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 13 Action & Environmental Justice, East Yard
 14 Communities for Environmental Justice, and
 15 Natural Resources Defense Council, Inc.

16 UNITED STATES DISTRICT COURT
 17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 CENTER FOR COMMUNITY ACTION &
 19 ENVIRONMENTAL JUSTICE, EAST
 20 YARD COMMUNITIES FOR
 21 ENVIRONMENTAL JUSTICE, AND
 22 NATURAL RESOURCES DEFENSE
 23 COUNCIL, INC.,

Plaintiffs,

v.

24 UNION PACIFIC CORPORATION,
 25 BURLINGTON NORTHERN SANTA FE,
 26 LLC, AND BNSF RAILWAY COMPANY,

Defendants,

Case No. **CV11-8608** - **STO**
(SSK)

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF
 [RCRA, 42 U.S.C §§ 6901 et seq]**

1

INTRODUCTION

2 1. This case is brought to abate deadly diesel particulate pollution that is
3 spewing from sixteen railyards located throughout California. These railyards are
4 owned and operated by Defendants and are not regulated by any State or Federal
5 agency. People living near these railyards, including members of Plaintiffs'
6 organizations, are in imminent and substantial danger of increased cancer risk,
7 asthma, reduced lung function and other cardiovascular ailments, all as a result of
8 the railyards' diesel particulate pollution.

9 2. Diesel pollution in the form of diesel particulate matter (DPM) is
10 created by these railyards by the operation on and near their property of diesel-
11 engined locomotives, trucks and other vehicles and equipment which emit DPM
12 into the air. DPM is comprised of solid particles that are part of the exhaust from
13 diesel engines. DPM from the railyards is transported by wind and air currents
14 onto the land and water near the railyards, and is inhaled by people both directly
15 and after the particles have fallen to the earth and then have been re-entrained into
16 the air by wind, air currents and passing vehicles.

17 3. In 1998, California identified DPM as a toxic air contaminant based
18 on its potential to cause cancer, premature death, and other health problems. The
19 United States Environmental Protection Agency (EPA) classifies diesel exhaust as
20 likely to be carcinogenic to humans.

21 4. The California Air Resources Board (CARB) has failed to regulate the
22 railroads that own and operate the railyards in question in this action. Voluntary
23 agreements between CARB and Defendants, and EPA regulations have failed to
24 ameliorate the DPM pollution from the railyards to health protective levels. And,
25 these Defendants are proposing to build one huge new railyard and expand another
26 in a heavily-polluted and densely populated area near the Port of Los Angeles.

1 health and quality of life. The mission of CCAEJ is “to bring people together to
2 improve our social and natural environment.”

3 9. CCAEJ’s work focuses on improving the quality of life for people in
4 the Riverside/San Bernardino region of southern California, an area covering more
5 than 30,000 square miles with a population of over 4.1 million. The Inland Valley
6 represents one of the fastest growing regions of the state, representing 11 percent
7 of California’s total population. CCAEJ is the only environmental health and
8 justice organization in this vast region focusing on the communities most affected
9 by environmental health hazards--low-income communities of color and recent
10 immigrants, who live, work, learn and play closest to railyards, industrial areas,
11 toxic waste facilities, intermodal facilities, freeways and other areas at greatest risk
12 for environmental health hazards.

13 10. Two communities stand out as the most heavily affected in this
14 region. They are the Westside of the City of San Bernardino and the combined
15 communities of Glen Avon/Mira Loma in Riverside County. Each is noted for
16 having high pollution levels: Mira Loma/Glen Avon have the highest levels of
17 particulate pollution in the South Coast Air Basin, and San Bernardino has the
18 highest ozone levels in the state. The Children’s Health Study conducted by
19 researchers at USC’s Keck School of Medicine have identified the children of this
20 area as having the slowest lung growth and weakest lung capacity of all children
21 studied in southern California. A recent Health Risk Assessment conducted by the
22 California Air Resources Board found the Westside to have the highest cancer risk
23 from railyard pollution of all communities studied in the state at 3,300 per million.
24 Both communities have high levels of poverty and are predominantly Latino and
25 immigrants. Both play host to railyards: the BNSF Intermodal facility in San
26 Bernardino and the Union Pacific Auto Distribution Center in Mira Loma.

1 11. Many CCAEJ members live close to the BNSF intermodal facility in
2 San Bernardino and the Union Pacific facility in Mira Loma, and the health of
3 these people is impaired by these railyards.

4 12. Plaintiff East Yard Communities for Environmental Justice (EYCEJ)
5 is an environmental health and justice organization working towards a safe and
6 healthy environment for communities that are disproportionately suffering the
7 negative effects of industrial pollution. The organization recognizes and promotes
8 full and authentic community participation in influencing policies that affect them
9 directly and promotes the implementation of environmental justice guidelines for
10 local, state and federal governments and agencies, as well as industry.

11 13. Long Beach and the Commerce/East Los Angeles area, where
12 EYCEJ's membership base is located, has clusters of neighborhoods composed
13 predominantly of persons of color that are subjected to a disproportionate burden
14 of many different environmental hazards which, taken cumulatively, have a
15 profound negative impact and significantly reduce the quality of life. Major rail
16 yards are located in both Long Beach and the East LA area. The ICTF/Dolores
17 yard is located adjacent to Long Beach, and the UP Commerce, BNSF Hobart,
18 BNSF Commerce, and BNSF Sheila yards are located in the Commerce/ East LA
19 area. EYCAJ's membership based in both these areas are exposed to high levels of
20 diesel exhaust from the transportation of goods.

21 14. In 2007, CARB estimated that 597,500 people that live around the
22 ICTF/Dolores yard are at risk of cancer (at least by 10 in 1 million, and at most
23 1,200 in 1 million from the 23.7 tons of DPM the yard produces each year). In the
24 East LA area, the four Commerce railyards put 1,285,200 people at risk of cancer
25 (with the maximum impact of 3,000 in 1 million cancer risk).

26 15. In the Long Beach zip code of 90810 (closest to the ICTF yard), with
27 a total population of 35,637 residents, the population data is as follows: 89.1% are
28 people of color, 17.7% of the families are below the poverty line, and 21.1 % of

1 the individuals are below the poverty line. In the East LA area, specifically the
2 City of Commerce in the 90040 zip code (with a total population of 9,790), the
3 population data is as follows: 96.9% are people of color, 14.5% of the families are
4 below the poverty line, and 15.8% of the individuals are below the poverty line.

5 16. Many EYCEJ members live close to the BNSF and UP intermodal
6 facilities in and near Commerce and Long Beach, and the health of these people is
7 impaired by these railyards.

8 17. Plaintiff Natural Resources Defense Council (NRDC) is a not for
9 profit membership corporation founded in 1970 and organized under the laws of
10 the State of New York. NRDC maintains offices in New York, NY; Washington,
11 D.C.; Chicago, IL; San Francisco and Santa Monica, CA; and Beijing, China.
12 NRDC has more than 420,000 members nationwide, including more than 63,000
13 members who live in California. NRDC's purposes include the preservation,
14 protection and defense of the environment, public health, and natural resources.
15 For 40 years, NRDC has engaged in scientific analysis, public education,
16 advocacy, and litigation on a wide range of environmental and health issues.
17 NRDC has long been active in efforts to reduce the threats to human health and the
18 environment from DPM emitted by railyards, ports, distribution centers and other
19 facilities.

20 18. Members of NRDC live in Long Beach, City of Industry, San Pedro,
21 Commerce, San Bernardino, Carson, Oakland, Richmond, Roseville, Stockton,
22 Mira Loma, and Barstow, where BNSF or UP intermodal facilities are located.
23 The health of many of these members is impaired by Defendants' railyards.

24 19. Defendant Union Pacific Corporation (UP) operates a railroad in 23
25 states, including California. UP owns and operates railyards in the following
26 locations in California: UP Dolores/ICTF, UP Commerce, UP Roseville, UP
27 Oakland, UP LATC, UP Colton, UP Industry, UP Stockton, and UP Mira Loma.
28 DPM emitted from these railyards, individually and collectively, has caused and is

1 causing an imminent and substantial risk to humans and to the environment in the
2 vicinity of the railyards.

3 20. Defendants Burlington Northern Santa Fe, LLC, and BNSF Railway
4 Company (collectively, BNSF) operate a railroad in 28 states, including California.
5 BNSF owns and operates railyards in the following locations in California: BNSF
6 Hobart, BNSF San Bernardino, BNSF Commerce, BNSF Stockton, BNSF Watson,
7 BNSF Richmond, and BNSF Barstow. DPM emitted from these railyards,
8 individually and collectively, has caused and is causing an imminent and
9 substantial risk to humans and to the environment in the vicinity of the railyards.

10 **FACTUAL BACKGROUND**

11 **A. Diesel Particulate Matter Is Dangerous To Human Health.**

12 21. The dangers to human health of diesel particulate emissions are well-
13 documented, by CARB and others. In its Goods Movement Emissions Reduction
14 Plan, CARB stated that goods movement-related air pollution can increase all-
15 cause mortality, cardiopulmonary mortality and lung cancer mortality in adults,
16 infant mortality, hospital admissions for all pulmonary illnesses, chronic
17 obstructive pulmonary disease, pneumonia, asthma, and all cardiovascular
18 illnesses. It can also contribute to pre-term births and lower birth weight.
19 Sensitive groups, including children and infants, the elderly, and people with heart
20 or lung disease, can be at increased risk of experiencing harmful effects from
21 exposure to diesel air pollution. CARB also found that people living in
22 communities close to the source of goods movement-related emissions, such as
23 ports, railyards and intermodal transfer facilities are likely to suffer greater health
24 impacts and these impacts will likely add to an existing health burden. CARB
25 noted that studies have shown associations between traffic-related pollution and
26 effects in children, including chronic bronchitis symptoms, wheeze, cough, allergic
27 rhinitis, asthma induction, and upper and lower respiratory tract infections. Recent
28 evidence indicates that diesel air pollution exposure can impair lung function

1 growth in children. The long-term consequences of lower lung function can
2 include shorter lifespan, as lung function peaks in young adulthood and declines
3 thereafter; lung function is the most significant predictor of mortality in the elderly.

4 22. There are also other exposure pathways to DPM, including dermal
5 contact and the eating of contaminated food. CARB found that:

6 Communities surrounding many goods movement-related facilities where
7 there may be a disproportionate exposure to air pollutants are often
8 economically disadvantaged or ethnically or culturally diverse. People in
9 these communities often have poor access to health care or carry a disease
10 burden that may make them more susceptible to excess exposure. Their
11 housing characteristics may contribute to this susceptibility.

12 Cumulative impacts are very likely to be experienced by communities living
13 in close proximity to goods movement-related activity. Airborne pollutants
14 can deposit onto surfaces and waterways, providing another source of
15 exposure. For example, goods movement activities contribute to non-point
16 source runoff that contaminates coastal and bay waters with a number of
17 toxicants, including PAHs, dioxins, and metals. Exposures to pollutants that
18 were originally emitted into the air can also occur as a result of dermal
19 contact, ingestion of contaminated produce, and ingestion of fish that have
20 taken up contaminants from water bodies. These exposures can all contribute
21 to an individual's health risk. In some cases, the risks from these kinds of
22 exposure can be greater than the risks from inhalation of the airborne
23 chemicals.

24 23. EPA Region 1 has stated that: "Diesel exhaust causes health effects
25 from both short term or acute exposures and also long term chronic exposures,
26 such as repeated occupational exposures. The type and severity of health effects
27 depends upon several factors including the amount of chemical you are exposed to
28 and the length of time you are exposed. Individuals also react differently to
different levels of exposure. There is limited information on exposure to just diesel
particulate matter but there is enough evidence to indicate that inhalation exposure
to diesel exhaust causes acute and chronic health effects."

1 24. EPA has also stated that: "Acute exposure to diesel exhaust may
2 cause irritation to the eyes, nose, throat and lungs, [and] some neurological effects
3 such as lightheadedness. Acute exposure may also elicit a cough or nausea as well
4 as exacerbate asthma. Chronic exposure in experimental animal inhalation studies
5 have shown a range of dose dependent lung inflammation and cellular changes in
6 the lung and there are also diesel exhaust immunological effects. Based upon
7 human and laboratory studies, there is considerable evidence that diesel exhaust is
8 a likely carcinogen. Human epidemiological studies demonstrate an association
9 between diesel exhaust exposure and increased lung cancer rates in occupational
10 settings."

11 25. DPM contains the following substances in solid form, all of which are
12 on the RCRA list of hazardous substances: arsenic, cadmium, nickel, inorganic
13 lead, antimony compounds, beryllium compounds, cobalt compounds, manganese
14 compounds, mercury compounds, phosphorus, and selenium compounds.
15 Although initially transported by a gas, these materials are solids which carry
16 volatile organic compounds (VOCs) and other toxic substances (in liquid or semi-
17 liquid form) that are adsorbed onto the particles' surfaces. DPM is both a solid
18 waste and a hazardous waste within the meaning of RCRA, 42 U.S.C. § 6903(5),
19 (27).

20 26. The RCRA hazardous wastes which the railyards are allowing to be
21 disposed of through their operations have well-documented, serious effects on
22 human health and the environment. The following bullets are EPA's assessment of
23 some of the human health impacts that result from some of the constituents of
24 DPM:

- 25 • Lead. "Lead is a very toxic element, causing a variety of effects at low dose
26 levels. Brain damage, kidney damage, and gastrointestinal distress are seen
27 from acute exposure to high levels of lead in humans. Chronic exposure to
28 lead in humans results in effects on the blood, central nervous system, blood

1 pressure, kidneys, and Vitamin D metabolism. Children are particularly
2 sensitive to the chronic effects of lead, with slowed cognitive development,
3 reduced growth and other effects reported. Reproductive effects, such as
4 decreased sperm count in men and spontaneous abortions in women, have
5 been associated with high lead exposure. The developing fetus is at
6 particular risk from maternal lead exposure, with low birth weight and
7 slowed postnatal neurobehavioral development noted.”¹

- 8 • Arsenic. “Acute high-level inhalation exposure to arsenic dust or fumes has
9 resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain); central
10 and peripheral nervous system disorders have occurred in workers acutely
11 exposed to inorganic arsenic. Chronic inhalation exposure to inorganic
12 arsenic in humans is associated with irritation of the skin and mucous
13 membranes. Chronic oral exposure has resulted in gastrointestinal effects,
14 anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or
15 kidney damage in humans. Inorganic arsenic exposure in humans, by the
16 inhalation route, has been shown to be strongly associated with lung cancer,
17 while ingestion of inorganic arsenic in humans has been linked to a form of
18 skin cancer and also to bladder, liver, and lung cancer. EPA has classified
19 inorganic arsenic as a Group A, human carcinogen.”²
- 20 • Cadmium. “The acute effects of cadmium in humans through inhalation
21 exposure consist mainly of effects on the lung, such as pulmonary irritation.
22 Chronic inhalation or oral exposure to cadmium leads to a build-up of
23 cadmium in the kidneys that can cause kidney disease. Cadmium has been
24 shown to be a developmental toxicant in animals, resulting in fetal
25 malformations and other effects, but no conclusive evidence exists in
26
27

28 ¹ See <http://www.epa.gov/ttn/atw/hlthef/lead.html>.

² See <http://www.epa.gov/ttn/atw/hlthef/arsenic.html>.

1 humans... EPA has classified cadmium as a Group B1, probable human
2 carcinogen.”³

- 3 • Nickel. “Nickel dermatitis, consisting of itching of the fingers, hands, and
4 forearms, is the most common effect in humans from chronic skin contact
5 with nickel. Respiratory effects have also been reported in humans from
6 inhalation exposure to nickel. Human and animal studies have reported an
7 increased risk of lung and nasal cancers from exposure to nickel refinery
8 dusts and nickel subsulfide... EPA has classified nickel refinery dust and
9 nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a
10 Group B2, probable human carcinogen.”⁴
- 11 • Antimony. “Acute exposure to antimony by inhalation in humans results in
12 effects on the skin and eyes. Respiratory effects, such as inflammation of
13 the lungs, chronic bronchitis, and chronic emphysema, are the primary
14 effects noted from chronic exposure to antimony in humans via inhalation.”⁵
- 15 • Beryllium. “Acute inhalation exposure to high levels of beryllium has been
16 observed to cause inflammation of the lungs or acute pneumonitis
17 (reddening and swelling of the lungs) in humans; after exposure ends, these
18 symptoms may be reversible. Chronic inhalation exposure of humans to
19 beryllium has been reported to cause chronic beryllium disease (berylliosis),
20 in which granulomatous lesions (noncancerous) develop in the lung... EPA
21 has classified beryllium as a Group B1, probable human carcinogen.”⁶
- 22 • Cobalt. “Acute exposure to high levels of cobalt by inhalation in humans
23 and animals results in respiratory effects, such as a significant decrease in
24 ventilatory function, congestion, edema, and hemorrhage of the lung.
25 Respiratory effects are also the major effects noted from chronic exposure to

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27 ³ See <http://www.epa.gov/ttn/atw/hlthef/cadmium.html>.

⁴ See <http://www.epa.gov/ttn/atw/hlthef/nickel.html>.

28 ⁵ See <http://www.epa.gov/ttn/atw/hlthef/antimony.html>.

⁶ See <http://www.epa.gov/ttnatw01/hlthef/berylliu.html>.

1 cobalt by inhalation, with respiratory irritation, wheezing, asthma,
2 pneumonia, and fibrosis noted. Cardiac effects, congestion of the liver,
3 kidneys, and conjunctiva, and immunological effects have also been noted in
4 chronically-exposed humans.”⁷

- 5 • Manganese. “Chronic exposure to high levels of manganese by inhalation in
6 humans may result in central nervous system (CNS) effects. Visual reaction
7 time, hand steadiness, and eye-hand coordination were affected in
8 chronically-exposed workers. A syndrome named manganism may result
9 from chronic exposure to higher levels; manganism is characterized by
10 feelings of weakness and lethargy, tremors, a mask-like face, and
11 psychological disturbances. Respiratory effects have also been noted in
12 workers chronically exposed by inhalation. Impotence and loss of libido
13 have been noted in male workers afflicted with manganism.”⁸
- 14 • Mercury. “Mercury exists in three forms: elemental mercury, inorganic
15 mercury compounds (primarily mercuric chloride), and organic mercury
16 compounds (primarily methyl mercury). All forms of mercury are quite
17 toxic, and each form exhibits different health effects. Acute exposure to
18 high levels of elemental mercury in humans results in central nervous system
19 effects such as tremors, mood changes, and slowed sensory and motor nerve
20 function. Chronic exposure to elemental mercury in humans also affects the
21 [central nervous system], with effects such as erethism (increased
22 excitability), irritability, excessive shyness, and tremors... Acute exposure
23 to inorganic mercury by the oral route may result in effects such as nausea,
24 vomiting, and severe abdominal pain. The major effect from chronic
25 exposure to inorganic mercury is kidney damage... Acute exposure of
26 humans to very high levels of methyl mercury results in [central nervous
27

28 ⁷ See <http://www.epa.gov/ttn/atw/hlthef/cobalt.html>.

⁸ See <http://www.epa.gov/ttn/atw/hlthef/manganes.html>.

1 system] effects such as blindness, deafness, and impaired level of
2 consciousness. Chronic exposure to methyl mercury in humans also affects
3 the central nervous system with symptoms such as paresthesia (a sensation
4 of pricking on the skin), blurred vision, malaise, speech difficulties, and
5 constriction of the visual field. Methyl mercury exposure, via the oral route,
6 has led to significant developmental effects. Infants born to women who
7 ingested high levels of methyl mercury exhibited mental retardation, ataxia,
8 constriction of the visual field, blindness, and cerebral palsy.”⁹

- 9 • Selenium. “Hydrogen selenide is the most acutely toxic selenium
10 compound. Acute exposure to elemental selenium, hydrogen selenide, and
11 selenium dioxide by inhalation results primarily in respiratory effects, such
12 as irritation of the mucous membranes, pulmonary edema, severe bronchitis,
13 and bronchial pneumonia. Epidemiological studies of humans chronically
14 exposed to high levels of selenium in food and water have reported
15 discoloration of the skin, pathological deformation and loss of nails, loss of
16 hair, excessive tooth decay and discoloration, lack of mental alertness, and
17 listlessness... EPA has classified elemental selenium as a Group D, not
18 classifiable as to human carcinogenicity, and selenium sulfide as a Group
19 B2, probable human carcinogen.”¹⁰

20 **B. The Railyards Emit Tons Of Diesel Particulate Matter Each Year.**

21 27. Defendants’ railyards, and each of them, emit tons of DPM per year
22 into the air. According to CARB, in 2005 these railyards emitted, collectively,
23 over 160 tons of DPM.¹¹ As commerce at the ports of Los Angeles and Long
24 Beach picks up, these numbers will likely be exceeded.

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26
27 ⁹ See <http://www.epa.gov/ttn/atw/hlthef/mercury.html>; see also
<http://www.epa.gov/hg/effects.htm>.

28 ¹⁰ See <http://www.epa.gov/ttn/atw/hlthef/selenium.html>.

¹¹ See <http://www.arb.ca.gov/railyard/hra/hra.htm>

1 28. Defendants have allowed and are allowing the DPM described herein
2 to be discharged into the air, from which it falls onto the ground and water nearby,
3 and is re-entrained into the atmosphere by the wind, passing vehicles and other
4 methods.

5 **C. Plaintiffs' Members Are Injured By And At Risk From**
6 **Defendants' Railyards.**

7 29. Members of Plaintiffs' organizations live, work, travel and recreate
8 near the railyards that are the subject of this action, and breathe and are otherwise
9 exposed to DPM emanating from Defendants' property.

10 30. CARB has produced studies of the extra cancer risk caused in
11 railyard-adjacent communities as a result of railyard operations. These studies can
12 be found at <http://www.arb.ca.gov/railyard/hra/hra.htm>. Using the relatively
13 generous metric of an excess cancer risk of 10 in a million, the CARB studies
14 found that over 1.8 million Californians are at elevated risk because of railyard
15 operations.

16 31. Here is the CARB breakdown by railyard at the 10 in a million excess
17 risk level:

18	UP Dolores:	309,000
19	UP Commerce:	187,000
20	UP Roseville:	140,000
21	UP Oakland:	130,000
22	UP LATC:	96,000
23	UP Colton:	60,000
24	UP Industry:	57,000
25	UP Stockton:	19,600
26	UP Mira Loma:	7,900
27		
28	BNSF Hobart:	552,000

1 BNSF San Bernardino: 187,600

2 BNSF Commerce: 32,100

3 BNSF Stockton: 17,000

4 BNSF Watson: 12,600

5 BNSF Richmond: 6,200

6 BNSF Barstow: 6,100

7 **D. Control Measures Are Available To Reduce DPM At Railyards.**

8 32. The injuries and potential injuries to Plaintiffs' members are
9 redressable by existing technology. There are control measures now available that
10 would substantially reduce the levels of DPM emitted from Defendants' railyards
11 in California or reduce exposure to DPM. These include:

- 12 • Use of cleaner locomotives.
- 13 • Electrification of major rail lines.
- 14 • Use of cleaner yard equipment, including cargo handling equipment, yard
15 hostlers and cranes.
- 16 • Plug-in electrification for all transportation refrigeration units.
- 17 • Locomotive idling limited to 15 minutes or less.
- 18 • No-idle zones for locomotives within 50 feet of sensitive receptors and
19 residential areas.
- 20 • Site configuration to relocate high pollution areas away from sensitive
21 receptors such as schools and homes.
- 22 • Health protective buffers between residential areas and the railyards.
- 23 • Filtration systems for homes and buildings in high health risk areas.
- 24 • Enhanced truck, locomotive and equipment inspections to ensure that
25 required pollution levels are being achieved.

1 **RCRA**

2 33. RCRA provides for comprehensive regulation of solid and hazardous
3 wastes to prevent threats to human health and the environment. In enacting
4 RCRA, Congress recognized that “disposal of solid waste and hazardous waste in
5 or on the land without careful planning and management can present a danger to
6 human health and the environment,” and that inadequate control of hazardous
7 waste management in particular “will result in substantial risks to human health
8 and the environment.” 42 U.S.C. § 6901(b)(2), (b)(5). Congress declared that
9 hazardous waste “should be treated, stored or disposed of so as to minimize the
10 present and future threat to human health and the environment,” *id.* § 6902(b); *see*
11 *also id.* § 6902(a)(3) (establishing the statutory purpose of “prohibiting future open
12 dumping on the land and requiring the conversion of existing open dumps to
13 facilities which do not pose a danger to the environment or to health”), *id.*
14 § 6902(a)(4) (establishing the statutory purpose of “assuring that hazardous waste
15 management practices are conducted in a manner which protects human health and
16 the environment”).

17 34. In 1984, Congress amended RCRA to allow private persons to bring
18 suit to abate certain hazards caused by the mismanagement of solid or hazardous
19 waste. Specifically, section 7002(a)(1)(B) of RCRA, added to RCRA by the
20 Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, 98 Stat. 3221,
21 Title IV, § 401, and codified at 42 U.S.C. § 6972(a)(1)(B), authorizes private
22 persons to commence civil actions “against any person, . . . including any past or
23 present generator, past or present transporter, or past or present owner or operator
24 of a treatment, storage, or disposal facility, who has contributed or who is
25 contributing to the past or present handling, storage, treatment, transportation, or
26 disposal of any solid or hazardous waste which may present an imminent and
27 substantial endangerment to health or the environment.” 42 U.S.C.
28 § 6972(a)(1)(B). Liability under this provision is joint, several, and strict.

1 **FIRST CLAIM FOR RELIEF**

2 [RCRA, 42 U.S.C §§ 6901 et seq]

3 35. Plaintiffs re-allege and incorporate herein by reference the allegations
4 in paragraphs 1 through 34, inclusive, of this Complaint.

5 36. As alleged herein, Defendants are persons who have contributed to
6 and are contributing to the handling, storage, treatment, transportation or disposal
7 of solid or hazardous waste that may present an imminent and substantial
8 endangerment to health or to the environment, and have been, are, and will be
9 violating RCRA by their failure to limit or control the amount of DPM generated
10 on and by the railyards described herein.

11 37. DPM is created by Defendants' railyard operations.

12 38. DPM is comprised of solid particles that are part of the exhaust from
13 diesel engines. DPM from the railyards is transported by wind and air currents
14 onto the land and water near the railyards, and is inhaled by people both directly
15 and after the particles have fallen to the earth and then have been re-entrained into
16 the air by wind, air currents and passing vehicles.

17 39. DPM contains the following substances in solid form, all of which are
18 on the RCRA list of hazardous substances: arsenic, cadmium, nickel, inorganic
19 lead, antimony compounds, beryllium compounds, cobalt compounds, manganese
20 compounds, mercury compounds, phosphorus, and selenium compounds.

21 Although initially transported by a gas, these materials are solids which carry
22 VOCs and other toxic substances (in liquid or semi-liquid form) that are adsorbed
23 onto the particles' surfaces. DPM is both a solid waste and a hazardous waste
24 within the meaning of RCRA, 42 U.S.C. § 6903(5), (27).

25 40. Without relief from this Court, injury to Plaintiffs' members as
26 alleged herein will continue. That injury is redressable by, among others, the
27 control measures described above.

1 c. Abate the threat of diesel particulate matter pollution from their
2 California railyards; and

3 d. Take any additional actions that may be necessary to remedy the
4 endangerment to health and/or the environment from diesel
5 particulate matter associated with their California railyards.

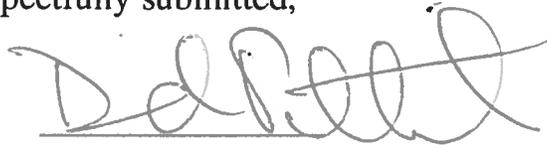
6 3. For an order requiring Defendants to pay Plaintiffs' reasonable
7 attorneys' fees, expert witness fees, and costs incurred in prosecuting this action,
8 pursuant to 28 U.S.C. § 2412 and 42 U.S.C. §6972(e); and

9 4. For such other and further relief as the Court may deem just and
10 proper.

11
12 Dated: October 18, 2011

Respectfully submitted,

13
14 By:



15 DAVID PETTIT
16 MELISSA LIN PERRELLA
17 MORGAN WYENN
18 NATURAL RESOURCES DEFENSE
COUNCIL

19 *Attorneys for Plaintiffs* Center for
20 Community Action & Environmental
21 Justice, East Yard Communities for
22 Environmental Justice, and Natural
23 Resources Defense Council, Inc.