



American Short Line and
Regional Railroad Association

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April 24, 2020

Via E-Filing

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: FD 36369, Association of American Railroads – Petition for Declaratory Order

Dear Chief Brown:

These comments supplement the letter that the American Short Line and Regional Railroad Association (“ASLRRA”) provided to the above-referenced docket on December 17, 2019. ASLRRA supports the Association of American Railroads (“AAR”)’s petition for a declaratory order that the Surface Transportation Board (“STB”) finds that 49 U.S.C. § 10501(b) preempts the Clean Water Act’s (“CWA”) discharge prohibition and National Pollutant Discharge Elimination System (“NPDES”) permitting regime as applied to discharge incidental to the normal operation of rail cars in transit.

Absent a declaratory order, ASLRRA’s Class II and III railroad members could face significant burdens if they had to comply with a multitude of state permitting laws. Many of our

railroad members operate across multiple states. For example, Pan Am Railways operates in five states; the Nebraska, Kansas & Colorado Railway operates in three states; the Iowa Interstate Railroad operates in three states; the Wheeling & Lake Erie Railway operates in four states; and the Rapid City, Pierre & Eastern Railroad operates in four states. Without a declaratory order, railroads like these would need to institute operational changes, incur administrative costs for potential permit recordkeeping requirements, and make management changes if their Class I partners, customers or other third party partners are also required to keep compliance records. All these changes to meet a patchwork of permit requirements would be prohibitively costly to these small businesses.

In addition to coal, petroleum coke, discharged coal or petroleum coke particles and dust - commodities discussed by the AAR petition - Class II and III railroads transport other bulk commodities in open-top or bottom discharge rail cars which could be subject to the CWA discharge prohibition and NPDES permitting requirements, including grain, minerals, aggregates, waste and scrap materials, and ores. Further, the American Farm Bureau Federation, the North American Freight Car Association, and the American Coal Council all submitted letters supporting the AAR petition. The American Farm Bureau Federation stated that requiring rail cars carrying a specified commodity to hold NPDES permits would be unworkable and would threaten the efficient movement of agricultural commodities. The Freight Car Association concurred with the AAR that § 10501(b) preempts the CWA's discharge prohibition and state-run NPDES permitting systems, and stated that not affirming preemption would result in uncertainty for railcar manufacturers, railcar lessors, and shippers. The American Coal Car Council also stated its support for AAR's position. ASLRRA shares the concerns of these entities, as their members are very important shippers and suppliers to small railroads.

As noted in its comment filed on December 17, 2019, and in these supplemental comments, ASLRRA fully supports AAR's petition and requests that the STB issue a declaratory order finding that 49 U.S.C. § 10501(b) preempts CWA's discharge prohibition and NPDES' permitting regime as applied to discharge incidental to the normal operation of rail cars in transit.

Respectfully submitted,

A handwritten signature in black ink that reads "Sarah Yurasko". The signature is written in a cursive, flowing style with a large initial 'S'.

Sarah G. Yurasko

CC: Parties of Record

Certificate of Service

I, Sarah G. Yurasko, hereby certify that a true and correct copy of the letter of the American Short Line and Regional Railroad Association was served on all Parties of Record in Finance Docket No. 36369 by email.

A handwritten signature in cursive script that reads "Sarah Yurasko". The signature is written in black ink and is positioned above a horizontal line.

Sarah G. Yurasko