



## Department of Transportation

### Office of the Secretary

Becker-Hansen Building  
700 E. Broadway Ave.  
Pierre, SD 57501  
Phone: 605-773-3265  
FAX: 605-773-3921

TO: Government Operations and Audit Committee

FROM: Darin Bergquist  
South Dakota Department of Transportation

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#### **South Dakota Department of Transportation Responses to GOAC Questions** **August 2017**

1. Are you aware of hazmat presently in storage on the State owned MRC line?  
*Yes, cars containing hazardous materials are currently stored on the MRC line west of Kennebec.*
2. What is the hazmat, and how many cars are on the MRC line?  
*There are 74 cars of butane, a liquefied gas commonly used in handheld lighters.*
3. Did Dakota Southern inform the Department of Transportation of these cars?  
*Reporting to the South Dakota Department of Transportation (SDDOT) of hazmat materials on state-owned rail lines is not a requirement of our lease/sublease with MRC Regional Rail Authority or operator. Instead, the lease/sublease agreements require that the operators keep fully informed of, observe, and comply with all federal, state and local laws, rules, ordinances, and regulations. However, hazmat storage must be reported to the local fire department, Local Emergency Planning Committee (LEPC), and State Emergency Response Commission (SERC). SERC notifications are submitted to DENR for review. Thresholds and exemptions from reporting are established under federal law.*

*When a railcar is in transit, its product is not reportable under Environmental Protection Agency (EPA) requirements, though the cars are subject to Federal Rail Administration (FRA) regulations. When a railcar holding product is no longer in transit, then it is reportable storage pursuant to EPA regulations.*

4. When did this hazmat first start arriving on the MRC line?  
*May 2017.*
5. Where are the cars presently located?  
*The cars are currently stored on the MRC line west of Kennebec.*

6. At the State Rail Board meeting in May 2016 permission was granted to Dakota Southern to install switches at milepost (MP) 413.5 and MP 415.5 to connect to sidings to be built on private property. Did Dakota Southern get prior Rail Board approval, or any State approval, for the hazmat currently stored on the State owned MRC line? Does the Department of Transportation apply a different standard for hazmat on State track vs. private land?

*As noted above, the operator – Dakota Southern -- is not required to get Rail Board approval to store or transport hazmat cars. While it is unclear what “standards” are being referenced in the question, SDDOT does not regulate hazardous materials on either state or private track.*

7. When the track between Mitchell and Chamberlain was upgraded, a switch was installed “on spec” for possible future development at about MP 415.8. Are you aware that Mike Williams and associated parties have purchased a strip of private land at this location?

*No.*

Does Dakota Southern or any other party have permission from the Department of Transportation or the Rail Board to connect to the MRC line at this location?

*No.*

Has the Department of Transportation or the Rail Board given permission to store hazmat at this location?

*No.*

Are you aware that construction of side tracks is already in progress at this location?

*No.*

Is storage of loaded LPG immediately adjacent to Interstate 90 acceptable to you?

*The details of such storage would need to be known, but it is possible as long as the storage is undertaken in compliance with state and federal law.*

8. Rail Board Chairman Todd Yeaton is considering storing rail cars on land he owns within the town of Kimball. Does he plan to store hazmat at this location?

*The SDDOT has no knowledge of Chairman Yeaton’s plans.*

9. Given that the National Transportation Safety Board attributed the derailed BNSF ethanol train (and resulting fire) about two years ago to deferred track maintenance, and given the serious derailment on Dakota Southern on July 15, can you assure this Committee that a similar mishap with hazmat will not occur?

*Derailments, while unfortunate, are not uncommon on rail lines and are caused by a variety of factors – not all of which can be foreseen, accounted for, or prevented. No guarantee can be made to ensure that future derailments will not occur. The Dakota Southern Railroad is responsible for maintenance on the MRC line and their contract requires the track to be maintained to Class 2 standards (from Mitchell to Presho). The Rail Board has reviewed the maintenance of this track several times and will continue to*

*ensure it is operated as safely as possible.*

10. The MRC Rail Authority is justified in seeing the Dakota Southern audit. Why was DOT's audit not provided to the MRC?

*As stated during the recent GOAC meeting, the SDDOT did not perform an audit on Dakota Southern. The SDDOT sent letters requesting information, but after reviewing the source documentation received, it became clear that an audit could not be conducted.*

11. Has the Department of Transportation had trouble in the past in getting Dakota Southern to respond with payments when due?

*There have certainly been occasions when short line operators have made late payments. In general, however, the SDDOT has not "had trouble" in getting these operators to respond.*

12. Was Dakota Southern late this spring in making payments (revenue share payment and car surcharge payment) to the Department of Transportation?

*Yes. There is currently a disagreement as to how the payment should be calculated relative to what constitutes car storage revenue. At the same time, the Department was in negotiations on a potential new lump sum agreement that could have guaranteed approximately \$1.2 million in revenue to the Rail Fund over the next five years. We were unable to reach an agreement. The cars being stored were moved from the line and Dakota Southern has paid the undisputed portion of the car storage lease payment. The Rail Board addressed this issue at its August 16, 2017 meeting and authorized the Department to negotiate a proposed amendment for consideration by the Board at a future meeting.*

13. Is the Department of Transportation holding Dakota Southern to its track maintenance plan?

*Yes. As noted above, the SDDOT and Rail Board members have regularly inspected the line and continue to communicate with Dakota Southern on maintenance items the Board feels need to be addressed.*

14. Given that the Department of Transportation's own consultant (Stone Consulting) identified track problems at MP 414/415 – why did a serious derailment just occur at MP414/415.

*The FRA has not sent the SDDOT its completed report on the cause of the derailment, so a definitive answer is impossible at this time. However, the track maintenance items identified were corrected by Dakota Southern prior to the derailment. Given the very high temperatures evident at the time, SDDOT does not believe the derailment to be maintenance related.*

15. Dakota Southern's lease requires that the State track be maintained at Class 2 (25 mph) standards. Is there any accountability to insure this is being done?

*The Department and the Rail Board regularly observe and inspect state-owned rail lines, including the MRC. Furthermore, geometry car analysis is periodically conducted to ensure adherence to the required maintenance standards.*

16. In 2013 a sitting member of the State Railroad Authority (Sheldon Cotton) was introduced to the MRC Rail Authority by Mike Williams. Mr. Williams told MRC he had hired Mr. Cotton to do marketing work for Dakota Southern. Does Mr. Cotton still have such a relationship with Dakota Southern?

*While the SDDOT is aware of discussions related to this topic, the SDDOT is not aware of any past or present financial relationship between Mr. Cotton and Dakota Southern.*

17. Are you aware that the Chairman of the Rail Board, Todd Yeaton, is looking at setting up his own personal rail car storage facility, to be served by Dakota Southern?

No.

Would such a relationship be acceptable to you?

*The details of any such relationship would be an issue for the Rail Board, in accordance with existing state laws regarding conflicts of interest.*

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As requested, the following is a summary of the information presented at the July 24<sup>th</sup> Government Operations and Audit Committee meeting regarding leases of state-owned rail lines:

SDCL 1-44-20. The Department of Transportation, with the approval of the South Dakota State Railroad Board and the written consent of the Governor, may enter into agreements, contracts, leases (as lessor or lessee), or other arrangements with any corporation, partnership, individual, agency, or authority, on such terms and conditions as the department shall determine, including providing for the acquisition, operation, maintenance, and improvement of public rail lines, and the acquisition and disposition of any and all rights-of-way, land, facilities, fixtures and appurtenant structures, services and equipment, determined by the department to be necessary or appropriate.

SDCL 1-44-27. The Department of Transportation shall obtain the approval of the Railroad Board in the matters of operation, management, finance, marketing, and development of rail service over all properties and facilities acquired, leased, or controlled by the state.

#### Existing rail lease agreements

- Sioux Valley line (68.6 miles Canton to Elk Point)
  - The state leases to Sioux Valley Regional Rail Authority at a rate of 1% of gross freight revenue. The regional rail authority subleases to D&I Railroad at the same rate of 1% of gross freight revenue.
    - Last annual 1% lease payment was \$35,877
  - There is also a \$20 per car surcharge each year which is applied to the outstanding loan from the Rail Board
- Wolsey turnout
  - The turnout is leased directly to RCPE railroad for an annual payment of \$29,557
- Mitchell to Rapid City line (MRC) (190.9 active miles Mitchell to Kadoka)
  - The state leases to MRC Regional Rail Authority at a rate of 1% of gross freight revenue. In addition, there is a \$50 per car surcharge. The regional rail authority subleases to Dakota Southern at the rate of 1.5% of gross freight revenue plus the \$50 per car surcharge.
    - Last annual 1% lease payment to state was \$24,404

- Last annual per car surcharge payment to state was \$242,600
- Britton line (76.1 miles from Aberdeen to Geneseo Junction, North Dakota)
  - The state leases to Marshall County Regional Rail Authority at a rate of 1% of gross freight revenue. The regional rail authority subleases to Dakota, Missouri Valley and Western Railroad (DMVW) at 1.5% of gross freight revenue.
    - Last annual 1% lease payment to state was \$10,972
  - There is also a \$20 per car surcharge each year which is applied to the outstanding loan from the Rail Board.
- Napa to Platte line (54.5 active miles to Ravinia)
  - The state leases to Dakota Southern at a rate of 1.5% of gross freight revenue, plus 50% of car storage fees generated from the line.
    - No annual lease payment has been received yet as the lease agreement became effective on December 1, 2016.
    - Last 50% car storage payment to state [pursuant to previous agreement] was \$196,267
- Yale line (15 miles from Huron to Yale)
  - The state leases to East Central Regional Rail Authority on a charge per car basis, beginning at \$1 per car for up to the first 750 cars.
    - Last annual lease payment for 149 cars was \$149
  - There is also a \$20 per car surcharge each which is applied to the outstanding loan from the Rail Board.