



MEMORANDUM

March 24, 2023

TO: Members of the Subcommittee on Environment, Manufacturing, and Critical Materials

FROM: Committee Majority Staff

RE: Hearing entitled, "Government Response to East Palestine: Ensuring Safety and Transparency for the Community"

I. INTRODUCTION

On Tuesday, March 28, 2023, at 10:00 a.m., the Subcommittee on Environment, Manufacturing, and Critical Materials will hold a hearing titled "Government Response to East Palestine: Ensuring Safety and Transparency for the Community." Witnesses are by invitation only.

II. WITNESSES

- **Debra Shore**, Regional Administrator for Region Five, U.S. Environmental Protection Agency
- **Anne Vogel**, Director, Ohio Environmental Protection Agency
- **Wesley J. Vins, DPA**, Health Commissioner, Columbiana County (Ohio) General Health District

III. BACKGROUND

A. Derailment

On the evening of February 3, 2023, a 149-car freight train operated by Norfolk Southern derailed in East Palestine, Ohio. Specifically, 38 of the train cars derailed – with a fire damaging another 12 cars.¹ Twenty "hazardous material" freight cars were part of this freight train, but only 11 of them derailed,² including five cars with vinyl chloride, two cars with benzene, and another four cars containing isobutylene, butyl acrylates, ethylhexyl acrylates, and ethylene glycol monobutyl ether.³

East Palestine is a small village in Columbiana County, Ohio with a population of 4,761.⁴ East Palestine is located near the border between Ohio and Pennsylvania on the eastern part of the state. The Norfolk Southern railway passes through the middle of the East Palestine Community, crosses the Sulpher Run stream, and comes into close proximity with the Leslie Run stream.

¹ See "[NTSB Issues Investigative Update on Ohio Train Derailment](#)," National Transportation Safety Board, February 14, 2023.

² See "[Derail List](#)," Norfolk Southern, February 2023.

³ *ibid*

⁴ See "[Total Population in East Palestine village, Ohio](#)" United States Census Bureau, 2020 Decennial Census

B. Response

Officials from the U.S. Environmental Protection Agency (U.S. EPA) arrived at the site hours after the derailment to support air quality monitoring and water sampling efforts by the state of Ohio and local health agencies. Norfolk Southern, Ohio Environmental Protection Agency (Ohio EPA), Columbiana County, Village of East Palestine, Pennsylvania Department of Environmental Protection, Ohio Department of Natural Resources, Butler County Incident Management Team, Federal Railroad Administration (FRA), National Transportation Safety Board (NTSB), and other agencies also mobilized to the site.⁵

C. Controlled Burn

On February 6, 2023, due to concerns of a catastrophic boiling liquid expanding vapor explosion (BLEVE) after a pressure relief valve failed and internal temperatures were increasing within one of the vinyl chloride rail cars, the East Palestine Fire Chief and the Ohio Governor, in coordination with Norfolk Southern, made the decision to conduct a “controlled burn” of the contents of the vinyl chloride rail car. Norfolk Southern subsequently informed the Incident Commander that all five (5) rail cars containing vinyl chloride would have to be involved in the “controlled burn” due to their proximity to the reacting rail car.⁶ The U.S. EPA monitored the air in conjunction with the burn, which was considered successful. The Agency emphasized, the “[U.S. EPA] air monitoring did not detect chemical contaminants of concern in the hours following the controlled burn.”⁷ Residents living within a one-mile radius of the derailment that had been evacuated ahead of the controlled burn were allowed to return safely on February 8, 2023.⁸

D. Water Contamination

By February 4, 2023, water quality impacts to Sulphur Run were evident due to runoff from the derailment fire.⁹ Containment measures were implemented by Norfolk Southern; however, complete containment was not viable.¹⁰ Containment and recovery resources were mobilized to the site and containment boom was placed within Sulphur Run. Two underflow dams were constructed on Sulphur Run on February 5, 2023. Negative impacts, most notably a significant fish kill, were noted due to the release to Sulphur Run and subsequent downstream waterways, including Leslie Run. U.S. EPA collected surface water samples from Sulphur Run, which showed elevated levels of contaminants of concern. Drinking water intakes were also notified of the spill on February 5, 2023.

E. Water Testing

⁵ See “[Enforcement Action Memorandum – Determination of Threat to Public Health and the Environment at the East Palestine Train Derailment Site, East Palestine, Columbiana County, Ohio](#),” United States Environmental Protection Agency Region 5, February 21, 2023.

⁶ *ibid*

⁷ See “[Previous Daily Updates: East Palestine Ohio Train Derailment Emergency Response](#),” United States Environmental Protection Agency, February 7, 2023.

⁸ See “[East Palestine Update: Residents Can Safely Return Home](#),” Governor Mike DeWine, February 8, 2023.

⁹ See “[Previous Daily Updates: East Palestine Ohio Train Derailment Emergency Response](#),” United States Environmental Protection Agency, February 4, 2023.

¹⁰ *ibid*

On February 15, 2023, Ohio Governor DeWine issued a press release on water quality testing performed by the Ohio EPA.¹¹ The Governor explained, “these results show no detection of contaminants in raw water from the five wells that feed into East Palestine’s municipal water system.”¹² Ohio EPA still recommended using bottled water for residents receiving drinking water from private wells that had not yet been tested. The Columbiana County Health Department led and continues to lead the sampling of private wells.

F. CERCLA Order

On February 21, 2023, the U.S. EPA issued a unilateral administrative order (UAO) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to compel Norfolk Southern to conduct all necessary actions associated with the cleanup in East Palestine, Ohio, including remediation of contaminated soil and water resources. A UAO is an enforcement instrument that U.S. EPA can use to require parties to take a response action, including site investigation, identification of cleanup methods, community outreach, and performance of short-term cleanup work (commonly referred to as “removal” work) and/or cleanup long-term work (referred to as “remedial action”).¹³ U.S. EPA Administrator Regan delivered several comments that the federal government will exercise its duty to fine Norfolk Southern if cleanup is not addressed properly.¹⁴

G. Shipment of Waste

Shipment and disposal of contaminated waste from the derailment site to facilities that have been built, licensed, and permitted to accept hazardous waste evolved into a complicated situation, as several states have tried to prevent specific solid and liquid waste shipments from East Palestine. Under Federal environmental law and regulations, the only restriction on the disposal of these shipments is that the disposal facility must be licensed -- under Subtitle C of the Solid Waste Disposal Act -- and acceptable to U.S. EPA because it does not have contamination issues.¹⁵ Of note, item #46 b of the UAO requires advance notice to an incoming state’s officials but does not explicitly state that State officials can object to the shipment once noticed.¹⁶ The Supreme Court has ruled in both *Philadelphia v. New Jersey* 437 U.S. 617 (1978) and *Fort Gratiot (MI) Sanitary Landfill v. Michigan* 504 U.S. 353 (1992) that a State or local government cannot discriminate against the disposal of out-of-jurisdiction waste.

On February 24, 2023, the U.S. EPA sent a letter to the CEO of Norfolk Southern directing the company to “initiate removal and proper off-site disposal of all stockpiled contaminated soil,” as well as residue in tank cars.¹⁷ Norfolk Southern began the removal process by shipping liquid waste to a facility in Vickery, Ohio and solid waste to the Heritage incinerator in East Liverpool, Ohio. Norfolk Southern also attempted to ship soil waste to the U.S. Ecology Wayne Disposal facility in Belleville, Michigan,

¹¹ See “[East Palestine Water Quality Update](#),” Governor Mike DeWine, February 15, 2023.

¹² *Id.*

¹³ See “[Superfund Unilateral Orders](#),” United States Environmental Protection Agency.

¹⁴ *ibid*

¹⁵ See 40 CFR 300.440

¹⁶ [Proceeding under Section 106\(a\) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9606\(a\). \(epa.gov\)](#)

¹⁷ See “[East Palestine Train Derailment Site Unilateral Administrative Order](#)” Letter, United States Environmental Protection Agency Region 5, February 24, 2023.

but the U.S. EPA ordered Norfolk Southern to pause all shipments, including shipments to the Michigan facility.¹⁸ In addition to Michigan, state officials in Texas and the Governor of Oklahoma have worked to prevent contaminated waste from East Palestine from being disposed and processed in their states.¹⁹

On March 17, 2023, the U.S. EPA sent a letter to state environmental regulators clarifying the shipment and disposal of hazardous waste from East Palestine.²⁰ The U.S. EPA stressed, “[s]tates cannot unilaterally stop shipments of out-of-state hazardous waste material from the Site.” Building on the Supreme Court precedent against discrimination of out-of-jurisdiction waste, the letter highlighted that, “Any interference with the movement of hazardous waste material into or through another state raises concerns under the Commerce Clause.”

H. Current Status

The Federal response to the derailment in East Palestine has shifted from an immediate, emergency response to a long-term environmental cleanup, with environmental remediation activities continuing in earnest. As of March 21, 2023, the U.S. EPA reported that 7,784 tons of contaminated soil and 7.5 million gallons of liquid wastewater have been shipped from the site, 621 indoor air screenings have been completed, and the Welcome Center has received 365 visitors.²¹ The U.S. EPA also noted that air monitoring at 23 locations, soil sampling, and creek agitation and aeration will continue.²²

The Ohio EPA referenced that 26,500 tons of excavated soil are awaiting removal from the site.²³ On water quality testing, the Ohio EPA noted that, “test results from 136 samples have been verified, and none have shown any harmful contaminant levels with the derailment.”

IV. ISSUES

The following issues may be examined at the hearing:

- Ongoing government response and cleanup in East Palestine, Ohio and surrounding areas by the U.S. EPA, the Ohio EPA, and the Columbiana County Health District.
- Health and safety of the East Palestine, Ohio community, and surrounding areas.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Martin, Jerry Couri, or Sarah Alexander of the Committee Staff at (202) 225-3641.

¹⁸ See comments by Debra Shore in the “[Joint Media Briefing on East Palestine Train Derailment Recovery Efforts](#),” Federal Emergency Management Agency, February 25, 2023.

¹⁹ See [Tweet](#) from Governor Kevin Stitt, March 12, 2023.

²⁰ See Letter titled “[Alert Regarding Disposal of Hazardous Waste Material from East Palestine, Ohio, Train Derailment Site](#),” United States Environmental Protection Agency, March 17, 2023.

²¹ See “[East Palestine, Ohio Train Derailment Emergency Response: Latest Updates](#)” United States Environmental Protection Agency, March 21, 2023.

²² See “[East Palestine Train Derailment Response Newsletter](#),” United States Environmental Protection Agency, March 21, 2023.

²³ See “[East Palestine Update](#),” Governor Mike DeWine, March 17, 2023.