

Congress of the United States

Washington, DC 20510

March 1, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Regan:

We have been closely monitoring the Norfolk Southern train derailment and subsequent cleanup. We write out of serious concern with the decision to transport contaminated materials from East Palestine, Ohio, to a disposal facility in Roachdale, Indiana.

On February 3, 2023, an eastbound Norfolk Southern freight train derailed in East Palestine, Ohio. According to the National Transportation Safety Board (NTSB), the derailment included a total of 38 cars, 11 of which were carrying hazardous materials.¹

On February 21, using authorities granted under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA), the U.S. Environmental Protection Agency (EPA) issued a unilateral administrative order directing Norfolk Southern to “conduct all necessary actions associated with the [East Palestine] cleanup.” As part of the order, EPA required Norfolk Southern to “[i]dentify and clean up contaminated soil and water resources.” The order also created a “unified command structure” to coordinate the efforts of Norfolk Southern, federal agencies, and state agencies.²

As part of its mandated cleanup, Norfolk Southern began to remove contaminated soil and water from East Palestine. On February 23, Norfolk Southern shared with the Ohio Environmental Protection Agency a list of disposal facilities it had contracted with for disposal. According to local reporting, this list included facilities in Belleville, Michigan; East Liverpool, Ohio; Romulus, Michigan; Deer Park, Texas; and Vickery, Ohio.³

On February 24, only three days after directing Norfolk Southern to lead the East Palestine cleanup, EPA ordered Norfolk Southern to pause its cleanup. During a joint media briefing, EPA Regional Administrator Debra Shore claimed that this pause was initiated “to identify sites that

¹ Press Release, National Transportation Safety Board, NTSB Issues Investigative Update on Ohio Train Derailment (Feb. 14, 2023), <https://www.nts.gov/news/press-releases/Pages/NR20230214.aspx>.

² Press Release, Environmental Protection Agency, EPA Orders Norfolk Southern to Conduct All Cleanup Actions Associated with the East Palestine Train Derailment (Feb. 21, 2023), <https://www.epa.gov/newsreleases/epa-orders-norfolk-southern-conduct-all-cleanup-actions-associated-east-palestine>.

³ Bennett Haerberle, *Hazardous waste removal continues from East Palestine train derailment*, WBNS-TV (Feb. 27, 2023), <https://www.10tv.com/article/news/investigations/10-investigates/hazardous-waste-removal-continues-from-east-palestine/530-c9279169-248a-42dc-8abe-d60f237c12af>.

are CERCLA-approved and can accept [the contaminated soil and water]” and to evaluate whether the contaminated soil and water should be transported over long distances.⁴

Other official statements from EPA, however, suggest that the agency deemed the facilities originally chosen by Norfolk Southern to be well-equipped to process contaminated materials. During the February 24 joint media briefing, Regional Administrator Shore clarified that the facilities were “up to the standards” for disposal. In a statement to local media, Norfolk Southern also clarified that the facilities it chose “regularly accept this type of material and were chosen due to their specific ability and necessary permitting to dispose of these types of waste.”⁵

We are concerned that, rather than a matter of safety, the decision to halt the Norfolk Southern cleanup was made in response to objections from elected officials in Michigan.

Earlier on February 24, before EPA halted the Norfolk Southern cleanup, the Michigan Department of Environment, Great Lakes, and Energy learned that licensed hazardous waste facilities in Michigan were receiving shipments of contaminated soil and water.⁶ Later that same day, Wayne County Executive Warren Evans held a joint press conference on the matter with two members of the Michigan Congressional delegation.

Less than 30 minutes after the press conference ended, EPA halted the Norfolk Southern cleanup and the delivery of contaminated soil and water to licensed hazardous waste facilities in Michigan. The Members of Congress in attendance at Wayne County Executive Evans’s press conference were directly notified.⁷ Following the halt of Norfolk Southern’s cleanup, five truckloads of contaminated soil were returned to East Palestine.⁸

On February 26, EPA announced that it “identified [two] EPA-certified facilities” to accept contaminated materials from East Palestine. Both facilities approved by EPA—the facilities in Vickery and East Liverpool, Ohio—were in use by Norfolk Southern before EPA halted the cleanup. In addition to recertifying these facilities, EPA also confirmed during a joint media briefing that the other sites chosen by Norfolk Southern were “EPA-approved.”⁹ These

⁴ Joint Media Briefing on East Palestine Train Derailment Recovery Efforts (Feb. 25, 2023), https://www.youtube.com/watch?v=R5GaSn_uZEs.

⁵ *Ibid.*, See also Mike Valente, *U.S. EPA orders Norfolk Southern to pause waste removal from train derailment*, WTAE-TV (Feb. 26, 2023), <https://www.wtae.com/article/east-palestine-train-derailment-norfolk-southern-epa-pause-waste-removal/43077333>.

⁶ Mark Hicks, *Officials: Ohio train wreck waste headed to Wayne County halted*, The Detroit News (Feb. 25, 2023), <https://www.detroitnews.com/story/news/local/wayne-county/2023/02/25/officials-ohio-train-wreck-waste-headed-to-wayne-county-halted/69942874007/>.

⁷ James David Dickson, *Train company in line for \$15M subsidy sent contaminated soil to Wayne County*, Michigan Capital Confidential (Feb. 24, 2023), <https://www.michigancapitolconfidential.com/news/train-company-in-line-for-15m-subsidy-sent-contaminated-soil-to-wayne-county>.

⁸ Associated Press, *EPA orders ‘pause’ of derailment contaminated waste removal* (Feb. 25, 2023), <https://apnews.com/article/politics-climate-and-environment-us-environmental-protection-agency-ohio-pennsylvania-ef698f4bbbcea1e2b7d7e2bad66bbd4e>.

⁹ Joint Media Briefing on East Palestine Train Derailment Recovery Efforts (Feb. 26, 2023), <https://www.youtube.com/watch?v=bkuYzbTlSjM&t=235s>.

announcements deepen our concern about the nature of EPA's decision to halt the Norfolk Southern cleanup.

On February 27, EPA announced that two more facilities—one in Grafton, Ohio, and another in Roachdale, Indiana—would begin to receive contaminated materials from East Palestine. During this announcement, EPA also explained that it “had promised to notify elected officials and our state agency partners before approving the shipment of any waste from the derailment to their state or district.”¹⁰

This does not appear to have been the case in Indiana. In fact, in his statement on February 28, Governor of Indiana Eric Holcomb explained that he learned about the decision to transport contaminated materials to Roachdale “third-hand.” Governor Holcomb also noted his continued objection to the decision and concerns with the “lack of communication” between EPA and Indiana elected officials.¹¹

We have a high degree of confidence in the Hoosiers operating the facility in Roachdale, Indiana, who are used to and well-practiced in handling these types of contaminated materials.

However, we have heard from Hoosiers who share our concerns about how EPA, the U.S. Department of Transportation, and Norfolk Southern have handled the cleanup following the East Palestine derailment. Specifically, our constituents have requested increased oversight because they share our concerns about the decision to transport contaminated materials to the Roachdale, Indiana, facility.

Please provide written responses to the following questions within one week:

1. Did EPA perform oversight of the initial Norfolk Southern cleanup, as governed by the unilateral administrative order?
 - a. If so, how does this oversight regime compare to the oversight performed after EPA halted and exerted control over the cleanup?
 - b. If not, why not? Was EPA limited by any statute or rulemaking from performing oversight?
2. Exactly when did EPA decide to halt the Norfolk Southern cleanup?
3. When EPA halted the Norfolk Southern cleanup, contaminated materials that were *en route* to a disposal facility were returned to East Palestine.
 - a. What specific criteria were used to make this decision?
 - b. Was the public exposed to unnecessary risk because materials were returned to East Palestine?
4. In its official statements on February 25 and 26, EPA explained that each of the sites chosen by Norfolk Southern were “up to the standards” and “EPA-approved” to dispose contaminated materials. If that is the case:

¹⁰ Joint Media Briefing on East Palestine Train Derailment Recovery Efforts (Feb. 27, 2023), <https://www.youtube.com/watch?v=C4ebirh-ItY>.

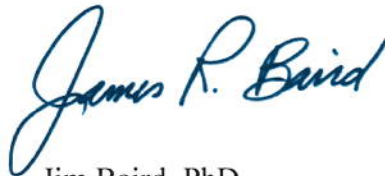
¹¹ Governor Eric Holcomb (@GovHolcomb), Twitter (Feb. 28, 2023, 11:33 AM), <https://twitter.com/GovHolcomb/status/1630607017512427526>.

- a. Why did EPA halt the Norfolk Southern cleanup?
 - b. Why did EPA recertify the Vickery, Ohio, and East Liverpool, Ohio, facilities, but not the Belleville, Michigan; Romulus, Michigan; or Deer Park, Texas facilities?
5. In its official statements on February 25, EPA explained that it was concerned about the total distance that contaminated materials would travel between East Palestine and disposal facilities. However, both facilities chosen by Norfolk Southern in its initial cleanup are significantly closer to East Palestine than Roachdale, Indiana, facility. If EPA was prioritizing total distance traveled, why was the Roachdale facility chosen instead of closer facilities?
6. The Roachdale facility was the first facility outside of Ohio to receive contaminated materials after EPA exerted control over the cleanup.
 - a. What specific criteria were used to make this decision?
 - b. Exactly when was Governor of Indiana Eric Holcomb notified by EPA?
 - c. Exactly when was the Indiana Department of Environmental Management notified by EPA?
7. As of February 28, EPA has not announced whether the contaminated materials that were diverted from Michigan to East Palestine had been transported to another facility. Will any of these diverted materials be transported to the Roachdale facility?
8. The aftermath of the Norfolk Southern derailment has tested the faith and trust our constituents place in EPA. Constituents in Putnam County are concerned about being exposed to unnecessary risk from exposure to contaminated materials if materials have to be turned away or are forced to wait outside the facility while materials are tested for compliance.
 - a. What on-site testing procedures are in place in East Palestine to test contaminated materials for the types and levels of contamination before they are transported to a facility for disposal?
 - b. Is EPA working to preemptively test and determine that facilities are certified to process the contaminants they are being asked to process?

Sincerely,



Mike Braun
U.S. Senator



Jim Baird, PhD
Member of Congress