



RICH NOLAN
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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, D.C. 20423

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

Dear Ms. Brown:

The National Mining Association (NMA), the national trade association of the mining industry, supports the Petition for Declaratory Order filed by the Association of American Railroads (AAR) on Nov. 27, 2019. NMA's membership includes the producers of most of America's metals, coal, and industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions, and other firms serving the mining industry.

As the AAR petition describes, a 2016 ruling by a federal court in Washington State has caused significant uncertainty for a wide variety of industries that ship goods via rail. The ruling leaves open the question of whether the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempts the application of the Clean Water Act (CWA) to rail cars in transportation. The decision contravenes decades of U.S. Environmental Protection Agency (EPA) practice by holding that rail cars loaded with coal would need a CWA National Pollutant Discharge Elimination System (NPDES) permit in case any amount of coal might incidentally fall off the cars into navigable waters. Prior to the decision, EPA had never required rail cars in transport to obtain a NPDES permit.

Requiring rail cars carrying coal, or any other commodity, to hold NPDES permits would be unworkable and would threaten the efficient movement of our members' goods across the country. The expansion of the NPDES permit program in this way to include rail transportation would subject the rail system to a patchwork of potentially conflicting state and tribal requirements in direct contravention of the ICCTA. The ICCTA was designed to avoid this patchwork of conflicting regulations through express preemption of all state and federal law involving rail transportation and subjecting rail transportation to the exclusive jurisdiction of the STB.

The STB has routinely issued declaratory orders to ensure uniform application of laws for efficient rail transportation. We believe the STB is in the best position to provide much-needed clarity on this important issue, and strongly support AAR's petition for a declaratory order.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Nolan", with a stylized, flowing script.

Rich Nolan
National Mining Association



Certificate of Service

I, Caitlin McHale, hereby certify that on December 17, 2019, a true and correct copy of the letter from the National Mining Association regarding the Petition for Declaratory Order in Finance Docket No. 36369 was served on the following:

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Caitlin McHale