



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

February 10, 2023

REPLY TO THE ATTENTION OF:
SE-5J

VIA EMAIL AND FED EX OVERNIGHT DELIVERY
SIGNATURE REQUIRED

Norfolk Southern Railway Company
c/o Matt Gernand, Deputy General Counsel
650 West Peachtree Steet NW
Atlanta, Georgia 30308

Re: East Palestine Train Derailment Site
Norfolk Southern Rail Line, East Palestine, Columbiana County, Ohio
Site/Spill Identifier (SSID): C5XR
General Notice of Potential Liability

Dear Mr. Gernand:

The U.S. Environmental Protection Agency has documented the release or threat of release of hazardous substances, pollutants or contaminants into the environment from the East Palestine Train Derailment Site (the Site) located in East Palestine, Ohio (Latitude: 40.8360864°N, Longitude: -80.5215884°W). On February 3, 2023, at approximately 8:55 PM EST, a Norfolk Southern train comprised of roughly 150 rail cars derailed. Approximately 20 rail cars were listed as carrying hazardous materials. Cars containing vinyl chloride, butyl acrylate, ethylhexyl acrylate, and ethylene glycol monobutyl ether are known to have been and continue to be released to the air, surface soils, and surface waters.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal "Superfund" law, EPA is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that Norfolk Southern Railway Company (Norfolk Southern or "you") may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up the Site, unless the PRP can demonstrate divisibility or assert one of the statutory defenses. PRPs include current and former owners and operators of a Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the hazardous substances were delivered.

Based on the information collected during and following the incident that occurred on February 3, 2023, at approximately 8:55 PM EST in East Palestine, Ohio, EPA believes that Norfolk Southern may be liable under Section 107(a) of CERCLA with respect to the East Palestine Train Derailment Site, as a current or previous owner and/or operator of the Site. To date, EPA has taken response actions at the Site under the authority of the Superfund Program. Below is a brief description of the actions and observations taken by EPA at the Site to date:

1. Conducted air monitoring around the scene of the incident, the surrounding community, and residential air monitoring as part of the re-occupancy plan;
2. Conducted air and water sampling;
3. Made the following observations:
 - a. Materials released during the incident were observed and detected in samples from Sulphur Run, Leslie Run, Bull Creek, North Fork Little Beaver Creek, Little Beaver Creek, and the Ohio River.
 - b. Materials related to the incident were observed entering storm drains.
 - c. Multiple rail cars and tankers were observed derailed, breached, and/or on fire, that included but not limited to the following materials:
 - i. Vinyl chloride
 - ii. Ethylene glycol monobutyl ether
 - iii. Ethylhexyl acrylate
 - iv. Isobutylene
 - v. Butyl acrylate.
 - d. Five rail car tankers of vinyl chloride were intentionally breached; the vinyl chloride was diverted to an excavated trench and then burned off.
 - e. Areas of contaminated soil and free liquids were observed and potentially covered and/or filled during reconstruction of the rail line including portions of the trench /burn pit that was used for the open burn off of vinyl chloride.

EPA has received information that your organization may own or operate the Site or may have generated or transported hazardous substances at the Site. By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you, as a PRP, to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance the response activities that EPA has determined or will determine are required at the Site.

Because of the conditions described above, EPA believes that response activities at the Site must be initiated as quickly as possible. Therefore, EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

As a PRP, you should notify EPA in writing within one (1) calendar day of receipt of this letter of your willingness to perform or finance the response activities to address contamination caused by the incident described above and to reimburse EPA for its costs.

If you have specific questions or if you are unable to respond in a timely fashion because of impacts related to the COVID-19 pandemic, please contact Donald R. Schwer III, Enforcement Investigator at (312) 353-8752 or at schwer.don@epa.gov, explaining the specific impacts on your ability to respond. To the extent possible you are strongly encouraged to use email to submit your response. Your response should be sent to:

Donald R. Schwer, Enforcement Investigator
U.S. Environmental Protection Agency, Region 5
Superfund & Emergency Management Division
Enforcement Support Section, SE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Your response should indicate the appropriate name, address and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in a voluntary cleanup action, or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities already underway; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

If you need further information regarding this letter, you may contact Naeha Dixit, Associate Regional Counsel, Office of Regional Counsel, at (312) 353-5524 or at dixit.naeha@epa.gov.

Due to the nature of the problem at this facility and the attendant legal ramifications, EPA strongly encourages you to submit a written response within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely,

Jason El-Zein
xZein

Digitally signed
by Jason El-Zein
Date: 2023.02.10
22:10:53 -05'00'

Jason El-Zein, Manager
Emergency Response Branch 1

cc: Mark Rickrich, Program Manager
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