

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

In The Matter Of:) **Docket No. CWA-1321-5-24-001**
)
Norfolk Southern Railway Company and) Proceeding under Section 311(c)
Norfolk Southern Corporation) of the Clean Water Act, 33 U.S.C. § 1321(c)
East Palestine, Ohio)
)
Respondents.

Administrative Order

I. JURISDICTION AND GENERAL PROVISIONS

1. The United States Environmental Protection Agency (EPA) is issuing this Order to Norfolk Southern Railway Company and Norfolk Southern Corporation (Respondents) pursuant to Section 311(c) of the Clean Water Act (CWA), 33 U.S.C. § 1321(c). EPA Region 5 On-Scene Coordinators have the delegated authority to issue orders under Section 311(c) of the CWA and Executive Order 12777, 56 Fed. Reg. 54757, from the President of the United States.

2. This Order requires the Respondents to immediately take removal actions to delineate, characterize, and remove oil and hazardous substances discharged into Sulphur Run and to further delineate, characterize, and as appropriate remove oil and hazardous substances discharged into Leslie Run, and to mitigate or prevent any substantial threat of a discharge of oil or hazardous substances in connection with the February 3, 2023, derailment of Norfolk Southern Train 32N in East Palestine, Ohio

3. Section 311 of the CWA prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States in such quantities as may be harmful as determined by the President. 33 U.S.C. § 1321(b)(3).

4. For oil, the quantities determined to be harmful are those that (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

5. For hazardous substances, the quantities determined to be harmful are those that are in “reportable quantities.” 40 C.F.R. § 117.1(a).

6. Section 311(c)(1)(A) of the CWA requires the President to ensure effective removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance into or on the navigable waters and on the adjoining shorelines to the navigable waters. 33 U.S.C. § 1321(c)(1)(A).

7. If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from an onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), Section 311(c)(2)(A) requires the President to direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge. 33 U.S.C. § 1321(c)(2)(A).

II. PARTIES BOUND

8. This Order applies to Respondents. The Order further applies to persons acting on behalf of Respondents, or who succeed to an interest in Respondents. Any change in ownership or corporate status of Respondents, including, but not limited to, a transfer of assets or real or personal property will not alter the responsibilities under the Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or

noncompliance by one or more Respondents with any provisions of this Order shall not excuse or justify noncompliance by any other Respondents.

9. Respondents shall ensure that its contractors, subcontractors, representatives, and agents comply with this Order. Respondents will be liable for any violations of the Order by its employees, agents, representatives, contractors, or subcontractors.

III. DEFINITIONS

10. This Order incorporates the definitions in Section 311 of the CWA, Section 1001 the Oil Pollution Act (OPA), 33 U.S.C. § 2701 *et seq.*, and associated implementing regulations unless otherwise specified.

11. “Discharge” has the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) and 40 C.F.R. Part 110.1 for purposes of the actions to be performed under this Order, and shall have the meaning set forth in Section 1001(7) of OPA, 33 U.S.C. § 2701(7), for purposes of reimbursement of costs.

12. “East Palestine Derailment Site” shall mean the areal extent of where CERCLA hazardous substances have come to be located, in Ohio and Pennsylvania, as a result of the Norfolk Southern Railway Company train derailment that occurred on February 3, 2023, at the rail line northeast of East Taggart Street and North Pleasant Drive intersection in East Palestine, Columbiana County, Ohio (Latitude: 40.8360395 Longitude: -80.5222838) and the subsequent emergency response activities including, but not limited to, breached rail cars and the controlled “vent and burn” that occurred on February 6, 2023.

13. “Hazardous substance” means any substance designated pursuant to 33 U.S.C. § 1321(b)(2) and listed in EPA’s regulations at 40 C.F.R. Part 116. 33 U.S.C. § 1321(a)(14).

14. “National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

15. “Navigable waters” have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and Section 1001(21) of OPA, 33 U.S.C. § 2701(21) and 40 C.F.R. Part 110.

16. “Oil” has the meaning set forth in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), for the purposes of the actions to be performed under this Order, and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.

17. “Onshore Facility” has the meaning set forth in Section 311(a)(10) and (a)(11) of the CWA, 33 U.S.C. § 1321(a)(10) and (a)(11), and by Section 1001(22) and (24) of OPA, 33 U.S.C. § 2701(22) and (24).

18. “Order” means this Unilateral Administrative Order and all appendices attached hereto and Workplans and removal plans submitted hereunder. In the event of conflict between this Order and any appendix, this Order shall control.

19. “Owner or Operator” includes “any person owning or operating such onshore facility.” 33 U.S.C. § 1321(a)(6).

20. “Person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).

21. “Pollutants” include solid waste, chemical wastes, wrecked or discarded equipment, and industrial waste discharged into water. 33 U.S.C. § 1362(6).

IV. FINDINGS OF FACT AND VIOLATIONS

22. Norfolk Southern Railway Company is a wholly owned subsidiary of holding company Norfolk Southern Corporation. Norfolk Southern Railway Company operates a freight railroad, which transports all manner of materials and goods, including hazardous materials.

23. Both Respondents operate out of the same corporate headquarters, and the President, Vice President, Chief Financial Officer, and Treasurer of Norfolk Southern Corporation hold the same or very similar positions in Norfolk Southern Railway Company.

24. Norfolk Southern Railway Company reports in financial filings with the Transportation Surface Board that all of Norfolk Southern Corporation's subsidiaries were under the common control of Norfolk Southern Corporation, and that rail operations are coordinated at the holding company level by Norfolk Southern Corporation's Chief Operating Officer.

25. Norfolk Southern Corporation issued *Operating Rules* governing the operations of all of its railroad subsidiaries, including Norfolk Southern Railway Company.

26. These *Operating Rules* cover almost every aspect of Norfolk Southern Railway Company's operations, including train inspections, use of defective equipment detectors, train movement, braking, and positive train control.

27. Norfolk Southern Corporation also issued *Railroad Special Hazmat Instructions* that govern the transportation and handling of hazardous materials by Norfolk Southern Railway Company's employees.

28. Norfolk Southern Corporation plays a controlling role in decisions regarding the operations of Norfolk Southern Railway Company.

29. On February 3, 2023, Norfolk Southern Train 32N derailed in East Palestine, Ohio.

30. On February 3, 2023, thirty-eight rail cars derailed. At least twenty-four rail cars burned and breached, discharging oil, hazardous substances, and other pollutants.

31. Oil, hazardous substances, and pollutants from the breached cars and runoff from firefighting efforts entered Sulphur Run and an Unnamed Tributary of Sulphur Run and traveled from Sulphur Run to Leslie Run to Bull Creek to the North Fork of the Little Beaver Creek to Little Beaver Creek, and ultimately to the Ohio River.

32. Sulphur Run, Leslie, Run, Bull Creek, the North Fork of Little Beaver Creek, Little Beaver Creek, and the Ohio River are all navigable waters of the United States.

33. Naphthalene, which is classified as a hazardous substance under the CWA, other petroleum hydrocarbons, and other CWA pollutants were detected in sampling in Sulphur Run and Leslie Run.

34. The derailed train 32N and the individual rail cars comprising the train are rolling stock, and each is an “onshore facility” within the meaning of 33 U.S.C. § 1321(a)(10).

35. Respondents are the owners and operators of the onshore facility within the meaning of 33 U.S.C. § 1321(a)(6).

36. Respondents are each a “person” within the meaning of 33 U.S.C. § 1321(a)(7).

37. Starting on February 3, 2023, and continuing thereafter, Respondents discharged oil within the meaning of 33 U.S.C. § 1321(a)(1) into waters of the United States.

38. Starting on February 3, 2023, and continuing thereafter, Respondents discharged hazardous substances within the meaning of 33 U.S.C. § 1321(a)(14) into waters of the United States.

39. The Ohio Department of Natural Resources has reported that as a result of discharges associated with the derailment thousands of aquatic animals were killed in the five-mile span of the waterways from where Train 32N derailed and discharged oil, hazardous substances, and pollutants into Sulphur Run to where Bull Creek flows into the North Fork of Little Beaver Creek.

40. Over time spilled oil breaks down and changes its physical and chemical properties. As these processes occur, the oil threatens surface resources and a wide range of subsurface aquatic organisms linked in a complex food chain.

41. At all times relevant to this Order, oil and naphthalene as well as other pollutants discharged from the Onshore Facility remain in the sediments of Sulphur Run and Leslie Run.

42. As recently as August 15, 2023, a visible amount of sheening presented upon disturbance of the sediments of Sulphur Run and Leslie Run.

43. At the time of this Order, the weather conditions such as rain increase the threat of continuous discharge of oil, hazardous substances, and pollutants from the sediments.

44. Ongoing sampling, analysis, and monitoring, as well as removal efforts, of sediments from the waterbodies may result in detection of additional hazardous substances that were discharged or released from the rail cars.

45. The discharge of oil, hazardous substances, and pollutants from the derailed Train

32N is of a size or character as to be a substantial threat to the public health or welfare of the United States including but not limited to fish, shellfish, wildlife, other natural resources, and the public.

46. The removal actions required by this Order are in accordance with the NCP and are authorized by EPA pursuant to the authority granted in Section 311(c) of the CWA, 33 U.S.C. § 1321(c), as delegated by the President in Executive Order 12777, Section 2(b)(1), 56 Fed. Reg. 54757 (Oct. 22, 1991).

47. The unpermitted discharge of oil, hazardous substances, and pollutants from Train 32N violated the CWA.

V. ORDER

48. EPA hereby orders that Respondents shall comply with all requirements of this Order.

Notice of Intent to Comply

49. Each Respondent shall notify EPA in writing within 24 hours after the Effective Date of this Order of its intent to comply with this Order. Failure of any Respondent to provide such notification within this time shall be a violation of this Order by such Respondent.

50. Respondents may elect to meet with EPA within 48 hours of receipt of this Order to discuss the work to be performed.

Work to Be Performed

51. Within 5 business days after the effective date of this Order, Respondents shall submit a workplan (“Workplan”) to perform a comprehensive sheen and sediment survey,

additional sediment sampling, and a detailed schedule for actions to begin in the following areas, as generally depicted in the map appended here as Appendix A:

a. Leslie Run from its confluence with Bull Run to 1,000 feet upstream past the confluence of Leslie Run and Sulphur Run.

b. Sulphur Run from its confluence with Leslie Run to 1,000 feet upstream beyond the confluence with the Unnamed Tributary of Sulfur Run, which is commonly referred to as the North Ditch.

52. The actions described in the Workplan shall include but not be limited to:

a. Sheen observation survey from agitated sediments every 25 feet or as directed by EPA along the length of the waterbodies described in subparagraphs 51 (a) and (b).

b. Sediment and sheen sample collection and analyses from areas that produce heavy and moderate sheen when agitated.

c. Photographic documentation of any sheen produced by agitation of sediments.

d. Ground level video documentation along the waterbodies described herein.

53. Respondents shall begin implementation of the Workplan within three calendar days of EPA's approval or approval with modifications.

54. Respondents shall complete the actions approved pursuant to paragraph 53 by December 1, 2023.

55. By December 11, 2023, Respondents shall submit a report describing the results of the comprehensive sheen and sediment survey.

56. By December 15, 2023, or a later date approved of by EPA, Respondents shall submit a full report including all final and validated analytical data.

57. Upon direction by EPA after its review of the sheen survey, and the sheen and sediment analytical data, Respondents shall submit a revised Workplan for sediment removal actions or mitigation measures.

58. Respondents shall implement and complete the revised Workplan as approved by EPA.

59. No later than November 1, 2023, Respondents shall submit a plan and schedule for removal of sediments from the culverts of Sulphur Run to EPA for approval or approval with modifications (Culvert Removal Plan). See map generally depicting the culverted areas of Sulphur Run appended here as Appendix B.

60. Respondents shall implement and complete the Culvert Removal Plan as approved by EPA.

61. No later than December 1, 2023, Respondents shall submit a report describing the actions completed pursuant to the approved Culvert Removal Plan for the culvert areas.

62. As information becomes available and as directed by EPA, Respondents shall perform activities to investigate and remove discharged oil, hazardous substances, and associated pollutants, or mitigate or prevent the threat of continuous discharge of oil, hazardous substances, and associated pollutants into the waters of the United States listed in Paragraph 32 above.

Access to Property and Information

63. Respondents shall provide access to the East Palestine Derailment Site, to off-site areas where access is necessary to implement this Order, and to all documents related to conditions at the East Palestine Derailment Site and actions conducted under the Order. Respondents must provide this access to EPA and the United States Coast Guard and their contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the East Palestine Derailment Site and appropriate off-site areas to conduct actions which EPA determines to be necessary. As directed by EPA or otherwise required in an approved Workplan or removal plan, Respondents shall submit to EPA the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Final Report

64. Within 30 working days after completion of implementation of the removal actions required under this Order, the Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall include at a minimum, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that under Section 309(c)(4) of the CWA, 33 U.S.C. §1319(c)(4), there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RESERVATION OF RIGHTS AND PENALTIES

65. This Order shall not preclude EPA from taking any action authorized by the CWA, the OPA, the NCP, or any other applicable law. EPA reserves the right to direct all activities including shipping, disposal, and all other matters related to this Order. Further, EPA may seek legal or equitable relief to enforce the terms of this Order and may take any other legal or equitable action as it deems appropriate and necessary. EPA may require the Respondents in the future to perform additional activities pursuant to the CWA, the OPA, or other applicable law. Nothing in this Order shall limit the authorities of the On-Scene Coordinator as outlined in the NCP.

66. Respondents shall notify EPA of any removal actions that are not described in this Order.

67. Violation of this Order may subject each Respondent to a civil penalty of up to \$55,808 per day of violation or an amount up to three times the cost incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted by penalty inflation rule codified at 40 C.F.R. § 19.4.

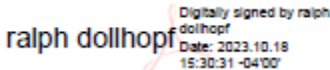
VII. NOTICE OF COMPLETION

68. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, EPA will provide written notice

to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents in writing, provide a list of the deficiencies, and require that Respondents revise the Workplan to correct such deficiencies. The Respondents shall implement the revised and approved Workplan and shall submit a revised Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved revised Workplan shall be a violation of this Order.

VII. EFFECTIVE DATE

69. This Order is effective on the date Respondents receives the Order.

 Digitally signed by ralph dollhopf
Date: 2023.10.18 15:30:31 -0400'

On-Scene Coordinator

Date

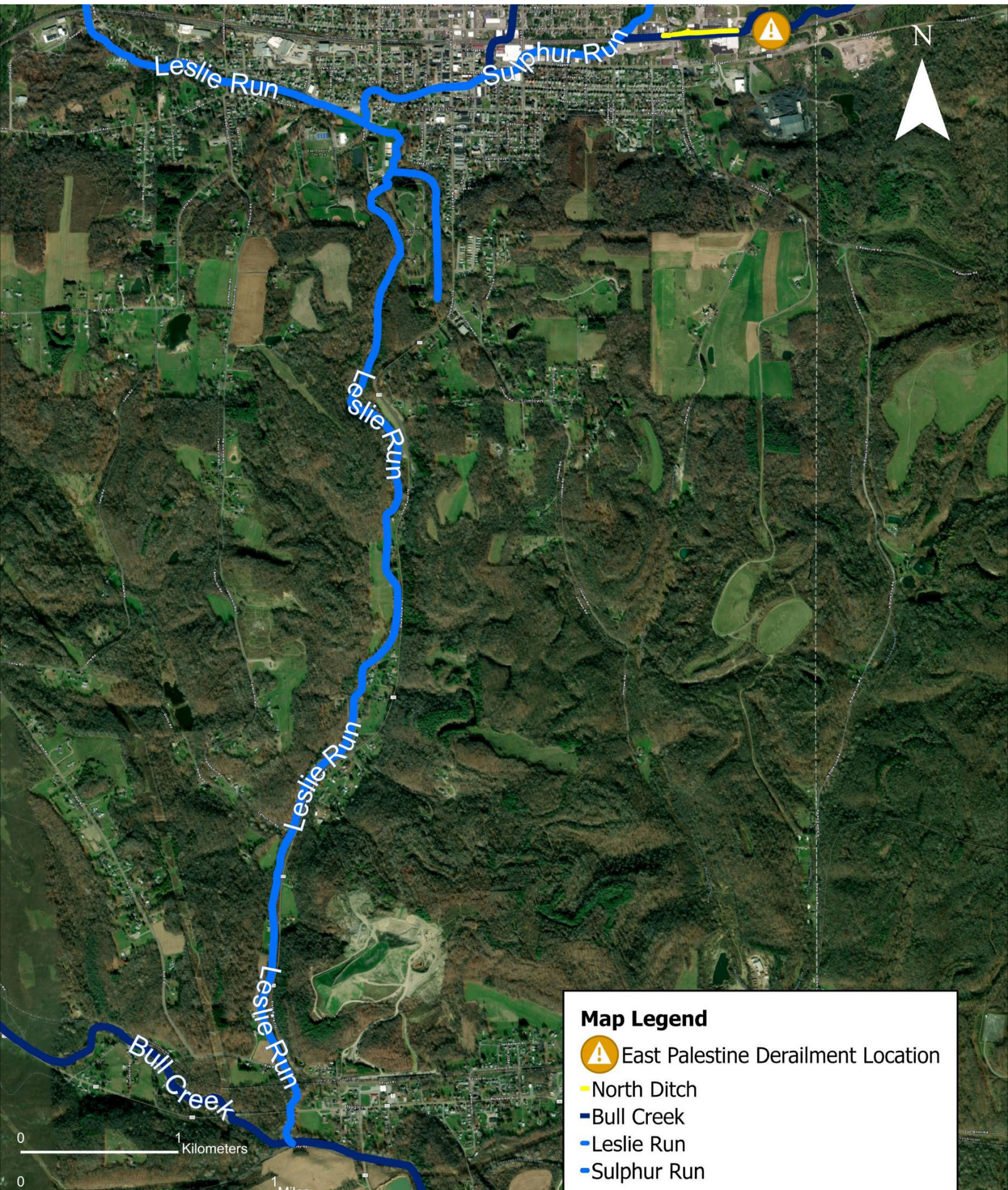
Received by: _____
For Norfolk Southern Railway Company

Date






Received by: _____
For Norfolk Southern Corporation

Date

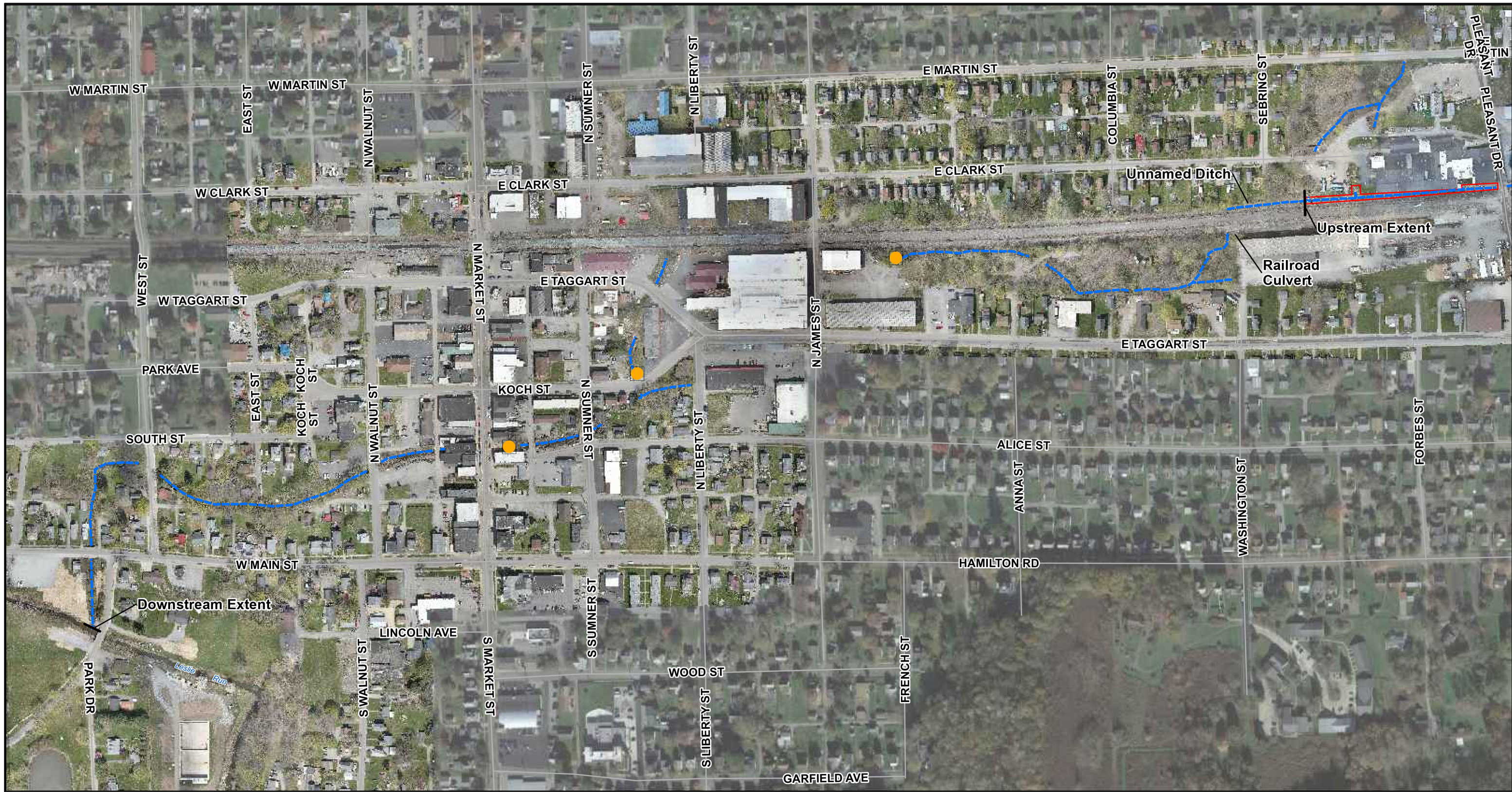
APPENDIX A



Map Legend

-  East Palestine Derailment Location
-  North Ditch
-  Bull Creek
-  Leslie Run
-  Sulphur Run

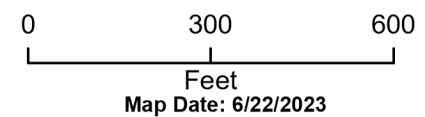
APPENDIX B



Legend

- - - Sulphur Run
- North Ditch Removal Extent West of North Pleasant Drive
- Start of Covered Culvert

Drone image onsite dated: 06/01/2023
 Drone image offsite dated: 04/15/2023



NORFOLK SOUTHERN
 EAST PALESTINE, OHIO

**SULPHUR RUN
 INVESTIGATION EXTENT**



FIGURE

1