

Executive Order 14108—Ensuring the People of East Palestine Are Protected Now and in the Future

September 20, 2023

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. On the evening of February 3, 2023, a Norfolk Southern Railway Company (Norfolk Southern) train carrying hazardous materials derailed in the Village of East Palestine, located in Columbiana County in the State of Ohio. At least 11 rail cars contained hazardous materials, including vinyl chloride, ethylene glycol monobutyl ether, ethyl-hexyl acrylate, butyl acrylates, benzene residue, and isobutylene. Some cars caught fire, and some spilled their loads onto the ground. These substances traveled into local waterways, including Sulphur Run and Leslie Run, and flowed miles downstream. The Village's fire department and several other fire departments responded. On the evening of February 5, 2023, responders observed a dramatic temperature increase in a derailed tanker rail car. Norfolk Southern expressed serious concern that the temperature change could lead to a catastrophic tanker rail car failure, which could cause an explosion with the potential of deadly shrapnel traveling up to 1 mile. The incident commander on the scene determined that the safest course of action was to conduct a controlled release of the chemicals.

It is critical that Norfolk Southern continue to be held fully accountable under the law for this disaster, and continue to provide resources to address the effects in East Palestine and surrounding communities.

My Administration has mobilized a robust, multi-agency effort to support the people of East Palestine, Ohio, and surrounding communities. Within hours of the Norfolk Southern train derailment, the Environmental Protection Agency (EPA) deployed a team to East Palestine to support State and local emergency and environmental response efforts. On February 21, 2023, EPA issued a Unilateral Administrative Order (UAO) for Removal Actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9606(a). Pursuant to the UAO, EPA is directing and supervising the cleanup to protect the health, safety, and future of the East Palestine community and other affected communities. Norfolk Southern and its contractors are performing the cleanup under the UAO. Since February 21, 2023, working closely with Federal, State, and local partners, EPA has led and continues to lead cleanup efforts, air quality monitoring, soil sampling, and water sampling to ensure the protection of human health and the environment, keep residents of East Palestine and nearby areas of Ohio and Pennsylvania updated on these and other ongoing efforts, and, importantly, hold Norfolk Southern fully accountable under CERCLA for the cleanup operation. More than 115,000 tons of contaminated soil and more than 33 million gallons of contaminated liquid have been shipped offsite for disposal. The EPA has built and manages an extensive air monitoring and sampling network that uses several different technologies and approaches to provide separate and redundant sources of data on air quality at the derailment site and throughout the area. In addition to monitoring, EPA's network continues to conduct analytical air sampling at many locations in the affected areas. Together, these efforts are designed to ensure that contamination from the site does not enter nearby communities. To date, EPA has collected more than 18,000 air samples and more than 3,000 soil samples. The EPA's State and local partners have collected more than 425 monitoring-well samples and more than 3,200 surface water samples, and have conducted 31 rounds of drinking water sampling. Available data show that no contaminants of concern have been detected at levels of concern in the air in the affected

communities at sustained levels since the evacuation order was lifted. Almost no contaminants of concern have been detected at levels of concern in water in surface streams since early May of 2023. Treated municipal drinking water shows no detection of contaminants associated with the derailment. To date, sampling indicates that residential groundwater wells have not been affected by chemicals associated with the derailment.

The Department of Transportation (DOT) has been coordinating with and supporting the National Transportation Safety Board (NTSB) to investigate the derailment. Officials from two DOT agencies, the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), also arrived on the scene within hours of the incident to investigate the causes of the derailment. The FRA is also assessing Norfolk Southern's compliance with rail safety regulations and scrutinizing Norfolk Southern's overall safety culture. The Federal Emergency Management Agency (FEMA) provided incident management and outreach support on the ground in East Palestine and has been closely coordinating with the Ohio Emergency Management Agency in furtherance of the multi-agency response and recovery effort. The Department of Health and Human Services (HHS), including through the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry, have also responded, including by deploying a team to conduct public health testing and assessments in the affected areas. The team has supported Federal, State, and local officials already on the ground to evaluate individuals who were exposed or potentially exposed to chemicals and help ensure timely communications to the public.

My Administration is committed to supporting the people of East Palestine and all those affected in surrounding areas of Ohio and Pennsylvania every step of the way, and continuing to hold Norfolk Southern fully accountable under the law.

Sec. 2. Policy. It is a continuing priority of my Administration to hold Norfolk Southern fully accountable under the law for this disaster and any of its long-term effects and to provide additional Federal assistance that the affected States, the people of East Palestine, and all those affected in surrounding communities may need.

Sec. 3. Federal Implementation. (a) The Department of Homeland Security, EPA, DOT, FEMA, FRA, PHMSA, and HHS are directed to use their authorities and available resources as appropriate to advance the policy established in section 2 of this order.

(b) Within 5 days of the date of this order, pursuant to section 503(b) of the Homeland Security Act of 2002, as amended (6 U.S.C. 313(b)), the Secretary of Homeland Security, through the Administrator of FEMA, shall designate a Federal Disaster Recovery Coordinator (Coordinator) to oversee long-term recovery efforts in the affected communities and conduct a comprehensive assessment of unmet needs of the affected communities in recovering from the derailment beyond the cleanup work directed by EPA. The Coordinator shall identify, in partnership with the State and East Palestine community, any unmet needs that are not addressed by Norfolk Southern and would qualify for Federal assistance, and shall immediately notify the relevant executive department or agency. The Coordinator shall repeat this assessment should Norfolk Southern stop meeting needs that it is currently addressing.

(c) The State of Ohio's request for a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.* (Stafford Act), shall be held in abeyance to allow the State time to submit information on needs that may arise in the future and cannot be addressed by Norfolk Southern, State, and local governments and therefore require Federal assistance under the Stafford Act. If the Administrator of FEMA receives such information from the State, including with respect to a change in the nature of assistance provided by Norfolk Southern, the Administrator shall immediately assess and submit a recommendation on whether a major disaster declaration is warranted.

(d) The EPA shall continue to direct removal of contaminated soils and wastewater from the site. The EPA shall also ensure that any remaining contamination in surface stream sediments is addressed and that air and water monitoring continue. Within 30 days of the date of this order, EPA shall submit a report to the President on the cleanup efforts and whether Norfolk Southern continues to comply with EPA's UAO to address the imminent and substantial endangerment its derailment caused. The report shall also explain the status of air, soil, surface water, groundwater, and drinking water sampling and monitoring. The EPA shall submit an updated report to the President every 60 days thereafter until all cleanup, assessment, and monitoring work required by EPA's UAO has been completed.

(e) Within 60 days of the date of this order, HHS shall submit a report to the President that summarizes key conclusions from the public health testing and assessments that have been conducted to date and the resources HHS and the CDC have provided to address any health conditions related to the derailment.

(f) In coordination with the affected States, HHS shall continue to monitor the public health consequences of the derailment, including any long-term health issues in the affected communities. Based on that monitoring, and based on the development of any acute medical conditions related to the derailment, the Secretary of Health and Human Services shall consider whether the circumstances warrant a declaration of a public health emergency under 42 U.S.C. 247d and, if the Secretary makes such a declaration, the Secretary shall exercise all appropriate authorities made available by such a declaration. The Administrator of EPA shall also consider, in consultation with HHS, whether the circumstances constitute a public health emergency under 42 U.S.C. 9604(a).

(g) The HHS shall provide technical assistance to the States of Ohio and Pennsylvania in the event that either State considers submitting a proposal for services through the Medicaid program for individuals affected by the derailment, such as an experimental, pilot, or demonstration project under 42 U.S.C. 1315.

(h) Within 60 days of the date of this order, DOT shall submit a report to the President on the actions that DOT is taking in light of the East Palestine train derailment. This report shall be updated within 120 days of the final NTSB investigation; the updated report shall include DOT's preliminary set of follow-on actions, which could include rulemakings, inspection activities, or other actions to ensure accountability. Should the Congress provide DOT with broader authorities than now exist, such new authorities shall be identified and timelines established for action.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

The White House,

September 20, 2023.

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NOTE: This Executive order was published in the *Federal Register* on September 26.

Categories: Executive Orders : East Palestine, OH, protection efforts following train derailment and chemical spill.

Subjects: Air pollution, public health impact; Department of Transportation investigation of East Palestine, OH, train derailment and chemical spill; Environmental Protection Agency; Federal Emergency Management Agency (FEMA); Norfolk Southern; Ohio, train derailment and chemical spill in East Palestine; Secretary of Homeland Security; Waterway pollution, mitigation efforts.

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