



Coal Dust Mitigation Decision and Other STB Issues

National Coal Transportation Association
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STB Coal Dust Decision

- ◆ 12/17/13 decision is the apparent end of a process that started in 2005 at a NCTA fall meeting
- ◆ In the decision the STB upheld the “Safe Harbor” in BNSF Tariff 6041-B, Item 100
- ◆ What did STB decide?
- ◆ What does decision provide coal shippers?
- ◆ What didn't STB decide?
- ◆ Is this the end of the matter?

What did the STB decide?

- ◆ “Coal dust is a pernicious ballast foulant”
- ◆ “Containment is superior to maintenance alone”
- ◆ Railroads have a “general right to establish reasonable coal loading requirements”
- ◆ Spraying coal with surfactants controls coal dust emissions, and using surfactants approved by BNSF (and profiling) is a reasonable “safe harbor” from the “85% standard”
- ◆ Shippers must initially bear 100% of the compliance costs
- ◆ BNSF’s general liability provision was unreasonable

What does the decision provide coal shippers?

- ◆ BNSF must “cooperate in good faith regarding all issues related to testing alternative methods of coal dust suppression”
 - Cost, burden of proof, timing issues
- ◆ BNSF must provide 60 days notice of an enforcement action for non-compliance
- ◆ Shippers may challenge coal dust compliance costs (or the reduction of BNSF maintenance costs) as part of a rail rate case

What didn't the STB decide?

- ◆ The enforceability of the underlying standard that a shipper must load coal so that “any loss in transit of coal dust from the shipper’s loaded coal cars will be reduced by at least 85% as compared to loss in transit from coal cars where no remedial actions are taken”
- ◆ Whether the common carrier obligation prohibits a railroad from denying service if it determines a coal emission standard is violated
- ◆ What are reasonable tariff enforcement methods?

Is This the End of the Matter?

- ◆ AECC Petition for Reconsideration pending, but STB seems unlikely to change its mind. A judicial challenge is possible
- ◆ Spraying is taking place, and neither railroads nor shippers have proposed alternatives to safe harbor spray treatment
- ◆ No other complaints have been filed at STB concerning coal dust standards or practices
- ◆ However . . .

PNW Clean Water Act Suits

- ◆ CWA “Citizen Suits” filed against BNSF in Eastern and Western Federal District Courts in Washington State in 2013
- ◆ Allege BNSF discharged coal dust . . .”and other substances or materials added to the coal including, but not limited to surfactants and suppressants” into waters without a NPDES permit.

Relevant CWA Principles

- ◆ National Pollution Discharge Elimination System (NPDES) is under USEPA jurisdiction
- ◆ No discharge of “pollutant” into navigable waters without a permit
- ◆ USEPA delegates permitting authority to individual states
- ◆ CWA allows “citizen suits” against alleged violators if proper prior notice and standing

Notable Aspects of Cases

- ◆ Both cases survived BNSF's motions to dismiss for lack of proper notice and standing; were consolidated into the Western District on 4/15
- ◆ Whether coal dust, surfactants, etc. are "pollutants" is apparently not in dispute at least at this early stage
- ◆ Court has reserved decision on the extent to which it can order injunctive relief such as remediation or restoration
- ◆ Case has a long way to go but shows that coal dust control issues didn't end with STB decision

Other STB Issues

- ◆ Board membership
- ◆ Rates
- ◆ Competitive Access
- ◆ Revenue Adequacy
- ◆ Fuel Surcharges



Questions?

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