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# Transportation/Hazardous Materials: Federal Court Addresses Challenge to California's Imposition of Railcar Charge

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A United States District Court (N.D. California) ("Court") addressed a challenge to a California law and its implementing regulations (Collectively "SB 84") which imposed a \$45 charge for each railway car loaded in, or crossing into, the State carrying any quantity of 25 specifically identified "hazardous materials" including such substances as:

- diesel fuel
- ethanol
- Gasoline
- Chlorine
- crude oil

See *BNSF Railway Company, et. al. v. California State Board of Equalization, et. al.* (2016 WL 6393507).

Plaintiffs BNSF Railway Company and Union Pacific Railroad Company (collectively "BNSF") challenged SB 84 on three grounds:

1. Preemption by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") because of exclusive federal jurisdiction over "rates", "practices" and "services" of rail carriers;
2. Violation of the federal Hazardous Materials Transportation Act ("HMTA") because it discriminates against rail transport and contravenes the Dormant Commerce Clause; and
3. The fee is a "tax" and therefore forbidden by the Railroad Revitalization and Regulatory Reform Act ("RRRRA").

The Court granted BNSF's motion for preliminary injunction. It agreed with two of BNSF's arguments.

First, the Court held SB 84 is preempted by the ICCTA. The ICCTA specifies that jurisdiction over "transportation by rail carriers and the remedies provided in respect rates, classifications, rules..." are governed exclusively by the Federal Surface Transportation Board. 49 U.S.C. § 10501(b).

The Court cited Ninth Circuit Court of Appeals case law holding that the ICCTA "preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation." *Ass'n of*

*American Railroads v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1096 (9th Cir. 2010) quoting *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007).

Second, the Court agreed there was a likelihood of success because the charge was not “fair” as required by the HTMA.

BNSF argued that the charge was unfair because it only applies to hazardous material that is being shipped via railway, but ignores hazardous material shipped by truck. The Court also reasoned that SB 84 violates the Dormant Commerce Clause because it has the potential of burdening interstate commerce by the enforcement of the required fee.

As to the RRRRA, the Court stated there is no evidence that the fees imposed by SB 84 were meant to raise general revenues, making the fee a tax.

[A copy of the opinion can be downloaded here.](#)