



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590**

March 31, 2023

VIA EMAIL

Norfolk Southern Railway Company
c/o Marc R. Ferries, P.E., MBA
Project Navigator, Ltd.
15990 N. Barkers Landing Rd, Suite 325
Houston, Texas 77079

Re: East Palestine Train Derailment Site
Norfolk Southern Rail Line, East Palestine, Columbiana County, Ohio
Site/Spill Identifier (SSID): C5XR
Unilateral Administrative Order CERCLA Docket No. V-W-23-C-004
Financial Assurance

Dear Mr. Ferries:

Financial assurance provisions in CERCLA orders help ensure that potentially responsible parties (“PRPs”), and not public funding sources, bear the financial burden of completing Superfund cleanups. EPA imposes financial requirements on PRPs through orders. In general, financial assurance provisions in orders require PRPs to demonstrate that adequate financial resources are available to complete required cleanup work.

Funds or work guaranteed by financial assurance mechanisms can be obtained (or funds can be directed into a standby trust in the case of a Unilateral Administrative Order or “UAO”) under specified circumstances. For instance, under many orders, EPA can demand funds or work secured by a financial assurance mechanism if:

- The PRP fails to perform all or any portion of the required response action and EPA takes over such work—a “work takeover” situation (see Paragraph 82.a of the above-referenced UAO¹); or
- EPA receives notice of an impending financial assurance mechanism cancellation or non-extension, and the affected PRP fails to establish alternative financial assurance within the allotted time (see Paragraph 82.b of the above-referenced UAO).

¹ Note that the UAO was issued on February 21, 2023, and amended on March 27, 2023 (including an amendment to the financial assurance provisions in Section XXIII).

In the former scenario, EPA can draw on any of the guaranteed funds after a work takeover notice is issued to, and not timely cured by, the PRP. In the latter scenario, EPA can draw on any of the guaranteed funds for a set period of time.

Norfolk Southern Railway Company (“NSR”) was identified as a PRP via General Notice of Potential Liability which was issued on February 10, 2023. Pursuant to Section XXIII (Financial Assurance) of the above-referenced UAO, the U.S. Environmental Protection Agency (“EPA”) is hereby providing you with an initial estimated cost of work (“Estimated Cost of the Work”): **\$688,749,283.50²** (see attached spreadsheet).

Pursuant to Paragraph 78 of the UAO, NSR has twenty (20) days to submit to EPA proposed financial assurance mechanisms in draft form. To ensure that the draft documents will be satisfactory to EPA, NSR is directed to the “Financial Assurance Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

Thank you for your attention to this matter. If you have any questions, I can be contacted at dollhopf.ralph@epa.gov or 231-301-0559 (cell).

Sincerely yours,

**ralph
dollhopf**  Digitally signed by
ralph dollhopf
Date: 2023.03.31
17:37:56 -04'00'

Ralph Dollhopf
On-Scene Coordinator

Attachment

² The total of \$688,749,283.50 includes a base number of \$459,166,189 plus a 50% contingency of \$229,583,094.

cc:

Hollister Hill, General Counsel - Environmental, Risk Management, Legal Claims, & Legal
Operations, Norfolk Southern

Matthew Gernand, General Counsel - Environmental, Norfolk Southern

Geoffrey Rathgeber, Assistant Deputy General Counsel, Norfolk Southern

E. Fitzgerald Veira, Esq., Troutman Pepper

Brooks Smith, Esq., Troutman Pepper

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