



July 31, 2024

VIA ELECTRONIC MAIL (pubcomment-ees.enrd@usdoj.gov)

United States Department of Justice
Assistant Attorney General – Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Re: DOJ Notice of Lodging of Proposed Consent Decree in *The State of Ohio and The United States of America v. Norfolk Southern Railway Company, et al.*, Case No. 4:23-cv-00517

To whom it may concern:

Pursuant to the U.S. Department of Justice’s (DOJ) notice of lodging of a proposed consent decree in *The State of Ohio and The United States of America v. Norfolk Southern Railway Company, et al.*, Case No. 4:23-cv-00517, the Village of East Palestine hereby provides the DOJ with written comments.

Serving as the unfortunate ground zero for Norfolk Southern’s 2023 derailment and subsequent vent and burn, the Village of East Palestine has been immensely affected by the disaster and continues to be affected each and every day. Since the disaster, the Village has been a steady advocate for its community and residents. With this goal in mind, the Village appreciates the opportunity to comment on the proposed consent decree (the “Proposed Decree”) in the DOJ’s enforcement case against Norfolk Southern Railway Company and Norfolk Southern Corporation (collectively, “Norfolk Southern”).

First, while the Village is encouraged that the Proposed Decree provides for the creation of a Community Health Program (the “Program”), the allocation currently proposed for the Program is woefully insufficient. The Proposed Decree allocates \$25M for the Program in its entirety, with \$14M of that fund going towards the Medical Monitoring and \$5.5M going towards Mental Health Services, both to be used over the first fifteen years of the Program.¹ However, based on figures from the East Liverpool City Hospital (“ELCH”), if every Qualified Individual under the Proposed

¹ Consent Decree between Plaintiff United States of America and Defendants at ¶ 48, *The State of Ohio and The United States of America v. Norfolk Southern Railway Company, et al.*, No. 23-00517 (N.D. Ohio March 13, 2023) [hereinafter “Proposed Decree”].

Decree utilizes the medical monitoring and mental health services covered in the Proposed Decree, the cost will exceed \$5M *every year*.² This means the \$19.5M allocated for medical monitoring and mental health services may only sustain the Program for a portion of the fifteen years it is supposed to cover.

Second, the current allocation for the Program is made further deficient by the fact that the Proposed Decree does not provide for certain testing essential to detecting latent symptoms.³ Specifically, the Proposed Decree does not provide for a combined blood-count (“CBC”) test or a urinalysis. To date, every medical facility that has been involved in medical monitoring associated with the Norfolk Southern derailment has included these tests in their medical monitoring exams. These tests are essential to the medical monitoring needed here because they are particularly informative when it comes to kidney function. Toxins and chemicals are filtered through the kidneys,⁴ so this would be an essential part of the puzzle in discovering latent symptoms and diseases caused by the derailment.

Third, the Proposed Decree does not provide for medical treatment of any kind.⁵ Given the considerable unknowns regarding how the released toxins will affect Village residents and first responders, the Village strongly opposes any consent decree that does not provide for treatment. Without designated funding for medical treatments for conditions caused by the derailment, Qualified Individuals will have to rely on their own insurance, workers’ compensation, or pay out-of-pocket for these procedures. This will result in Village community members and businesses shouldering derailment-related medical costs through increased taxes, prices of goods, operating costs for businesses, and co-pays and deductibles for residents – or worse, foregoing necessary medical treatment due to financial hardship. Further, the Proposed Decree does not specify how medical treatments for Village employees will be paid, allowing for the possibility that the Village takes on these costs through workers’ compensation coverage. The Proposed Decree should include mechanisms that ensure these costs fall squarely on the actor responsible for the disaster: Norfolk Southern.

Fourth, the Village objects to the Proposed Decree because it does not provide for any system of centralized data management and sharing between medical facilities that are conducting medical monitoring.⁶ Medical monitoring is only a useful tool when it is coupled with effective data collection and analysis. Without these components, it will be impossible to detect larger health patterns and chronic conditions, such as cancer clusters, in the future. As such, the Village requests that the Proposed Decree be revised to clearly define a “lead” organization, who is responsible for administering the Program, coordinating with other medical facilities, and managing the associated data (or delegating such responsibilities to another responsible party). The Village strongly

² This estimate does not include the costs of specialty services, advanced diagnostics, and treatment of any long-term health effects of the train derailment.

³ Proposed Decree at ¶ 50(a).

⁴ Chemscape, *Workplace Chemical Hazards & Occupational Renal Disease*,

<https://www.chemscape.com/resources/chemical-management/health-effects/kidney-damage#:~:text=How%20Is%20the%20Kidney%20Affected,Renal%20Disease%20in%20the%20Workplace?> (last visited July 25, 2024).

⁵ See generally Proposed Decree at pp. 30, Sec. XI: Community Health Program.

⁶ See *id.*

believes the medical monitoring plan will only be effective with more definitive organizational and data management structures.

Fifth, and finally, the Proposed Decree requires groundwater monitoring for a period of 10 years, and further allocates \$15M in funds to the Private Drinking Water Well Monitoring Fund to be used for ten years to monitor private water wells and fund contingency actions needed because of exceedances of specified screening levels at those wells.⁷ The Proposed Decree does not clearly address or provide for steps to be taken by Norfolk Southern in the event groundwater contamination is found, other than to vaguely require Norfolk Southern to conduct an environmental benefit analysis and coordinate further with U.S. EPA.⁸ The Groundwater Characterization Work Plan and Sentinel Monitoring Well Installation and Groundwater Sampling Work Plan (“the Plans”) do not include these details either. The Village of East Palestine requests that the Proposed Decree be revised to clearly require, and address how, Norfolk Southern will be held accountable for addressing any groundwater contamination that is later revealed, particularly any such contamination that may reach the wells of a public water system such as that of the Village.⁹

The Village of East Palestine would like to thank the U.S. DOJ for the opportunity to comment on the Proposed Decree filed in Case No. 4:23-cv-00517. As a party uniquely affected by the derailment and its aftermath, and as a local community that may very well be asked to serve on a coordination committee as contemplated by the Proposed Decree, the Village submits these comments in furtherance of the most just resolution for the East Palestine community and those that surround it. We look forward to working with the DOJ as our comments are considered.

Sincerely,



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⁷ *Id.* at ¶ 47.

⁸ *Id.* at ¶ 44.

⁹ *Id.*

