

Alerts & Publications

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Transportation Sector Targeted in Legal Action Over Diesel Emissions

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The Natural Resources Defense Council (“NRDC”), together with two other environmental justice organizations, have given notice (“Notice”) to the Union Pacific Corp., Burlington Northern Santa Fe LLC and BNSF Railway Company of their intent to sue the railroads under the citizen’s enforcement provisions of the federal Resource Conservation and Recovery Act (“RCRA”). According to the Notice, the lawsuit will be filed in federal court in ninety days unless the railroads take steps to reduce emissions of diesel particulate matter.

Ordinarily, emissions of diesel particulate from locomotives and auxiliary equipment are regulated by the U.S. Environmental Protection Agency and, in California by the Air Resources Board. However, NRDC’s strategy as stated in the Notice is to obtain emission reductions by categorizing diesel particulate as a waste under RCRA. The Notice alleges that the railroads disposed of a variety of chemicals and metals, which collectively make up diesel exhaust particulate, on the land and water in the vicinity of rail yards operated by the Notice recipients.

NRDC alleges that people who live and work near rail yards are exposed via dermal contact, eating of contaminated food, and by breathing exhaust-laden air. They further allege that such exposure can lead to cancer, premature death, asthma, cardiovascular disease, birth defects and other health impacts.

According to the Notice, citizen suits may be brought under RCRA against persons who contribute to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste that may present an imminent and

substantial endangerment to health or the environment. NRDC argues that disposal includes discharges of solid or hazardous waste onto land or water, and that solid or hazardous waste includes many of the compounds that make up diesel particulate, including lead, arsenic, cadmium, nickel, mercury and a variety of other materials.

NRDC urges the railroads take action immediately to reduce emissions, and recommends using clean locomotives, electrifying major rail lines, using cleaner yard equipment, reducing locomotive idling, supporting advancements in technology, creating health protective buffer zones between residential areas and facilities, providing air filtration systems for homes and buildings in high health-risk areas, and increased monitoring of emissions, among others.

The environmental groups seek a state-wide resolution to the issues raised in the Notice. If there is no resolution within 90 days, the groups state their intent to seek preliminary and permanent injunctions to restrict the activities they claim are leading to public endangerment.

As this is a matter of first impression, it is unclear how the court will respond to a RCRA-based demand for injunctive relief, especially where diesel particulate has never been recognized as a RCRA contaminant, where the equipment emitting the diesel particulate is already regulated by governmental agencies, and where there is no allegation that the equipment is not in compliance with existing emission requirements.

Given that RCRA is a federal statute, a victory in court for the environmental groups could have significant ramifications for operators of rail yards, truck and bus depots, and other locations where there is significant use of diesel equipment. Such operators could face threats of partial or complete shutdown, and demands that cleaner technologies be employed, so as to reduce potential endangerment to the public.