

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY  
COMPANY,

and

NORFOLK SOUTHERN CORPORATION,

Defendants.

Civil Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiff, the United States of America, by authority of the Attorney General of the United States, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

INTRODUCTION

1. On February 3, 2023, a train carrying hazardous materials<sup>1</sup> derailed in East Palestine, Ohio. The derailment caused dozens of rail cars to collide into one another and fall over. Fire broke out and lasted for days. Residents of the town had to be evacuated from their homes. As a result of this incident, hazardous materials vented into the air and spilled onto the

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<sup>1</sup> For purposes of the Introduction and General Allegations in this complaint, the term “hazardous materials” includes hazardous substances, pollutants, contaminants, and/or oil within the meaning and coverage of the statutes at issue.

ground. These substances contaminated local waterways and flowed miles downstream. EPA, along with other agencies, responded within hours of the incident to ensure the safety of public health and the environment. Plaintiff United States of America asks this Court to hold Defendants accountable for unlawfully polluting the nation's waterways and to ensure it pays the full cost of the environmental cleanup.

2. This is a civil action brought by the United States against Norfolk Southern Railway Company ("NS Railway") and Norfolk Southern Corporation ("NS Corporation") (collectively "Norfolk Southern" or "Defendants"), seeking injunctive relief, cost recovery, and civil penalties, as specified below in the Claims for Relief. This action is brought under:

- a. Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, for Defendants' discharges of pollutants into waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311;
- b. Section 311 of the CWA, 33 U.S.C. § 1321, for the discharge of oil or hazardous substances into waters of the United States in violation of 33 U.S.C. § 1321(b)(3); and
- c. Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for the recovery of response costs.

#### JURISDICTION, VENUE, AND AUTHORITY

3. This Court has jurisdiction over the subject matter of this action pursuant to 33 U.S.C. § 1319(b), 33 U.S.C. § 1321(b)(7)(E), 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this district pursuant to 33 U.S.C. § 1319(b), 33 U.S.C. § 1321(b)(7)(E), and 42 U.S.C. § 9613(b) because Defendants do business in this district and the events that gave rise to the claims occurred in this district.

5. This action is properly filed in the Eastern Division of this district pursuant to Local Rule 3.8(a) because the events that gave rise to the claims occurred in Columbiana County.

#### THE PARTIES

6. Plaintiff, the United States of America, is acting at the request and on behalf of the Administrator of EPA.

7. NS Railway is a Virginia corporation with its headquarters in Atlanta, Georgia.

8. NS Railway is a wholly-owned subsidiary of NS Corporation, which holds all the stock of NS Railway.

9. NS Corporation is a Virginia corporation with its headquarters in Atlanta, Georgia.

10. Each Defendant is a “person” within the meaning of the CWA and CERCLA. 33 U.S.C. § 1362(5); 33 U.S.C. § 1321(a)(7); and 42 U.S.C. § 9601(21).

#### GENERAL ALLEGATIONS

##### A. Norfolk Southern Corporation Controls the Operations of Norfolk Southern Railway Company

11. NS Corporation plays a controlling role in decisions regarding the operations of NS Railway, which operates a freight railroad over 35,000 miles of track in 22 states, transporting all manner of materials and goods, including coal, intermodal containers, agricultural products, chemicals, metals, and automotive products.

12. NS Railway is a common carrier that accepts hazardous substances for transport.

13. Defendants operated Norfolk Southern Train 32N and its railcars at all times relevant to this complaint.

14. Defendants owned the locomotive and some of the railcars on Norfolk Southern Train 32N at all times relevant to this complaint.

15. Both Defendants operate out of the same corporate headquarters, and the President, Vice President, Chief Financial Officer, and Treasurer for NS Railway hold the same or very similar positions with NS Corporation.

16. The United States Surface Transportation Board requires railroad companies operating within the United States to submit an annual report (“Annual Report”).

17. The 2021 Annual Report states that all of NS Corporation’s subsidiaries were under the common control of NS Corporation, and that rail operations are coordinated at the holding company level by NS Corporation’s Chief Operating Officer.

18. The 2021 Annual Report identifies NS Railway as the principal subsidiary of NS Corporation.

19. Clairborne L. Moore, the Vice President and Controller for NS Corporation, signed the 2021 Annual Report.

20. In affidavits filed in federal litigation:

- a. Jason Zampi, a Vice President and Controller for NS Corporation, stated that the annual reports submitted to the Surface Transportation Board are prepared by personnel of NS Corporation with knowledge of and a business duty to prepare the information contained in the annual reports.

- b. Roger Petersen, NS Corporation’s General Counsel – Litigation, stated that NS Corporation “directs, controls, oversees, and handles litigation involving it and its wholly-owned subsidiaries, including [NS Railway].”

*See Coker v. Norfolk Southern Corporation, et al.*, Civil Action No. 2:18-cv-1364 (S.D. Ala 2018) (Dk. No. 34-1, 34-2).

21. Approximately eighty percent of the compensation for NS Corporation’s executives are based on performance metrics.

22. These performance metrics focus on performance measures such as operating ratio and operating income for its subsidiaries. Operating ratio looks at operating expenses as a percentage of revenue. Operating income looks at operating revenue less operating expenses.

23. These financial metrics were selected to motivate and reward NS Corporation’s executives for increasing revenue, improving operating efficiency, and reducing expenses of its railroad subsidiaries.

24. NS Corporation’s executives achieve these metrics by controlling subsidiaries’ operations, which includes the operations of NS Railway.

25. Over the past four years, annual reports show a stark contrast between the increases in operating income and the drop in railroad operating costs.

26. The drop in operating costs includes reductions in spending to repair, service, and maintain locomotives and freight cars, perform train inspections, and pay engine crews and train crews.

27. In 2019, prior to retiring, Mike Wheeler, the Executive Vice President and Chief Operating Officer for NS Corporation, issued *Operating Rules* governing the operations of all of NS Corporation’s railroad subsidiaries.

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