



After the Smoke Clears: What's Next for Those Involved in the Ohio Train Derailment?

By M. Colleen LaVelle on March 30, 2023
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On February 3, 2023, a Norfolk Southern train carrying an alleged 1.1 million pounds of hazardous chemicals (vinyl chloride,^[1] ethylene glycol monobutyl ether, ethylhexyl acrylate, benzene, and isobutylene) derailed in the town of East Palestine, Ohio. Because authorities on the scene were concerned about the risk of explosions following the spill and co-mingling of these chemicals, additional vinyl chloride was released. This was followed by a controlled burn of the chemicals to avoid potential combustible reactions. Residents within a one-mile radius of the crash site had to evacuate the area, while residents within a three-mile radius were told to shelter in place.

Effects on the People and the Environment

Since the spill, residents in the area of East Palestine have reported side effects such as rashes, blood in their urine, vomiting, nausea, headaches, dizziness, and irritation of the eyes, nose, and throat.^[2] Scientists are comparing this chemical spill to the after-effects of those exposed to chemicals after the terrorist attacks on 9/11. James Fabisiak, Associate Professor of Environmental and Occupational Health at the University of Pittsburgh School of Public Health stated, "Usually if you're concerned about butyl acrylate, you're more concerned about a worker in a factory that spills some on their skin or it spills on the floor and not so much about what a small concentration in water over a long period of time would be." Professor Fabisiak stressed that a systematic public health response to assess the long-term health of the East Palestinian community will be critical, as will monitoring the short- and long-term environmental effects.

Juliane Beier, Assistant Professor of Medicine at the University of Pittsburgh, has stated that exposure to high concentrations of vinyl chloride can cause cancer over a stretch of time, but it can also immediately cause symptoms of dizziness, irritation to the skin and eyes, and coughing. Beier's research on the lasting effects of vinyl chloride exposure suggests that exposure to low concentrations could exacerbate pre-existing damage in the liver.

To date, no reported government environmental monitoring efforts have detected airborne pollutants posing a direct threat to local residents.^[3] The biggest concern right now is whether the spilled chemicals made their way through the soil and into the groundwater. Despite contaminated runoff from the wreckage making its way to two nearby streams and four tributaries along the Ohio River (a space of 7.5 miles), Tiffani Kavalec, Chief of the Ohio Environmental Protection Agency's Division of Surface Water, has said that no vinyl chloride has been detected in the area's drinking water. Kavalec stated that the contamination found within these waterways mostly consisted of fire contaminant combustion materials from the controlled burn.

Legislative and Litigation Responses

The Environmental Protection Agency has issued a general notice of potential liability letter to Norfolk Southern.[4] The letter outlines the potential to hold the railroad accountable for associated costs under the EPA's Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Ohio Governor Mike DeWine has urged Congress to change legislation that did not deem the Norfolk Southern train a "high hazardous material train," which would have required the railroad to notify state officials about the chemicals the cars contained.[5]

So far, eight lawsuits have been filed against Norfolk Southern alleging negligence and seeking more than \$5 million for property damage, economic loss due to evacuation, and exposure to toxic chemicals.[6] While the lawsuits against Norfolk Southern will continue to rise, one of the first firms to file on behalf of East Palestine residents was Morgan & Morgan. Attorney John Morgan has alleged that Norfolk Southern was negligent in its choice to use a "cheaper, less safe method to contain the damage by releasing more chemicals, rather than safely and properly cleaning up the spill." [7] However, to prove Norfolk Southern liable under a negligence claim, plaintiffs will have to prove both actual and specific causation by a preponderance of the evidence.

The Takeaway

The result of this incident leaves residents of East Palestine, and those viewing from around the country, with a cliffhanger. Neither government officials nor scientists can provide concrete answers as to what lies ahead for those exposed to the chemicals associated with this spill. Knowledge about the short- and long-term effects of exposure to these chemicals is widely unknown. Further still, this incident begs the question on whether legislatures will change regulations for the rail industry. What does seem foreseeable, however, is the increase in litigation surrounding this event, whether that be individual lawsuits or class actions. Regardless, due to the complexity of this spill reaching multiple areas of law—including areas such as environmental law, complex litigation, product liability, and toxic tort law—companies finding themselves as defendants in this particular matter, as well as those in similar situations, should be diligent in finding knowledgeable and experienced legal counsel to adequately represent them.

[1] <https://time.com/6256827/norfolk-southern-lawsuit-ohio-derailment/>

[2] <https://nypost.com/2023/02/16/scientists-explain-health-risks-from-ohio-train-derailment/>

[3] Isaacs-Thomas, Bella, What We Know About the Chemicals Aboard the Train that Derailed in Ohio, <https://www.pbs.org/newshour/science/what-we-know-about-the-chemicals-aboard-the-train-that-derailed-in-ohio> (February 16, 2023)

[4] Statement from Regional Administrator Debra Shore on the East Palestine Train Derailment, <https://www.epa.gov/newsreleases/statement-regional-administrator-debra-shore-east-palestine-train-derailment> (February 14, 2023)

[5] Waterways along Ohio River Still Contaminated Following Train Derailment Carrying Hazardous Materials, <https://abcnews.go.com/US/waterways-ohio-river-contaminated-train-derailment-carrying-hazardous/story?id=97195028>, (February 14, 2023)

[6] <https://time.com/6256827/norfolk-southern-lawsuit-ohio-derailment/>

[7] What to Know About the Lawsuits Against the Company at the Center of the Ohio Train Derailment, <https://time.com/6256827/norfolk-southern-lawsuit-ohio-derailment/>, (February 18, 2023).

Tags: Hazardous Chemical Spills, Hazardous Chemicals, Norfolk Southern, Train Derailments