



**EARTHJUSTICE**

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

235462

February 13, 2014

**VIA E-Filing**

Cynthia T. Brown  
Chief, Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E St., SW  
Washington, DC 20430

**ENTERED**  
**Office of Proceedings**  
**February 14, 2014**  
**Part of**  
**Public Record**

Re: DOCKET #FD 35803, UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REPLY TO PETITION FOR DECLARATORY ORDER  
SOUTH COAST AQMD RULES 3501 AND 3502

Dear Ms. Brown:

The undersigned is an attorney at law, serving as counsel for Center for Community Action & Environmental Justice (“CCA EJ”) and Sierra Club. CCA EJ is a non-profit environmental health and justice organization dedicated to making communities in Riverside and San Bernardo healthy and safe. It is located at 7701 Mission Blvd. Jurupa Valley, CA 92509; P.O. Box 33124 Jurupa Valley, CA 92519, (951) 360-8451. The Sierra Club is a nationwide non-profit membership organization incorporated and headquartered in California with over 600,000 members nationwide, and almost 145,000 members in California. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s concerns encompass the exploration, enjoyment and protection of the air and waters in California to keep members and their communities healthy. Sierra Club’s national headquarters are located at 85 Second St, 2<sup>nd</sup> Floor, San Francisco, CA 94105.

*CCA EJ and Sierra Club write to Reply to the referenced Petition and request that they be added to the service list for the referenced docket. They also requests the opportunity and invitation to present oral arguments, participate in conferences, appear at fact-finding hearings, and provide additional written submissions in this Docket.*

CCA EJ and Sierra Club strongly support including South Coast Air Quality Management District (“SCAQMD” or “District”) Rules 3501 and 3502 in California’s State Implementation Plan (“SIP”) under the Clean Air Act (“CAA,” or “Act”). These rules were forwarded by the District to the California Air Resources Board (“CARB,” or “Air Board”), and then on to the U.S. Environmental Protection Agency (“EPA”) for consideration. EPA forwarded the Rules to the Surface Transportation Board (“STB”) on January 24, 2014 under 5 U.S.C. § 554(e) and 49 U.S.C. § 721. As such, this document is timely submitted into the record for this proceeding.

**I. RULES 3501 AND 3502 ARE NECESSARY TO ADDRESS PUBLIC HEALTH AND ENVIRONMENTAL HEALTH HAZARDS**

CCA EJ and Sierra Club are concerned about the localized and regional impacts from railyard pollution throughout the South Coast Air Basin and California. These organizations are particularly concerned about the impacts the Union Pacific railyard in Mira Loma, California,<sup>1</sup> and the Burlington Northern Santa Fe (“BNSF”) railyard in San Bernardino, California,<sup>2</sup> have on residents. The effects of these, as well as from the many other railyards,<sup>3</sup> area serious environmental justice issue. Accordingly, we urge the STB to protect public health and welfare by finding the proposed idling Rules are not preempted by the Interstate Commerce Commission Termination Act (“ICCTA”). The health and welfare of CCA EJ’s and Sierra Club community members and the hundreds of thousands of residents adversely impacted from rail pollution depend on it.

Several sources have identified the threat of railyard pollution on local communities, but the health risk assessments of the California Air Resources Board (“Air Board”) provide particularly important information that must be considered. The Air Board’s risk assessment for the BNSF San Bernardino railyard revealed deeply concerning data about the devastating impacts this railyard has on the residents adjacent to the railyard. In particular, the risk assessment determined that the maximally exposed individual receptor experienced a cancer risk of 2,500 in a million.<sup>4</sup> The risk assessment for the UP Mira Loma railyard determined that the highest exposed resident experienced a cancer risk of 100 in a million.<sup>5</sup> In addition, the risk assessment for the BNSF San Bernardino railyard estimates that approximately 339,880 people are exposed to cancer risk greater than 10 in a million from that facility.<sup>6</sup> These highly elevated cancer risks from one facility indicate the seriousness of the health and safety issues associated with residents living near railyards.

The risk assessments also identified significant impacts to sensitive receptors, which include schools, hospitals, day-care centers and elder care facilities. In fact, the risk assessment identified “41 sensitive receptors within a one-mile distance of the BNSF San Bernardino railyard, including 15 schools, 19 child care centers and 7 hospitals/medical centers.”<sup>7</sup> At least one of those sensitive receptors is exposed to risk of greater than 500 in a million from the BNSF

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<sup>1</sup> “*Health Risk Assessment for the UP Mira Loma*,” Report of the California Air Resources Board Stationary Source Division, 2007 (“ML HRA”), available at [http://www.arb.ca.gov/railyard/hra/up\\_miraloma\\_hra.pdf](http://www.arb.ca.gov/railyard/hra/up_miraloma_hra.pdf).

<sup>2</sup> “*Health Risk Assessment for the BNSF Railway San Bernardino Railyard*,” Report of the California Air Resources Board, Stationary Source Division, 2007 (“SB HRA”), available at [http://www.arb.ca.gov/railyard/hra/bnsf\\_sb\\_final.pdf](http://www.arb.ca.gov/railyard/hra/bnsf_sb_final.pdf).

<sup>3</sup> Residents near rail yards in Southern California face an up to 140% increased risk of cancer from soot. *See Cancer Risk Rises for Those Near Rail Yards*, LA Times, May 5, 2007, <http://www.latimes.com/features/health/medicine/la-me-smog25may25,1,3647264.story>.

<sup>4</sup> SB HRA, at 13.

<sup>5</sup> ML HRA, at 62.

<sup>6</sup> SB HRA, at 61.

<sup>7</sup> SB HRA, at 72.

February 13, 2014

Page 3 of 4

railyard. The UP Mira Loma railyard has approximately 2 sensitive receptors in the area exposed to a 10 in a million cancer risk or greater.<sup>8</sup> In addition to these localized impacts, there are regional impacts from railyards related to nonattainment of National Ambient Air Quality Standards (“NAAQS”).

## II. JUDICIAL AND STB PRECEDENT SHOW RULES 3501 AND 3502 ARE NOT PREEMPTED

The STB should recognize that the Ninth Circuit decision in *Association of American Railroads v. South Coast Air Quality Management District*, 622 F.3d 1094, 1098 (9th Cir. 2010) (“*Ass’n of Am. R.Rs*”) concerning Rules 3501 *et seq.* held that submission of the Rules to CARB, and then to EPA, for inclusion in the SIP is the appropriate and proper avenue for the District to pursue. *These Rules, adopted under federal CAA authority, are not preempted by the Interstate Commerce Commission Termination Act and nor do the Rules require any sort of STB approval.* STB must reject the railroads’ arguments seeking to rewrite the opinion to the contrary.

The Ninth Circuit in *Ass’n of Am. R.Rs* held that “to the extent that state and local agencies promulgate EPA-approved statewide plans under federal environmental laws (such as “statewide implementation plans” under the Clean Air Act), ICCTA generally does not preempt [approved SIPs] because it is possible to harmonize the ICCTA with those federally recognized regulations.”<sup>9</sup> The Ninth Circuit further noted that “[n]othing in [the ICCTA] is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as the Clean Air Act[.]” As a result, the *Ass’n of Am. R.Rs* litigation is not an obstacle to SIP approval. In fact, the *Ass’n of Am. R.Rs* case specifically envisions that inclusion in the SIP is the appropriate path to pursue.

Finally, STB precedent supports a conclusion that ICCTA does not preempt the rules at issue here. Importantly, a decision by the STB now would interfere with state and local efforts to curb harmful air pollution, which is a mandate under the Clean Air Act.

We would be happy to discuss any of these issues with the appropriate STB staff at any time. Thank you for your consideration of this Reply.

Sincerely,



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Adriano L. Martinez, Esq., Earthjustice (Cal. Bar No. 237152)  
Attorney for  
Center for Community Action and Environmental Justice &  
Sierra Club

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<sup>8</sup> ML HRA, at 74.

<sup>9</sup> *Ass’n of Am. R.Rs.*, 622 F.3d at 1098.

STB DOCKET #FD 35803

February 13, 2014

Page 4 of 4

VERIFICATION

I, Adriano L Martinez, verify that I have read the foregoing Reply, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement. There is good ground for the document and it has not been interposed for delay.

A handwritten signature in black ink that reads "Adriano L. Martinez". The signature is written in a cursive style with a long horizontal stroke at the end.

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Adriano L. Martinez

Executed on February 13, 2014