

Natural Resource Damages Claims: A primer on this Potential Liability for the Railroad Industry

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As North American gas and oil production has soared, market factors have resulted in a resurgence in the transport of crude oil by the railroad industry. The growth trend has the potential to continue, with estimates that the current inventory of rolling stock can support up to a five-fold increase in delivery. The public response to this development is complex: some view it as an important step toward energy independence and a resurgence of domestic manufacturing, especially in the chemical industry. Others are passionately protesting these changes based on their beliefs about the role of fossil fuels in climate change. The opponents of fossil fuels have established vocal, persistent, and concerted programs of criticism and activism against coal, hydraulic fracturing oil and oil trains, and are influencing legislation and rulemaking. The trends of increasing transport of crude oil by rail and decreased risk tolerance by influential critics of fossil fuel are elevating the potential for a natural resource damage assessment (NRDA) case to be filed by natural resource Trustees in response to an oil train accident. This presentation will explain the elements and process of NRDA cases under existing statutory authorities, explain how a NRDA case differs from private third party damages cases and remediation requirements. The presentation will discuss the set of circumstances under which a NRDA case is most likely to occur in the railroad industry. An abbreviated failure mode effects analysis (FMEA) of a hypothetical scenario will be used to examine the probability that the scenario could occur and the potential severity of the NRDA liability that could be assessed by Trustees. The presentation will also include 3 indicators that a NRDA case is pending, and discuss common methods that have been used by NRDA defendants to minimize the total cost of settlement.