

United States Senate

WASHINGTON, DC 20510

February 15, 2023

The Honorable Jennifer L. Homendy
Chair
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594

Dear Chair Homendy:

Thank you for the response by the National Transportation Safety Board (NTSB) to the February 3rd derailment of a Norfolk Southern train near the Ohio-Pennsylvania border in East Palestine, Ohio. We want to express our appreciation for the work of the NTSB staff to collect perishable evidence quickly from the site of the derailment, in coordination with the heroic first responders who prevented a catastrophic explosion and further release of hazardous materials into the surrounding communities. We also want to express our appreciation to NTSB Board Member Michael Graham and the NTSB staff for the updates they provided to the public on the initial stages of the NTSB investigation while onsite.

While we are grateful no injuries or fatalities resulted directly from the derailment, we are deeply concerned about the release of hazardous materials into the air and groundwater in East Palestine and surrounding communities. Hundreds of families were forced to flee their homes, and they are now rightfully concerned about long-term health risks due to the Norfolk Southern train derailment. No American family should be forced to face the horror of fleeing their homes because hazardous materials have spilled or caught fire in their community. The EPA, OEPA, and PA DEP must ensure these families will have their homes and water supplies fully tested and that Norfolk Southern is held accountable for the cleanup and sustained assistance they are required to provide under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The NTSB's independent investigation to determine probable causes of the East Palestine derailment is critical to preventing future derailments involving hazardous materials in Ohio and Pennsylvania, as well as across the nation. We will use NTSB's findings and any pertinent safety recommendations to advance measures that Congress and the U.S. Department of Transportation can implement to prevent derailments involving hazardous materials.

NTSB must independently assess all factors and causes that may have contributed to this derailment, and the Board can identify safety recommendations that might prevent similar derailments. We do want to note several factors and concerns that we have heard from our constituents, outside experts, and representatives of railroad workers:

- **High-hazard flammable train (HHFT) definition and safety practices:** What can be done to improve safety practices regarding high-hazard flammable trains, including

expanding USDOT's definition of HHFT trains to capture the transport of all railcars that are clearly dangerous, like those which derailed in East Palestine? Would additional safety inspections or maintenance requirements for railcars in trains that transport high-hazard materials prevent or mitigate similar derailments?

- **Axle and journal bearings inspections:** NTSB Board Member Graham stated that an axle on one of the railcars involved in the derailment appears to have experienced a mechanical issue. Are sufficient measures in place for railroads to identify malfunctioning axles or journal bearings before derailments occur, including sufficient standards for the installation, operation and maintenance of hotbox or defect detectors?
- **Inspections of railcars:** Would enhanced inspection of railcars help identify damage to axles or other components that could lead to a derailment? Do railroad personnel have sufficient time to conduct inspections of rail cars? It has been reported that railroad workers get roughly 30 to 45 seconds to check each railcar. Senator Brown's office was informed that railroad personnel were given 3 minutes to inspect a railcar prior to the adoption of Precision Scheduled Railroading by the Class I railroads.
- **Electronically controlled pneumatic brakes:** Would the implementation of requirements for the use of electronic controlled pneumatic (ECP) brakes in the shipment of all hazardous materials help prevent similar derailments or mitigate the release of hazardous materials?
- **Staffing practices:** Are railroad staffing practices a factor in this accident or other derailments? It is estimated that Class I railroads have cut 30% of their workforce between 2015 and the end of 2021 following adoption of Precision Scheduled Railroading.
- **Maintenance of railcars and track:** Are U.S. railroads and shippers investing sufficiently in maintaining the railcars and tracks used by trains that transport hazardous materials? It has been reported that the seven Class I railroads in the U.S. spent more than \$114 billion on stock buybacks and cash distributions and paid more than \$77 billion in dividends between 2010 and 2021, amounts that significantly exceed the \$138 billion spent on their infrastructure during that period.

We do not expect the NTSB to respond to the factors and concerns raised above unless the Board's independent investigation determines it appropriate to address such factors and concerns, but we appreciate the opportunity to raise these matters to the Board. We ask that the NTSB respond to let us know if the Board believes it has the budget and resources necessary to carry out rail investigations and identify trending factors and causes that may contribute to future derailments involving hazardous materials. We will also be pressing the U.S. Department of Transportation to conduct new analysis and act to improve railroad safety practices and prevent derailments of trains carrying hazardous materials.

The work of the NTSB in this matter is critical. Thank for your prompt attention to concerns of the East Palestine, Darlington Township, and the concerns of every community in the nation that has railroad service.

Sincerely,



Sherrod Brown
United States Senator



JD Vance
United States Senator



Robert P. Casey, Jr.
United States Senator



John Fetterman
United States Senator

cc:

The Honorable Pete Buttigieg, USDOT
The Honorable Amit Bose, Federal Railroad Administration
Deputy Administrator Tristan Brown, PHMSA