



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

February 19, 2023

Mr. Alan Shaw
President and Chief Executive Officer
Norfolk Southern
650 West Peachtree Street NE
Atlanta, GA 30308

Dear Mr. Shaw,

The derailment of a Norfolk Southern train carrying hazardous materials near East Palestine, Ohio, has upended the lives of numerous residents, many of whom continue to worry about their immediate health and safety as well as the long-term effects of the dangerous materials released near their homes. They fear for their future, as do thousands of American communities and neighborhoods that sit along railway lines.

I am writing to emphasize the urgent need for Norfolk Southern to demonstrate unequivocal support for the people of East Palestine and the surrounding areas, and to be a part of needed safety improvements across the industry. You have previously indicated to me that you are committed to meeting your responsibilities to this community, but it is clear that area residents are not satisfied with the information, presence, and support they are getting from Norfolk Southern in the aftermath and recovery. It is imperative that your company be unambiguous and forthright in its commitment to take care of the residents – now and in the future.

As the independent National Transportation Safety Board (NTSB) proceeds with its investigation into what caused this derailment, I want to make certain that you are aware that the U.S. Department of Transportation's (USDOT) Federal Railroad Administration (FRA) is conducting its own analysis to determine whether any safety violations occurred. Using this analysis and after receiving the findings from the NTSB's independent work, FRA will act with all of its legal authorities to hold Norfolk Southern responsible for any safety violations found to have contributed to this derailment.

While USDOT focuses on the rail safety dimension of this disaster, Norfolk Southern has been contacted by another federal agency, the U.S. Environmental Protection Agency (EPA), which has stated that Norfolk Southern must document the release of hazardous contaminants, outline cleanup actions, and respect EPA's authority under the law to hold the company accountable for violations.

While we have seen a downward trend in the number of derailments, they remain far too commonplace in this country, especially when it comes to those involving hazardous materials.

Until the number of derailments is zero and rail workers are confident in being fully equipped to do their jobs safely, everyone involved in our rail system must make safety improvements a priority. Given the statements of support you have made toward those impacted in this situation, I am writing to stress that the future must not resemble the past when it comes to your company's and your industry's follow-through on support for stringent safety policies. Major derailments in the past have been followed by calls for reform – and by vigorous resistance by your industry to increased safety measures. This must change.

In 2011, a Norfolk Southern derailment in Arcadia, OH, resulted in 25 tanker cars loaded with ethanol that burned fewer than two miles from the community. About 20 families evacuated their homes up to 1.5 miles from your tracks. In 2012, 17 rail cars derailed on a Norfolk Southern train in Columbus, OH. Some of the hazardous cars were engulfed in a pool of fire and split open; one person near the derailment site sustained burns and about 100 people in a one-mile radius of the derailment were forced to evacuate.

In response to these and other derailments, including the devastating 2013 derailment and explosion of a Maine and Atlantic Railway train in Canada that resulted in 47 deaths, the public coalesced in support of strengthening safety protections. In 2015, the Pipeline and Hazardous Materials Safety Administration (PHMSA) and FRA finalized federal rules around high-hazard flammable trains (HHFT) and Electronically Controlled Pneumatic (ECP) braking (a technology that your company at one time publicly touted) that would enhance safety on trains carrying hazardous materials.

Rather than support these efforts to improve rail safety, Norfolk Southern and other rail companies spent millions of dollars in the courts and lobbying members of Congress to oppose common-sense safety regulations, stopping some entirely and reducing the scope of others. As a result, Congress enacted language that undermined the ability of USDOT to sustain the ECP brake requirements, and they were ultimately withdrawn under the Trump administration. Also, the completion date for phase-in of more durable rail cars to transport hazardous material was delayed by years, to 2029 from an originally envisioned date of 2025. While we do not yet know what the NTSB investigation will conclude regarding what caused the derailment in East Palestine, we do know that these steps that Norfolk Southern and its peers lobbied against were intended to improve rail safety and to help keep Americans safe.

The people of East Palestine cannot be forgotten, nor can their pain be simply considered the cost of doing business. Norfolk Southern must live up to its commitment to make residents whole – and must also live up to its obligation to do whatever it takes to stop putting communities such as East Palestine at risk. This is the right time for Norfolk Southern to take a leadership position within the rail industry, shifting to a posture that focuses on supporting, not thwarting, efforts to raise the standard of U.S. rail safety regulation.

Yours is an exceptionally profitable business. Norfolk Southern's operating income was an astonishing \$4.8 billion in 2022 – approaching a 37.8% operating margin. The income is 8% higher, or \$362 million more in profit, compared to 2021. Meanwhile, the New York Times reports that over the past five years, Norfolk Southern paid shareholders nearly \$18 billion through stock buybacks and dividends -reportedly twice as much as the amount Norfolk

Southern invested in its railways and operations. The arithmetic suggests Norfolk Southern can remain extremely profitable while also complying with a higher standard of safety regulation and offering better consideration to its workers. Similar patterns appear across your entire industry. In this context, Norfolk Southern and your industry must demonstrate that you will not seek to supercharge profits by resisting higher standards that could benefit the safety of workers and the safety of American communities, like East Palestine.

Soon I will be laying out several steps that Norfolk Southern, and all major railroads, should take immediately to improve rail safety for workers and communities—in addition to prioritized actions planned at our department in furtherance of our safety mission. I will also be calling on Congress to raise the cap on fines against railroads for violating safety regulations, to ensure their deterrent effect is commensurate with the economic proportions of today's large railroad companies. Even as we await results from NTSB's investigation into what caused the derailment in East Palestine, I expect that Norfolk Southern and other railroads will take action now, not later, to address public safety concerns and better prevent future disasters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Buttigieg", with a stylized flourish at the end.

Pete Buttigieg