



Congress of the United States
House of Representatives

December 17, 2019

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

The Honorable Patrick J. Fuchs
Vice Chairman
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

The Honorable Martin J. Oberman
Board Member
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

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 a declaratory order seeking to clarify the interplay between the Interstate Commerce Commission Termination Act of 1995 (ICCTA), the Clean Water Act (CWA), and the CWA permitting authority currently delegated by the Environmental Protection Agency (EPA) to the majority of states. 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 to all the parties involved in rail transportation.

Historically, the EPA has never required rail cars in transit to hold a CWA National Pollutant Discharge Elimination System (NPDES) permit. However, a 2016 ruling by a federal court in Washington State ruled that loaded rail cars, in this case with coal (but other commodities could also be potentially impacted), would need a NPDES permit if any of the commodity – even dust – might incidentally escape the cars and land in navigable waters.¹ This decision represents an expansion of the CWA and the NPDES program, which would allow EPA and any of the numerous states with independent permitting authority to establish permit conditions that result in direct regulation of rail transportation. As a result, this could subject the interstate freight rail system to a patchwork of local requirements.

We believe the decision by the federal court in Washington State 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 *state and federal* law involving rail transportation to avoid subjecting railroads to conflicting regulatory requirements or a patchwork regulation by multiple entities.

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

² 49 U.S.C. §10501(b).

The STB has the power to issue declaratory orders in precisely these situations, 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 fairly consider this important matter. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dusty Johnson", with a stylized, cursive script.

DUSTY JOHNSON
Member of Congress