



## **Fact Sheet**

### United States and Norfolk Southern Railroad Settlement Agreement for the East Palestine Train Derailment

- The Department of Justice (DOJ) is accepting public comments through August 2, 2024, on the proposed settlement of its lawsuit against Norfolk Southern. Comments can be submitted to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or by mail to: Assistant Attorney General, US DOJ – ENRD, PO Box 7611, Washington, DC 20044-7611.
- DOJ will read all comments it receives and consider whether changes to the settlement are needed. DOJ will tell the Court why it decides to make or not make changes based on the comments.
- You can read the full consent decree at: <https://www.justice.gov/enrd/consent-decrees>.
- Representatives from the US Department of Justice will be available at EPA’s Welcome Center in East Palestine on July 15 and 16 to answer questions about the proposed settlement. To make an appointment to discuss the settlement call (330) 775-6517 or email [R5\\_EastPalestine@epa.gov](mailto:R5_EastPalestine@epa.gov)

### **What Case is Being Settled?**

- Last year, the US Department of Justice filed a lawsuit on behalf of the Environmental Protection Agency (EPA) and the Department of the Interior against Norfolk Southern for spilling harmful chemicals and oil when its train derailed in East Palestine on February 3, 2023. The lawsuit alleged violations of two federal laws -- the Superfund law (also known as CERCLA) and the Clean Water Act.
  - The US case does not include claims for violations of federal rail safety laws, because at this time it does not appear that the Norfolk Southern’s operation of train 32 N broke rail safety rules in a way that contributed to the derailment (such as exceeding the speed limit, failing to do proper inspections, etc.).
  - The US case does not include claims specifically about the chemical vent & burn, because the facts did not support a Clean Air Act violation.
- The State of Ohio is not part of this settlement. Ohio is part of the same case, but it has its own claims, based on state laws. The State will negotiate its own settlement or go to trial and may be able to get different and additional relief from Norfolk Southern.
- The US case is separate from and unrelated to the class action lawsuit that Norfolk Southern recently settled. The US settlement does not affect the rights of residents, first responders, or businesses to file your own lawsuit for injuries or economic harm related to the derailment.

### **How Was it Decided What Would Be Included in the Settlement?**

- This settlement is only one tool being used to address the significant harm caused by Norfolk Southern’s train derailment. There are also other lawsuits (state and individual), government



programs (such as tax relief, health studies, and other potential assistance), and Norfolk Southern's own voluntary actions.

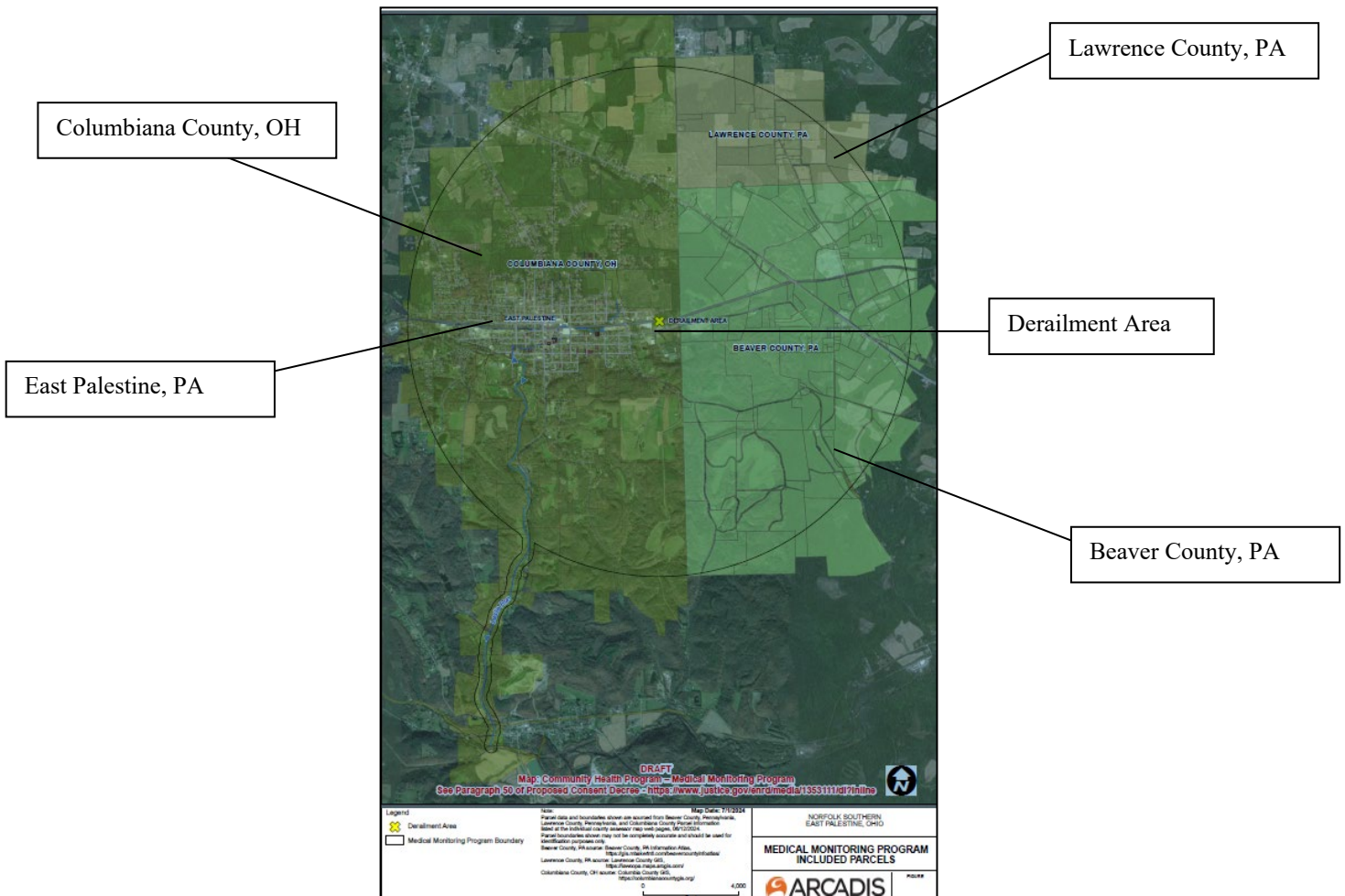
- This settlement is limited to the specific environmental claims in the US lawsuit. It addresses damage to the environment and to public health, but not individual injuries. It does not and cannot provide everything this community wants and deserves. Basically, this settlement is limited by what a Court could order for the two environmental claims brought by the US.

### **What is Included in the Settlement?**

- **Environmental Cleanup.** Last year, EPA ordered Norfolk Southern to clean up all harmful chemicals and oil spilled during the derailment. The Consent Decree requires Norfolk Southern to finish the cleanup (expected this fall) and pay back all money spent by EPA, so no taxpayer money is used on the cleanup. Norfolk Southern will likely end up paying over \$900 million for the total cleanup and government reimbursement.
- **Long-term Environmental Monitoring.** Norfolk Southern is sampling and monitoring groundwater and creek water under EPA supervision, as well as testing private drinking water wells. The settlement will continue these programs for another 10 years and require Norfolk Southern to take action if contamination is found.
- **Environmental Improvements.** In addition to the cleanup, Norfolk Southern will spend another \$6 million to improve and protect Sulphur Run and Leslie Run. Projects may include cleaning up older pollution from before the derailment, protecting the waterways from stormwater runoff, or restoring fish populations. Norfolk Southern will also pay to preserve nearby wetlands.
- **Community Health.** Norfolk Southern will pay \$25 million into a Community Health Fund to pay for medical monitoring and mental health services for up to 20 years.
  - **Medical Monitoring.** Qualified residents will receive at least 10 free annual medical monitoring exams over a 15-year period (and more exams during the last 5 years of the program depending on funds available). These exams will include: routine physical exams, comprehensive metabolic blood panels, pulmonary function tests, x-rays, and assessment of results.
    - People who lived within the area on the “Automatic Qualifier Map” (Map) below at any time from the derailment until the settlement was announced (Feb. 3, 2023 – May 23, 2024) are automatically eligible for Medical Monitoring. This covers people who live within 2-miles of the derailment site or along part of Leslie Run, as shown on the Map.
    - First responders on site in February 2023 are also automatically eligible for Medical Monitoring.
    - For everyone else, Medical Monitoring will be available on a case-by-case basis based on factors like the person's distance to the derailment site and any medical conditions potentially linked to the derailment event. Norfolk Southern will provide details on the application process later this year.



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- **Mental Health Services.** Residents and first responders can receive free counseling from certified mental health providers to discuss impacts from the derailment and chemical releases.
  - Mental health counseling will be available for anyone living in Columbiana County, Ohio, or Beaver or Lawrence County, Pennsylvania, and anyone who worked within 2 miles of the derailment site between Feb. 3, 2023, and May 23, 2024. First responders on site in February 2023 are also included.
- **Coordination Committee and Independent Advisor.** A committee of community members will be organized to give advice and help coordinate the Community Health Program. Norfolk Southern will also pay for an independent advisor to help the community understand the different health studies and assist residents in accessing the Community Health benefits.
- **Civil Penalty.** Norfolk Southern will pay a \$15 million penalty for violating the Clean Water Act. Penalties under the Clean Water Act are set by the number of days that pollutants spilled into Sulfur



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Run and the amount of oil released from the train. The US also brought Superfund claims, but that law is cleanup focused and does not allow the US to get penalties for this type of event.

- **Railroad Safety Improvements.** Norfolk Southern will be required to change how it operates to improve rail safety and reduce the chance of future derailments. Many of these improvements were recently recommended by the National Transportation Safety Board (NTSB) in its investigation of the derailment.
  - **Better Monitoring of Overheated Wheel Bearings.** NTSB concluded that an overheated wheel bearing caused the derailment. Under the settlement, Norfolk Southern will install hot bearing detectors no less than every 15 miles on its tracks; lower the temperature threshold to set off alarms to stop trains; send temperature data more frequently to its “help desk;” and increase staffing at the help desk so that data is reviewed quickly.
  - **Improved Emergency Coordination Procedures.** Poor communication and incomplete information sharing among the railroad, its contractors, and federal, state, and local emergency response officials has been a major concern. Norfolk Southern will create new procedures to follow in future derailments, including improving communication with the government and public before it performs a vent and burn of chemicals or reopens tracks after a derailment where hazardous materials have spilled. EPA and non-government groups will help with this project.
  - **Train Build Rules for Long Trains.** Norfolk Southern must follow specific new rules about how to organize railcars in a train to reduce the risk of longer trains derailing. These include placing blocks of heavier, full cars in the front and lighter, empty cars in the back of the train, as well as using additional locomotives mid-train.
  - **High-Hazard Flammable Train Rules.** Railroads must follow extra safety rules – lower speeds, better braking, more information to communities – when a train transports a certain amount of flammable liquids. Norfolk Southern will now apply these extra safety rules to more trains, including trains carrying flammable gases like vinyl chloride.
  - **Safer Tank Cars.** Older models of tank railcars called DOT-111s are more likely to be damaged in a derailment because they have thinner walls. Over half of the DOT-111s involved in the East Palestine derailment released material, including three carrying hazardous materials. Norfolk Southern will stop using its own DOT-111s to transport flammable hazardous materials and will design a Customer Tank Car Replacement plan to encourage its customers to switch from DOT-111s to safer, better armored cars.
  - **More Emergency Response Training.** To protect the public from dangers from future chemical releases and oil spills, Norfolk Southern will conduct more emergency response training and will pay for state and local emergency response organizations to participate in major annual training exercises with the railroad.