

# THE CALIFORNIA RAILROAD INDUSTRY

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March 8, 2006

**RE: Rail Lawsuit Challenging SCAQMD 3500 Regulations**

To Whom it May Concern:

I want to write to you to inform you of an important legal action. On Tuesday, the Association of American Railroads, BNSF Railway, and Union Pacific Railroad Company jointly filed suit in federal district court in Los Angeles against the South Coast Air Quality Management District (SCAQMD). The suit seeks to overturn SCAQMD's recently adopted Rules 3501, 3502, and 3503. These rules significantly interfere with rail operations and therefore violate federal laws protecting interstate commerce.

The SCAQMD regulations violate federal interstate commerce laws because they:

- Impose invalid local regulatory mandates requiring railroads to either retrofit federally regulated locomotives or comply with infeasible reporting/recordkeeping requirements, with severe civil, criminal and injunctive penalties for failure to comply.
- Interfere significantly with railroad operations and rail safety concerns -- which is prohibited under the Commerce Clause of the United States Constitution and several Acts of Congress promoting interstate transport by rail.
- Discriminate against interstate transport by rail, single out rail from all other modes of transportation in goods movement, and bypass the lawful authority and control mechanisms established by authorized agencies of the State of California.

The railroads believe the federal court will agree.

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The railroads voluntarily worked with the State of California by accepting and implementing last June the statewide 2005 Memorandum of Understanding (“MOU”) with the Air Resources Board (“ARB”) that reduces emissions sooner and more efficiently than could have been legally required by any regulatory or legislative act. The railroads are currently continuing to comply with and implement the state wide emission reduction provisions of the MOU while the litigation with SCAQMD is considered by the court.

Rail has developed a unique, successful partnership with California and is currently implementing several innovative programs to reduce locomotive emissions state wide. (See attached summary: *Railroads Commitments to Help Clean the Air in California*). The California Air Resources Board staff recently announced that, by 2010, emissions around rail yards will be reduced about 65% from 2005 levels by state regulations already adopted, by the two existing railroad MOUs with ARB addressing NOx and Particulate Matter, and by some additional future investments from the Moyer or other programs. No other mode of transportation, or in the goods movement industry, in Southern California can claim such a substantial reduction from 2005 levels.

Both BNSF Railway and Union Pacific Railroad will continue working with the state to find additional innovative, legal and expeditious solutions to achieve the State’s air quality goals without interfering and disrupting our railroad operations, and will continue to contribute to the State’s key economic role in national and international commerce. If you have any questions, please contact me at 415-421-4213, extension 12.

Sincerely,

Kirk Marckwald