



**American Short Line and
Regional Railroad Association**

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December 17, 2019

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

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

Dear Ms. Brown:

The American Short Line and Regional Railroad Association (“ASLRRA”) is a non-profit trade association representing the interests of approximately 500 small railroads and 500 railroad supply company members in legislative and regulatory matters. Small railroads operate 50,000 miles of track in 49 states, or approximately 38% of the national railroad network, originating or terminating one out of every four railcars moving on the national railroad network, serving customers who otherwise would be cut off from the network.

ASLRRA fully supports the Association of American Railroad’s (“AAR”) request for a declaratory order from the Surface Transportation Board (“ASLRRA or “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 Program (“NPDES”) program. Both the railroads represented by the AAR and those represented by ASLRRA take careful and considerable steps to prevent or minimize the incidental discharge of commodity particles from railcars in transit.

As stated by AAR in its petition, application of the CWA discharge provisions would create substantial burdens on railroads. First, the application of the provisions would require railroads and railcar owners to ensure that particles of a commodity, no matter how small, would not leave a railcar and thereafter enter a body of water during transit. Unless the railroad could ensure this, the railroad would face the imposition of the CWA provisions and would be exposed to administrative, civil or criminal liability, and potential injunctive relief.

In the alternative, railroads would need to obtain permits from every state through which they operate with each state requiring potentially different requirements pursuant to NPDES requirements. These types of requirements would place a heavy burden on the small railroads

that make up the membership of the ASLRRA from an operating perspective as well as adding costs to them.

ASLRRA concurs with the statement of AAR in its petition that the application of the CWA discharge prohibition and the NPDES permitting regime to incidental discharges from railcars in transit is preempted by ICCTA. The application of the prohibition and the permitting regime would conflict with ASLRRA member railroads' common carrier obligations, interfere with interstate commerce, and create an undue and unnecessary burden on small railroads. ASLRRA fully adopts the legal position stated by AAR in its petition.

Respectfully submitted

A handwritten signature in black ink that reads "Keith T. Borman". The signature is written in a cursive, flowing style.

Keith T. Borman
Senior Vice President and General Counsel

Certificate of Service

I, Keith T. Borman, hereby certify that on December 17, 2019 a true and correct copy of the letter from the American Short Line and Regional Railroad Association to the Surface Transportation Board regarding the Petition for Declaratory Order in Finance Docket No. 36369 was served on all Parties of Record.

A handwritten signature in black ink that reads "Keith T. Borman". The signature is written in a cursive style with a horizontal line underneath it.

Keith T. Borman