



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 17, 2023

VIA EMAIL

Alan Shaw
Chief Executive Officer
Norfolk Southern Railway Company
650 West Peachtree Street NW
Atlanta, Georgia 30308

Re: East Palestine Train Derailment Site
Norfolk Southern Rail Line, East Palestine, Columbiana County, Ohio
Site/Spill Identifier (SSID): C5XR
Unilateral Administrative Order
Waste Disposal

Dear Mr. Shaw:

On February 21, 2023, the U.S. Environmental Protection Agency issued a Unilateral Administrative Order for Removal Actions (“UAO”) to Norfolk Southern Railway Company (“Norfolk Southern”) directing the company to conduct all necessary actions to clean up the East Palestine Train Derailment Site (“Site”) in response to the Norfolk Southern train derailment in East Palestine, Ohio. The UAO became effective on February 27, 2023.

Pursuant to Paragraph 36 of the UAO, Norfolk Southern is required to “*perform all actions necessary to . . . [r]emove, secure, stage, consolidate, package, transport, and dispose of identified hazardous substances, pollutants, and contaminants at EPA-approved disposal facilities in accordance with the EPA’s Off-Site Rule 40 C.F.R. § 300.440.*” (emphasis added).

Under the UAO and EPA-approved work plans, Norfolk Southern must dispose of contaminated wastes from the Site properly. EPA expects Norfolk Southern to consider all options to comply with disposal requirements set forth in the UAO and EPA-approved work plans to secure disposal of wastes from the Site. This includes seeking performance of contracts that Norfolk Southern has or will enter into with disposal facilities to accept wastes from the Site and payment of increased contract costs associated with waste shipment and disposal from the Site.

EPA is aware that some states may have sought to block acceptance of out-of-state wastes from Norfolk Southern, but that does not relieve Norfolk Southern of its obligations under the UAO. States cannot unilaterally stop shipments of out-of-state hazardous waste material. Under the Supremacy Clause, state actions are preempted when they “stand[] as an obstacle to the accomplishment and execution of the full

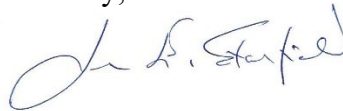
purposes and objectives of Congress.” *Arizona v. United States*, 567 U.S. 387, 399 (2012). Such actions may be impeding Norfolk Southern’s ability to comply with its obligations under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, and may also be contravening the objectives of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, which gives EPA authority over the generation, transportation, treatment, storage, and disposal of hazardous waste.

Moreover, any interference with the movement of hazardous material from the derailment site into or through another state raises significant concerns under the Commerce Clause. U.S. CONST. art. I, § 8, cl. 3. The Supreme Court’s precedents are clear: the Commerce Clause forbids states from discriminating against or outright prohibiting the disposal of out-of-state wastes and thereby “isolat[ing] itself from a problem common to many by erecting a barrier against the movement of interstate trade.” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 628 (1978) (striking down a law that barred New Jersey landfills from receiving out-of-state waste).

In sum, EPA expects Norfolk Southern to find appropriate disposal facilities, including, as necessary, taking legal action to enforce contracts and/or to obtain access to EPA-approved disposal facilities. Failure to make efforts to promptly arrange for disposal at an EPA-approved disposal facility may subject Norfolk Southern to civil penalties and damages and may result in the referral of an action to the U.S. Department of Justice seeking judicial enforcement of the terms of the UAO.

Please address any questions you have about this letter or your obligations under the UAO and EPA-approved work plans to Robert Kaplan, EPA Region 5 Regional Counsel, at kaplan.robert@epa.gov. Thank you for your prompt attention to these matters.

Sincerely,



Lawrence E. Starfield
Acting Assistant Administrator

cc: Nabanita Nag, Chief Legal Officer, Norfolk Southern
Matthew Gernard, Deputy General Counsel, Norfolk Southern
Debra Shore, Regional Administrator, EPA Region 5
Barry Breen, Acting Assistant Administrator, EPA Office of Land and Emergency Management
Robert Kaplan, Regional Counsel, EPA Region 5
Doug Ballotti, Superfund and Emergency Management Division Director, EPA Region 5