

NO. _____

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIERRA CLUB, FORESTETHICS, WASHINGTON ENVIRONMENTAL
COUNCIL, WATERKEEPER ALLIANCE, FRIENDS OF THE GORGE,
SPOKANE RIVERKEEPER, AND CENTER FOR BIOLOGICAL DIVERSITY

Petitioners,

v.

SECRETARY OF TRANSPORTATION,

Respondent.

PETITION FOR REVIEW

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1. The Sierra Club, ForestEthics, Washington Environmental Council, Waterkeeper Alliance, Friends of the Gorge, Spokane Riverkeeper, and Center for Biological Diversity (the “Petitioners”) hereby petition the United States Court of Appeals for the Ninth Circuit for review of the final rule issued by Respondent Secretary of Transportation entitled, “Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains.” The final rule was published in the Federal Register on May 8, 2015, at 80 Fed. Reg. 26,644 (May 8, 2015) and is attached as Exhibit 1.

2. The Secretary issued the final rule pursuant to the Hazardous Materials Transportation Act (“HMTA”), in conjunction with its authority under the Federal Railroad Safety Act. Jurisdiction lies in this Court under HMTA, which provides for judicial review of final actions of the Secretary through a petition for review in the courts of appeals. 49 U.S.C. § 5127(a); *see also* Federal Railroad Safety Act, 49 U.S.C. § 20114(c) (provides for review in the court of appeals of final action of the Secretary); 28 U.S.C. § 2342(7) (the court of appeals has exclusive jurisdiction to enjoin, set aside, suspend, in whole or in part, or determine the validity of all final agency actions described in 49 U.S.C. § 20114(c)).

3. Venue is appropriate in this Circuit as the Sierra Club is incorporated in the State of California and has its principal place of business in San Francisco,

California; ForestEthics is incorporated in the State of California and has its principal place of business in San Francisco, California; Washington Environmental Council is incorporated in the State of Washington and has its principal place of business in Seattle, Washington; Friends of the Columbia Gorge is incorporated in Oregon and its principal place of business is in Portland, Oregon; Spokane Riverkeeper is incorporated in the State of Washington and has its principal place of business in Spokane, Washington; and Center for Biological Diversity has its principal place of business in Tucson, Arizona. *See* 28 U.S.C. § 2343 (venue provision).

4. Petitioners ask the Court to declare that the Secretary acted arbitrarily, capriciously, and contrary to law in promulgating the Rule on Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, including, but not limited to, establishing an unduly long phase-out period for tank cars that are prone to puncture, spill oil, ignite, and harm communities in train accidents. The long phase-out period runs counter to the evidence in the record, the Secretary's findings of imminent hazards and extreme safety risks from the hazardous tank cars, and his statutory mandate to regulate to protect life, property and the environment from hazardous material on the rails. In addition, the final rule backtracks from the proposal to hold the existing fleet to the new tank car standards. Instead, it establishes a weaker standard for retrofits than that

applicable to new tank cars, and this weaker standard will apply to a majority of the tank cars shipping crude oil and ethanol. Petitioners also ask the Court to declare that the Secretary acted arbitrarily, capriciously, contrary to the evidence, and counter to his statutory safety mandate in establishing a 40 m.p.h. speed limit in high-threat urban areas and not in other densely populated areas in close proximity to the tracks. Petitioners ask the Court to remand these aspects of the rule to the Secretary to consider the proper factors and evidence, and increase protection from rail accidents and catastrophes. In addition, Petitioners ask the Court to declare that the Secretary acted arbitrarily, capriciously, contrary to the evidence, counter to controlling statutes, and in violation of notice and comment rulemaking requirements in abandoning the notification requirements established in Emergency Restriction/Prohibition Order DOT-OST-2014-0067 (May 7, 2014), and instead making a pre-existing regulatory scheme applicable to trains transporting crude oil and ethanol, which will decrease the amount of information made affirmatively available to emergency responders about train routes, frequency, and emergency response measures and that will deny the public access to information that has been publicly available for nearly a year in most states and that the Secretary has found will not expose sensitive security or confidential business information. Petitioners ask the Court to vacate and remand the notification provisions in the final rule for further notice-and-comment rulemaking

consideration in keeping with the controlling statutes and evidence, and order that the emergency order will remain in place during that rulemaking process.

Respectfully submitted this 14th day of May, 2015.



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