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AND FORESTRY
BANKING, HOUSING,
AND URBAN AFFAIRS
FINANCE
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510 - 3505

September 20, 2023

Mr. Alan Shaw
President and CEO
Norfolk Southern Corporation
650 W. Peachtree Street NW
Atlanta, GA 30308

Mr. Shaw:

It has been 229 days since your train derailed and uprooted the lives of the residents of East Palestine and the surrounding area. I am writing today to outline my continued concerns about Norfolk Southern's response to the derailment, and to demand that you uphold the promises made to the community.

As you know well, on the night of February 3rd multiple Norfolk Southern train cars flew off the tracks in East Palestine, including 11 hazardous materials tank cars containing vinyl chloride, butyl acrylate, 2-ethylhexyl acrylate, and ethylene glycol monobutyl ether. In the days after the incident, a decision was made to vent and burn five tank cars containing vinyl chloride at the direction of your company's representatives. This vent and burn released additional dangerous chemicals into the air, water, and soil of East Palestine and surrounding communities. The long-term environmental and public health impacts of this man-made disaster on residents, including impacts on their mental health, are still not known and require ongoing monitoring for years to come.

- 1. Continue environmental monitoring and clean-up activities and provide full compensation for all related environmental and public health impacts that arise, now or in the future.**

Nothing is more valuable than our health, and that is why I expect Norfolk Southern to continue environmental monitoring and clean-up activities for the foreseeable future. Conducting daily air quality testing, periodic soil and water sampling, and monitoring for potential groundwater contamination is necessary for preventing any adverse health effects and reassuring residents that their homes and community are safe. This work, combined with the removal of contaminated soil and water, is the best way to ensure the health of this community going forward. Should long-term testing identify further contamination, including but not limited to, contamination of the ground water that the area's residents and businesses rely upon, I expect Norfolk Southern to

provide full compensation for all related environmental and public health impacts on residents that arise, now or in the future.

2. Commit to paying for all economic damages to families and businesses.

In addition to environmental contamination and public health impacts caused by the derailment, the disaster has imposed a financial toll on everyone in the community. Norfolk Southern remains responsible for repairing the damage you caused to this community – both now and in the long-term.

Despite many promises to help repair and improve the community by contributing to East Palestine's economic development, Norfolk Southern's commitments to date do not address all of the harm caused. Norfolk Southern has not offered housing-related compensation to residents who stay in their homes and offered assistance only to those who sell their houses and sign away their legal rights, depriving anyone who takes the assistance from the potential benefits of future housing-related settlements. I am also concerned by reports that families have not been fully reimbursed for relocation costs and are not receiving assistance with rent payments for homes they no longer live in. Norfolk Southern's failure to fully address the housing burden it has imposed on both homeowners and renters undermines good faith efforts to rebuild trust and could allow Norfolk Southern to escape full responsibility for the damages your company caused.

Norfolk Southern must pay for all remaining expenses and economic losses related to the derailment, and release residents from any waiver of their legal rights which your company demanded for initial compensation.

3. Fulfill Norfolk Southern's responsibilities under the settlement with the Occupational Safety and Health Administration (OSHA) concerning workers at the derailment site.

The workers cleaning up this mess are relying on you to protect their safety while working in and around the derailment site. Your recent settlement with OSHA is the first step toward building the trust between workers and Norfolk Southern. Everyone who is working or has worked on the cleanup must be provided with proper training for handling the material at the derailment site medical screenings to monitor for any resulting health impacts.

4. Acknowledge the failed safety culture at Norfolk Southern that precipitated the derailment in East Palestine and show real progress in prioritizing safety.

It is your responsibility to ensure that similar derailments never happen again. The National Transportation Safety Board's (NTSB) investigative hearing has shown that Norfolk Southern's company's deficient safety culture, understaffing, and inadequate defect detector network failed the East Palestine community. The NTSB and Senate Committee on Commerce, Science, and Transportation's hearings showed that employees were pressured to conduct each side of a railcar inspection in 30 seconds or less. The NTSB hearing revealed that on the night of the derailment in East Palestine, only one Norfolk Southern employee at headquarters was responsible for

monitoring wayside detector alerts for every train in your network, and the single employee missed the alert from a hotbox detector, which signaled a wheel bearing was on fire before the train reached East Palestine. Therefore, the train crew had no warning the train was at risk of derailment.

Additionally, Norfolk Southern failed to lower the temperature alert threshold for hot bearing detectors from 200 degrees down to 170 degrees, the industry standard, until another Norfolk Southern train derailed due to hot bearing on May 10, 2023, in New Castle, PA, less than 20 miles from East Palestine. Other decisions under your leadership, like the extended delay in Norfolk Southern joining the Federal Railroad Administration's Confidential Close Call Reporting System, also indicate that safety has not been made a priority.

Norfolk Southern hired an outside firm, Atkins Nuclear Secured, to conduct an independent review of the company's safety culture, and the results of that review were shared this month. The consultants identified 11 "more significant" areas that need action, and they identified seven "additional opportunities for improvement." Many of the "more significant areas" for improvement are longstanding and well documented problems that have been long ignored, such as resolving staffing shortages.

The large number of safety culture deficiencies identified by the consultants show the depth of the problem. Until you demonstrate real and continued improvements to improving the company's safety culture and stop putting profits ahead of the safety of communities along your tracks, Norfolk Southern is not fulfilling its responsibility to prioritize safety.

5. Cease Norfolk Southern's financial support for the freight rail industry's lobbying against the Railway Safety Act.

The Railway Safety Act would update federal rules to ensure that Norfolk Southern and the other large railroads are operating safely. My legislation with Senators Vance, Casey, and Fetterman would help prevent derailments and make our rail network safer in every community where freight trains travel.

The Class I freight railroads, through their lobbyists, are opposing efforts to require better defect detector networks, fighting rules to ensure proper rail car inspections, and resisting commonsense updates to rules for trains carrying vinyl chloride and other flammable cargo. Vinyl chloride and other flammable gases are not covered by existing regulations for high-hazard flammable trains, and further delay in updating these safety rules puts more communities at risk.

Commitments to safety and pledges to improve your safety culture ring hollow when Norfolk Southern continues to pay industry lobbyists to block safety reforms like those in the Railway Safety Act. Using hired guns to dodge modest efforts at accountability shows a continuing commitment to putting profits over safety. That must change.

6. Cease your opposition to the safe operation of trains with 2-person crews and call on the freight rail industry to end the lawsuit against the State of Ohio.

You have repeatedly argued in hearings and interviews that operating a train with a single crew member is safe, but that's not common sense. Modern trains, like commercial aircraft, are safer when operated by two crew members, particularly as trains in the U.S. have become much longer – often more than two miles in length. In East Palestine, the presence of an engineer and a conductor, as well as a trainee, enabled the crew to alert your company headquarters of the derailment and separate the locomotive from the burning rail cars without delay, ensuring your employees could move to safety and prevent further tragedy.

Following the East Palestine derailment, Norfolk Southern and other railroads briefly paused plans to test removing conductors from trains, but testing efforts have resumed.

Adding insult to injury, the Association of American Railroads (AAR), is suing the State of Ohio to overturn Ohio law requiring two crew members on a train. Ohio's law is reasonable, measured response to the East Palestine tragedy. It is an effort to increase safety and ensure a prompt response following accidents or derailments. Until Norfolk Southern and your lobbyists support the reasonable requirement to have two crew members on a freight train and cease industry efforts to remove crew members from trains, your company's commitment to safety will remain insufficient and hollow. This commitment should start by calling on the AAR to cease its lawsuit against Ohio's commonsense law and withdrawing Norfolk Southern's support for the lawsuit.

Empty promises to East Palestine are not enough. It's time for action.

Please provide me with a comprehensive overview of both your completed and planned actions to assist the village of East Palestine as it works to recover from this derailment, and please provide a detailed response to the requests made above. Furthermore, I ask that you take the steps detailed above to show that your efforts to rebuild trust are in good faith, and not more misleading gestures for public relations. Such steps should include: releasing all residents from any waivers of their legal rights, complying with all OSHA requirements, committing to changing the safety culture by immediately entering the Confidential Close Call Reporting System, publicly demanding your industry's lobbyists stop trying to undermine and stop the Rail Safety Act, and withdrawing your support for the lawsuit against Ohio's commonsense law requiring two-man crews. We cannot allow what happened to East Palestine to ever be forgotten – or ever happen again.

Sincerely,



Sherrod Brown
United States Senator