

United States Senate

WASHINGTON, DC 20510

September 26, 2023

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

Dear Administrator Regan:

As you are aware, on the night of February 3, 2023, multiple Norfolk Southern train cars derailed in East Palestine, Ohio, less than one-quarter mile from the Ohio-Pennsylvania border. We write to inquire about section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, 42 U.S.C. 9601 et seq.) and to encourage you to examine the feasibility of making a determination under this authority, as directed by the Executive Order issued on September 20th, 2023¹. If applicable, such a determination could provide residents of East Palestine with much-needed, additional resources, including Medicare coverage, as they cope with the lingering impacts of this preventable, man-made crisis by Norfolk Southern.

According to the U.S. Environmental Protection Agency (EPA), twenty of Norfolk Southern's affected railcars contained hazardous materials, including vinyl chloride, butyl acrylate, 2-ethylhexyl acrylate, and ethylene glycol monobutyl ether. In the days after the incident, a decision was made by the Unified Command to vent and burn five tank cars containing vinyl chloride in order to avoid a potential explosion. 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 impact of this exposure on residents remains unknown and may not become apparent for years to come. Given this uncertainty, even after clean-up activities are completed, residents' concerns will remain about potential harms caused by exposure to the dangerous chemicals released as a result of the derailment.

Under CERCLA section 104(a), it is our understanding that the administration may make a determination of a public health emergency based on hazardous environmental exposures, which could provide for additional resources to the impacted communities such as allowing the U.S. Department of Health and Human Services to utilize its authority under section 1881A of the Social Security Act (42 U.S.C. §§ 301-1307) to provide individuals exposed to certain environmental health hazards or diagnosed with a health condition related to an environmental exposure access to Medicare coverage. This Medicare coverage would help ensure residents of East Palestine, Ohio, and the surrounding communities impacted by the derailment and resulting

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/20/fact-sheet-president-biden-issues-executive-order-to-protect-people-in-east-palestine-ohio-and-nearby-communities-and-continue-to-hold-norfolk-southern-accountable/>

chemical exposures have access to the long-term medical care that they deserve in the wake of this environmental disaster.

We understand that federal, state, and local monitoring and assessment activities currently report that the air, ground water, and drinking water in East Palestine and surrounding communities is safe. However, we cannot disregard the long-term potential for contaminants to migrate and impact surface, ground, or drinking water in the region, or preclude the emergence of serious medical conditions linked to the exposure of environmental contaminants from the derailment over the long-term. Therefore, we request the EPA explore the applicability of section 104(a) of CERCLA to make a determination whether the crisis caused by Norfolk Southern's derailment meets the criteria of a public health emergency under the law. If EPA has already examined its authorities under section 104(a) of CERCLA, we request detailed information on why a determination has not been issued.

No affected resident of East Palestine or its surrounding communities should have to worry about affording necessary health care, now or in the future. It is incumbent on us to explore using every tool available to the federal government in the service of that goal – including utilization of section 104(a) of CERCLA.

Thank you for your prompt attention to this critical matter.

Sincerely,



Sherrod Brown
United States Senator



JD Vance
United States Senator