

Norfolk Southern seeks to have lawsuits dismissed over derailment, toxic chemical spill in East Palestine, Ohio

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Do you work at Norfolk Southern or another Class I railway? Do you live in East Palestine or a neighboring community? Tell us what you know about the Norfolk Southern disaster by filling out the form at the bottom of this article. All submissions will be kept anonymous.

Norfolk Southern has filed a motion in court to dismiss the class-action lawsuit that has been brought by residents of East Palestine, Ohio and surrounding communities over the damages caused by the February 3rd train derailment and release of toxic chemicals into the air, water and soil. The class-action lawsuit has consolidated more than 30 separate lawsuits brought by residents, property owners and businesses that were impacted by the derailment.

In a motion filed on Friday with the US District Court in Youngstown, Ohio, Norfolk Southern made the absurd claim that they are not responsible for the derailment or obligated to pay for any of the damage caused to residents health, homes or businesses, because the first car to derail was not owned by the railroad company and that they did not construct the wheel bearing whose failure is believed to have caused the derailment.

In the motion they write, “The first car to derail did not belong to Norfolk Southern. Nor did Norfolk Southern construct the wheel bearing that allegedly ‘overheated’ and ‘caused’ the train to derail.”

The fact that the Norfolk Southern train had passed not one, but three hot-bearing detectors, the first over 40 miles before reaching East Palestine, or that each detector showed that the bearings were getting hotter and hotter, was ignored by the attorneys.

This would be the same as a car owner arguing that the car’s manufacturer, and not themselves, were responsible for a crash caused by faulty brakes even though they had not gotten their brakes inspected and had ignored the car’s warning light.

The Norfolk Southern filing makes three basic arguments for having the case dismissed.

First, the railroad is seeking to get the case thrown out of court since the damages could run into the hundreds of millions, if not billions of dollars, as the suit covers people and businesses living and working within a 30 miles radius of the crash site, which would cover roughly half a million people.

Additionally, the railroad argues that since they are regulated under federal law, they cannot be held responsible for accidents that happen on those railroads. In a sign that government regulations are closely written in such a way as to favor the massive railroad companies Norfolk Southern points out that the laws regulating the railroad industry explicitly exempt them from being sued in such cases.

While this is in fact a gross exaggeration, it is the case that those suing a railroad have a much higher burden to face in court.

Third, they claim that the suit does not provide enough details of the injuries suffered and the different levels of injuries faced by people who lived within a mile of the crash site and by those who live further out.

Attorneys for the plaintiffs stated that while the company’s motion will likely be rejected, the fact that it has been submitted at all is an indication that the railroad will fight vigorously to limit their financial liability. Even if they lose at trial they will use these arguments in an appeal, to get any settlement reduced.

Four months since the East Palestine disaster

It has now been just over four months since the February 3 crash of the Norfolk Southern eastbound train that sent 38 cars off the track, including eleven cars carrying toxic materials.

Three days later, on February 6, Norfolk Southern carried out a “controlled release and burn.” This consisted of the deliberate rupturing of five of the overturned tanker cars, releasing 1.1 million pounds of vinyl chloride onto the ground, and then setting it ablaze.

This sent flames shooting 200 feet into the air, and a column of smoke rose into the atmosphere that could be seen from miles away. Over the next several days, the plume of smoke drifted outwards, depositing toxic chemicals onto the land and into rivers for miles around.

Many of East Palestine’s nearly 5,000 residents, as well as people throughout the area, suffered severe chemical burning in their throat, eyes, nose and lips. Many people developed rashes, dizziness and headaches.

Vinyl chloride is a known carcinogen responsible for liver and brain cancer as well as damages to other organs in the body. The byproduct of burning vinyl chloride fall into a category of chemicals known as dioxins, which are highly cancer causing.

For a full month following the derailment and the burn, EPA officials refused to test for dioxins in the soil and water. More recently, evidence has come out that EPA officials knew that the hand-held air quality testers that were being used by the contractors hired by Norfolk Southern were not sufficient to capture the levels of dioxins and vinyl chlorides that would have been present.

Residents from both East Palestine and the surrounding area continue to suffer from the effects of the deliberate poisoning of their community. Many residents have turned to private testing labs to have themselves and their homes and farms tested.

Linda and Russell Murphy, who own a farm a little under three miles from the crash site, have publicly released the test results for themselves and their farm. Tests from Linda show that her body contains byproducts of vinyl chloride. Soil samples taken from their farm show the presence of dioxins at a level that could only have arisen from the burn.

Jessica Hoskinson, who lives just across the Pennsylvania border from East Palestine, told the *World Socialist Web Site* that her brother and his family have been forced to move out of their home because of the derailment.

Jessica explained that her brother and family were driving home through the area when the derailment

happened. She said they never thought they would have to leave their home, “now they can’t go back to their home without getting sick,” Jessica told the WSWS.

“My brother has had to relocate to South Carolina and leave the only home he ever knew. He planned on living there his entire life. Our family has been broken up. We are used to family dinners every Sunday and now I can’t see three of my nieces and nephews. My brother’s oldest is here with his mom, which is a strain on their relationship.”

Jessica said that her brother told her that they all felt burning in their lungs and that especially he and his young son were the most affected with eyes burning and blurred vision. “He said he didn’t feel like himself. Like he was crawling out of his skin.”

As with many residents of East Palestine, when they went to the hospital they were made to feel as if the “symptoms were all in their head,” Jessica said.

The family says her brother’s symptoms have gotten better since leaving the area, but worries that they don’t know what the long-term effects will be like.

“We are a close family. We are not used to being apart,” Jessica said. “It has been very hard on my mother, not to be able to see her son and grandchildren. We used to all go over to mother’s house for the Sunday family dinner each week.” Jessica is considering moving to South Carolina with her family as well.

Jessica is especially angry at the fact that the railroad did not act in a timely manner to prevent the derailment. “That train traveled 40 miles and they knew about that car getting hot. They had many chances to stop and check it out. There are many trains that pass through with coal cars, hazardous material, but the company just cares about making money. Everyone just cares about profits. It is a very sad world that would permit this.”

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