

Court Rules Diesel Particulate Emissions Waste Is Not Solid Waste Under RCRA

By:

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The Resource Conservation and Recovery Act (RCRA) regulates discarded solid or hazardous waste. A recent lawsuit by environmental groups advanced a novel legal argument that diesel particulates found in diesel exhaust emitted from locomotives and trucks at rail yards should be considered a form of solid or hazardous waste subject to regulation under the RCRA.

The U.S. District Court for the Central District of Los Angeles rejected this argument on May 29, ruling that Congress did not intend for diesel exhaust to be regulated under RCRA. [[Center for Community Action and Environmental Justice v. Union Pacific Corp.](#), C.D. Cal., No. 11-CV-08608]

The argument advanced by the plaintiffs was as follows: Congress intended to regulate diesel emissions at rail yards under the RCRA, not the Clean Air Act (CAA). Why? Because although Congress amended the CAA to cover locomotive emissions, rail yards are exempt under the CAA since they are indirect sources of air pollution. By way of background, the Clean Air Act has a prohibition against indirect source regulation, defined as any “facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution.” Since the CAA only regulates direct sources, such as locomotives, and not indirect sources, such as rail yards, the RCRA should fill in the gap.

The Court did not buy this argument, noting that “the prohibition against federal indirect source regulation necessarily contemplates a situation in which indirect sources are largely unregulated.”

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