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Congress of the United States
House of Representatives
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December 10, 2019

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

The Honorable Martin J. Oberman
Board Member
Surface Transportation Board
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The Honorable Patrick J. Fuchs
Vice Chairman
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Dear Chairman Begeman, Vice Chairman Fuchs, and Board Member Oberman:

We write to encourage the Surface Transportation Board (STB) to open a proceeding to consider the important issues raised in the Association of American Railroads' petition for declaratory order. As you know, a 2016 ruling by a federal court in Washington State left open the question if the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempts application of the Clean Water Act (CWA) to railcars in transportation. As the STB has done in the past with other important environmental laws and protections, we believe you are in the best position to answer this question and provide the much-needed certainty all the parties involved in rail transportation need.

Historically, the EPA has never required rail cars in transit to hold a CWA National Pollutant Discharge Elimination System (NPDES) permit. However, the aforementioned case ruled that rail cars loaded, in this case with coal (but other commodities could also be potentially impacted) would need a NPDES permit in case any commodity – big or small - might incidentally fall off those cars and land in navigable waters.¹ This decision represents a massive expansion of the CWA and the NPDES program, which would allow the EPA and any States and Indian Tribes with independent permitting authority to establish permit conditions that result in direct regulation of rail transportation and subject the interstate freight rail system to a patchwork of local requirements. Additionally, states could also add conditions to NPDES permits through the CWA's state water quality certification process, potentially creating such extensive requirements that some commodities may no longer practicably be able to be transported by rail.

¹ *Sierra Club v. BNSF Ry. Co.*, No. C16-967-JCC, 2016 WL 6217108 (W.D. Wash. Oct. 25, 2016).

This decision is in direct conflict with ICCTA, which makes clear that rail transportation is subject to the exclusive jurisdiction of the STB.² In fact, ICCTA expressly preempts all state *and federal* law involving rail transportation to avoid subjecting railroads to conflicting regulatory requirements or patchwork regulation by multiple entities.

Again, the STB has the power to issue declaratory orders, and it has done so frequently. An expansion of the NPDES program to rail transportation could prevent or disrupt the efficient movement of commodities vital to our economy. An order from the STB would provide much needed certainty and we urge you to open a proceeding and fully and consider this important matter. Thank you for your consideration of our request.

Sincerely,



Rick Crawford
MEMBER OF CONGRESS

² 49 U.S.C. §10501(b).