be evaluated on a case-by-case basis. You know, we can't decide, we're never going to decide right now that for ten years we're always going to do something, you know, it's going to be based on the circumstances, what information they have, what's going on in the country at the time, you know. There's a lot of things that we'd look at to see if it would fit into some of the protections that are out there but right now we just don't fit into those.

The unidentified SERC member responded with, and I'm asking just so I can have understanding at what implications and differences might be involved and I guess I don't have any concerns with that. The only thing I'll mention and I don't think this needs to be included in the motion, but if there is something that would come up where there could be differences between your authority as the Homeland Security Director and what's made available to the SERC and what could be released under the SERC, that you'd just notify the SERC and I don't have any doubts that you'd do that but I just wanted to make that acknowledgement.

Chairman Wilz responded with, I think the provisions for special or emergency meetings could be implemented if in fact if you provide this motion. At the end of the day, I believe in that kind of level of operation. He continued with, and I want to do things in conjunction with the full body of the SERC, as the Homeland Security Director. I chair this by law, so you're stuck with

me, but at the end of the day, you guys have to know I want to do the right thing here.

Wilz went on and stated, if ever there was a question as to would the SERC have opposition to this or whatever, I think I would do that. And obviously you'll find out because quite frankly, I see no other way than to notify members on your quarterly updates, the amount of traffic that we get, the reports that we get, and how we're handling that information. Okay. Any more discussion?

Brad Darr representing the ND Department of Transportation (NDDOT) then related, It's minor but I guess there's no reason to include your name in the motion, as it stands as it's already the position of Homeland Security Director you hold.

Chairman Wilz replied with, yes, that makes sense Brad, because that's what's cited in law, not my name, but position, so that would be fine. So can we go back to Motion #1, which Kathy made, do we need to restate that Kathy, so everybody's clear on it again?

Kathleen replied, I didn't get a second on the first go around.

Chairman Wilz went on, Well, I think that there was a need to discuss motions 2, 3 and 4 before anybody was going to provide the second, so, we are now taking it off the table. Is there a second on the first motion?

An unidentified SERC member related, and that included the review of the Attorney General's office, is that what was added to it?

Wilz responded, no. What was added is based upon the Attorney General's recommendation and the lack of provision within state law that the confidentiality agreement not be signed. Close enough Kathy?

Spilman replied, its close enough and asked if there was a second to her motion?

Chairman Wilz then responded with, the motion would be, that based upon the Attorney General's opinion and lack of state law that we, the SERC, would decline from signing the confidentiality agreement.

The motion was seconded and passed.

Chairman Wilz then asked, what is the body's wishes regarding discussion on Motion 2?

Kathleen Spilman asked for a clarification on Motion 2. All information currently in the 'possession' not 'position?' and we're releasing it to whom, by Executive Order we have to release it to the LEPC, are you making this to the general public?

Chairman Wilz related that there is a motion to release all information currently in possession of the SERC provided by the rail operators subsequent to the Federal Department of Transportation Executive Order and will fulfill the information upon request that we have of

the five on record. Discussion ensued and it was brought forth by Chairman Wilz that the information will be sent to the Local Emergency Planning Committee's (LEPC's) as well. Motion was seconded and voted on and passed.

So on motion 3, then the one change on there would be instead of your name (meaning the SERC Chairman) we just change it to the Homeland Security Director or the SERC Chairman?

Kathleen Spilman then asked, so are you releasing it as SERC Chairman or are you releasing it as Homeland Security Director, and in which capacity do you want authority?

Wilz responded, I really think I personally would prefer that the SERC Chair request that rail operators, that requests from rail operators, that information be released to the Homeland Security Director, Department of Emergency Services, and get rid of the SERC Chair and its capacity, all of that kind of stuff, simplify it. Does that get it at what you'd like done?

Spilman went on to state, because I hate blanket authority, and because we've already acknowledged that legal interpretations will be ongoing, can we make this valid until the next time the SERC meets?

Chairman Wilz then asked Spilman, so you want to try it on for a while?

Kathleen replied, well, both. But I guess I would move an amendment to make the previously stated chair to, or changes that recognize the release by, after review as Homeland Security Director and that authority extends until the next time the SERC meets.

Chairman Wilz then asked for discussion and a second to the motion

Kathleen Spilman then asked, we're releasing this to anybody who requests it? Is essentially what this is saying. On motion #3. Again the question is who are we giving you authority to release it to, just the responders and the LEPCs or the public at large?

Chairman Wilz responded, I don't see us as having anything in terms of releasing in Motion #3. All that is doing is allowing the SERC to request from the rail operators that they now release the information to the Homeland Security Director as opposed to the SERC. It was asked, can you do that when the Executive Order explicitly says SERC. Wilz continued with mentioning that it's alluded to the in the Executive Order and it's specific in the FAQs. That the SERCs have the authority to request that the information be provided to another entity.

Spilman then stated, then I would withdraw the limitation until the next meeting to go ahead and just give you blanket authority.

Chairman Wilz then stated, motion as amended would be as written in #3, with the

change essentially saying to release to Mr. Wilz, Homeland Security Director with the Department of Emergency Services.

Chairman Wilz then related, so I have a motion, do we have a second? The motion was seconded and passed unanimously.

Wilz then asked SERC members what their wishes were for Motion #4.

Kathleen Spilman stated, I would propose to amend the motion as written to drop the specific name and leave just the title in there and allow that authority to continue until the next SERC meeting.

Wilz then stated, so we would move that the SERC authorizes the Homeland Security Director to accept the railroads information instead of the SERC.

Chairman Wilz then said, so we can get rid of this capacity thing, to provide information to First Responders as required by the EO, to release significant changes to the public so long as the information is general in nature and would not by its release constitute a security risk to the public or rail operator through or to the next SERC meeting,

Spilman then agreed with the verbiage and also asked if this information is open to the general public, correct?

Mary Kay Kelch then responded, possibly.

Curt Zimmerman that stated, I would want to have a review by the Attorney General on this one.

Mary Kay replied, yes,

Zimmerman stated, we're looking at different information that's, different requests for different information being provided to the Homeland Security Director. I'm not sure what that is, but it would need to be under review of the Attorney General for opinion as far as what information can be released and then to do that, at the next meeting.

Mary Kay replied, right because I don't know if we can presume that they are all going to look like this. She continued and stated, so if they come much more detailed, then our answer might be, well we are going to redact out some of this stuff, you're only going to get, you know, only so much, so we can't presume our answer is always alright.

Spilman then asked, can we amend Motion 4 to "in consultation with the Attorney General's office?" I would like to make sure that the SERC has that protection as well.

Mary Kay responded to the affirmative.

Chairman Wilz stated, so we will add "in consultation with the Attorney General's

office,” into the motion. Wilz then asked for a second on the motion which he received and Motion #4 was passed unanimously”

Most SERC members then asked the Chairman if they could we get an email of all the revised motions. The Chairman related that he would provide those through the SERC Secretary.

Chairman Wilz then mentioned that time was running short and he wanted to be able to allow Renee Loh from the ND Firefighter’s Association to discuss some additional New Business. This information was not on the current agenda as it has only come about in the last few days and it will be included as an update in future agendas.

Renee Loh then mentioned that: Greg was very generous with his time and talent and actually we put in a grant request to the BNSF for a Kidde rail car training prop. What we would like to do with this prop is to take it to all of the different areas of the state and work with the fire departments one on one. I will tell you at TRANCAER last night some of the people traveled an hour and a half to get to the petroleum crude oil training. So we know that this would be a very excellent training item and could be utilized by all of the departments and first responder’s, law enforcement, etc.

Chairman Wilz then mentioned that this is a real tank car. Real training from real experts, but I also recognize the mere fact that we’re only going to get this in 5,6,7 locations within a year because of various limitations. I’m of the opinion that you are to going have a vehicle to provide as much training as possible to everybody and NDFA came in about a month and a half ago and asked for support in trying to find a way to obtain one of these so they could get that critical mass of our fire fighters out there trained on dealing with tanker cars. Piece of equipment is wonderful, it’s expensive, but it’s wonderful. It mimics an actual train car plus it has the ability to mimic all potential leaks or punctures within the car. It can be powered up with water. Now I’m still an advocate for our small town rural fire departments. You know, the best thing they can probably do is keep people back, but there may be times, a need for more than just that level of knowledge, I think the more training we can provide to our fire fighters, the better off we are. I’d rather have them armed with information and be able to make good decisions than not armed and make bad decisions. So I’m really happy to work with NDFA and I really hope, this is a grant to BNSF by the way. I talked to BNSF and they seemed pretty positive. We just have to run it through their process. I think this, quite frankly, will be a wonderful thing for BNSF to be associated with. So thank you Renee.

Secretary DeBoer then clarified to SERC members that the name “Kidde” is the name of

the company making the training trailer and not a child's piece of equipment.

Kathleen Spilman then asked to bring up a subject. For whatever reason on the agenda, I'm going to go back to my favorite subject to harp on, which is that the position of the SERC, purpose of the SERC, is to provide oversight of the LEPCs, I hear no reports, saw no information on how our LEPCs are doing. I continue my grave concern that they are overwhelmed with situations in their communities and they rely upon the state to help get those guys resources and unfortunately we don't have anything to leverage information to go in and help those guys out and I think we're remiss in not continuing our report on how well they are doing or how well they are not doing.

Secretary DeBoer then stated: I'll take the blame for that. I totally forgot it for this meeting, so I apologize for not getting one of the coordinators or somebody from an LEPC here to discuss their county. I apologize. We'll have somebody at the next meeting.

Bernadette Rose representing the Environmental Protection Agency (EPA) then stated that she had a couple of announcements to make regarding EPA and the LEPCs. Maybe give you some education material that the SERC could provide to the LEPC's in the near future. There could be information more with regards to hazardous chemicals than necessarily oil train emergencies, and I think you all aware of the Executive Order 13650 that came out as a result of West Texas fertilizer plant explosion. What EPA is looking at doing in Region 8 is reaching out to the SERCs and the LEPCs by doing at least 1 or 2 day long trainings with the SERCs. Per your decision, we thought maybe we would have one here in a central area, you know, a major area and then maybe in another area that you would suggest. But we'll totally play it by ear according to what you want to do. We would probably hire a contractor to do this if you're interested. We would work closely with you to develop unique educational material for your area, but we would also have the basics of EPCRA and what LEPCs need to do, what their responsibilities are, what their priorities are, according to EPCRA. So if that's something you're interested in doing, you can work with me and we can figure that out where you would like to have training. It could be one or two days. I'm sorry, but we probably can't afford more than 2 days, but if it's necessary we can figure it out, and if it needed to be longer than a whole day, like a day and a half we could have individualized discussions with your groups. That would make more sense for the North Dakota area, we can figure that out with you as well.

Secretary DeBoer then replied, I'll definitely get the information out again. I've had a couple of calls but they aren't saying, hey, I need this kind of training, but it is what the LEPCs need for Kathy to make sure they do understand,

Lt Col Dave Hall then asked, could you make it part of the hazardous materials conference agenda? Maybe have a current training or something or that? Since everybody's there?

Bernadette then stated, I wanted to let you know as well that EPA is looking at working with DOT about what this really means for the SERCs in regards to Executive Order 13650. That you're getting this information about the oil trains. You're responsible for it, but you know, the railroads have all classified the information making it difficult for you to send it out.

Chairman Wilz then stated, DOT should have not used the SERC as its vehicle.

Bernadette agreed with Chairman Wilz and agreed that they put the SERC between a rock and hard spot.

Chairman Wilz asked Bernadette to carry that information forward to DOT.

Chairman Wilz then went on to schedule the next SERC meeting. Next SERC meeting, next quarter, we're looking at September 10, 17 or 24. We would like to pick a primary and an alternate in case something comes up.

### **Adjourn**

The date for the 104th SERC meeting was set for September 17, 2014 at 1:30 p.m., at the ND Department of Emergency Services-Division of Homeland Security Conference Room, Building 35, Fraine Barracks, Bismarck, North Dakota. A back-up date of September 24, 2014 was selected if the meeting scheduled for September 17 cannot be held.

A motion was made by Jeff Bitz to adjourn, with a second from Curt Zimmerman. The 103rd SERC meeting adjourned at 3:00 p.m.

Respectfully submitted:



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Greg Wilz, Chairman