



Support, Connection, Advocacy

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December 11, 2019

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Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings
December 12, 2019
Part of
Public Record

Re: STB Finance Docket No. 36369, Association of American Railroads - Petition for Declaratory Order

Dear Ms. Brown:

The Railway Supply Institute ("RSI"), the international trade association of the railway supply industry, supports the Petition for Declaratory Order filed by the Association of American Railroads ("AAR") in Finance Docket No. 36369. RSI's membership includes all of the major North American railcar leasing companies, which are responsible for leasing over 700,000 railcars to U.S. freight railroads, as well as the leading railcar manufacturers in North America. By way of example, RSI members own over seventy percent of all rail cars in the North American fleet. RSI's members also manufacture all types of railcars used by U.S. freight railroads subject to the jurisdiction of the STB.

RSI fully supports AAR's request for a declaratory order from the Board that Section 10501(b) of the ICC Termination Act ("ICCTA") preempts the application of the discharge provisions of the Clean Water Act ("CWA") to incidental discharges from rail cars that are in transit, and that railroads should not be required to obtain permits from every state under the National Pollutant Discharge Elimination System ("NPDES") program. The railroads already take considerable steps to prevent or minimize the incidental discharge of coal dust or other commodity particles from railcars in transit.

AAR has explained in its petition that the application of the CWA discharge provisions would require rail car owners and operators to ensure that no particle of a commodity will leave a rail car and enter a body of water during transit without significant risk that the owner or operator may face administrative, civil, or criminal liability and potentially injunctive relief. Alternatively, under the NPDES permitting regime, railroads would need to obtain permits from each and every state through which any railcar may travel and to comply with a variety of permit requirements before such transportation by rail could occur. This inconsistent and burdensome patchwork of regulation would significantly restrict the ability of railroads to provide competitive freight service to shippers in a timely manner and would negatively impact RSI members that build and lease railcars for the U.S. freight railroad industry.

ICCTA's preemption provision is clear and broad. Any application of the discharge provisions of the CWA and the NPDES permitting regime to railcars in transit is an impermissible attempt to regulate rail transportation in violation of Section 10501(b) of ICCTA. The members of RSI, as owners and/or lessors of such railcars, could face significant financial harm and substantial disruption to their ongoing business operations from the possible application of the CWA discharge provisions and NPDES permitting schemes to railcars operating in transit unless the Board issues the requested relief. For these reasons, RSI supports AAR's request that the Board issue an order declaring that the CWA discharge provision and the NPDES program are preempted by Section 10501(b) of ICCTA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Michael O'Malley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

E. Michael O'Malley
President

Certificate of Service

I, Carolyn Kraska, hereby certify that on December 12, 2019, a true and correct copy of the letter from the Railway Supply Institute regarding the Petition for Declaratory Order in Finance Docket No. 36369 was served on the following:

Timothy Strafford
Association of American Railroads
425 3rd Street SW
Suite 1000
Washington, DC 20024
tstrafford@aar.org
Served via email

The Honorable Rick Crawford
House of Representatives
2422 Rayburn Building
Washington, DC 20515
Served via USPS



Carolyn G. Kraska