

February 24, 2023

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, D.C. 20590

Dear Secretary Buttigieg:

On Friday, February 3 at approximately 8:54pm, a Norfolk Southern Railway Company (NS) train derailed in East Palestine, Ohio, roughly 20 miles from the West Virginia border. 38 rail cars derailed and an additional 12 cars were damaged in the ensuing fire, including 11 cars carrying hazardous materials. This caused a dangerous chemical fire and forced residents to evacuate for days while local and state officials conducted a controlled burn to prevent a potentially fatal explosion. I greatly appreciate the swift response of first responders and local and state officials, and am relieved there are no current reports that indicate West Virginians should be concerned for their air or water quality. However, I understand the concerns raised by West Virginians and Ohioans in close proximity to the site. People deserve answers.

This week, the National Transportation Safety Board (NTSB) released a preliminary report on the derailment in East Palestine. NTSB found that a wheel bearing was heating up over several miles before the accident, according to data from the trackside sensors, but did not reach a critical threshold until shortly before the accident. In the report, NTSB cites issues with a rail car axle that could have caused the crash, and surveillance video shows a wheel bearing was in the final stage of overheat failure moments before the derailment. This raises serious questions around equipment maintenance, inspections, and existing safety systems intended to prevent these accidents.

Almost seven years to the day, a train hauling 107 tanker cars loaded with Bakken Shale crude oil from North Dakota derailed in Adena Village near Mount Carbon, West Virginia around 1:30 p.m. on Feb. 16, 2015. A total of 27 tank cars derailed, releasing 378,000 gallons of crude oil and igniting a fire that caused massive fireball eruptions that destroyed a nearby home and displaced more than 1,000 people from their homes for days.¹ If the derailment had taken place just two miles down the track, it could have caused enormous damage to the town of Mount Carbon and significant loss of life. If that sounds familiar, that's because train derailments are all too common across the United States, with the Federal Railroad Administration (FRA) reporting 1,044 train derailments in 2022, nearly 3 train derailments per day across the U.S.²

Since that time, rail infrastructure has played an increasingly important role in our domestic energy and chemical industries. While that economic activity is welcome, we must protect the people of West Virginia and the other communities across the country who live along these corridors. That's why I have long fought to protect strong braking requirements that could prevent pile-ups like we saw in 2015 and continue to see today. It took the FRA nine years to finalize the rules for Electronically-Controlled Pneumatic (ECP) brakes, and I fought to ensure they were included in the 2015 Fixing America's Surface Transportation (FAST) Act after being stripped from an earlier version of the bill. Unfortunately, the Pipeline and Hazardous Materials Safety

¹ <https://www.nts.gov/safety/safety-recs/reletters/R-15-014-017.pdf>

² <https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/inctally3.aspx>

Administration (PHMSA) within the Department of Transportation, which oversaw the rulemaking, later rescinded the ECP requirement for high-hazard flammable trains after its Regulatory Impact Analysis (RIA) found that the requirements were not economically justified.³ It has now been over 16 years since FRA first began studying ECP. As train lengths and weights have increased along with the tonnage we ship across the U.S. by freight rail in recent years, I encourage the FRA to revisit this cost-benefit analysis. As I said then, we simply can't afford to be wrong.

I am heartened that the FRA has reinstated regular audits of the railroads to ensure compliance with safety regulations, but we must do more. FRA's last systemwide audit of NS took place in May 2022, almost a year ago. In the audit report released in July 2022, FRA found "inconsistencies in NS's operational testing and inspection program, ranging from access to and accuracy of records, to the methods and processes used to prioritize the testing of rules that prevent accidents." It also found "inadequate communication between the NS transportation and mechanical departments" including several cases in which "defective conditions identified were not reported to the mechanical department for repair or the equipment was not removed from service until repairs could be made." FRA concluded that these issues could "raise the overall risk of train derailment."⁴

As such, I urge DOT to review its inspection practices with a particular focus on maintenance and safety. At the very least, FRA should work with freight railroads to better understand their maintenance procedures and work to standardize these practices across industry. I fully understand that future investigative activity by NTSB will focus on maintenance procedures and practices, use of wayside defect detectors, and railcar inspection practices, and I welcome the results of that investigation. In the interim, I call on DOT to consider what can be done before that time to ensure that we are doing all that we can today and in the future. To that end, I ask that you answer the following questions:

- How does the FRA audit maintenance procedures used by freight railroads? How often do these audits take place?
- Is DOT considering additional inspection processes to enhance the ability to quickly and accurately identify flaws on tracks and on railcars?
- Using available data, can FRA determine how often maintenance take place on wheel bearings or rail car axles? Is there additional data FRA would need to determine these maintenance practices?
- Can you provide an update on the industry's implementation of Electronically-Controlled Pneumatic (ECP) brakes? Would ECP have prevented or mitigated some of the damage caused by the East Palestine derailment?

I look forward to your responses to these critical questions. Thank you for your attention to this important matter.

Sincerely,



Joe Manchin III
United States Senator

³ <https://www.phmsa.dot.gov/news/phmsa-rescinds-ecp-brake-mandate-after-ria-finds-costs-outweigh-benefits>

⁴ <https://railroads.dot.gov/elibrary/fra-audit-report-norfolk-southern-railway-company>