

MOVING HAZARDS: THE RAILS

Nearly a billion tons of hazardous materials are moved over roughly 140,000 miles of U.S. freight rails each year¹; there are far too many accidents, derailments, and toxic releases.²

- In the first five months of 2024, there were already 105 reported “incidents.”³ The previous year, 332 were reported.⁴
- Among the most well-known recent derailments occurred in East Palestine, Ohio when a nearly two-mile-long freight train containing combustible liquids and cancer-causing gases derailed, causing fires, liquid spillage, and gas releases – a situation which the railroad company worsened by unnecessarily blowing open five tank cars filled with 115,580 gallons of vinyl chloride and burning it.⁵

Private companies that control the rails are not making safety as high a priority as they should.

- Seven companies are most responsible for the safety of rails. Considered the largest, most powerful, and categorized as Class I railroads, they are: BNSF Railway, Canadian National Railway, Canadian Pacific, CSX Transportation, Kansas City Southern, Norfolk Southern Railway, and Union Pacific.
- There is a new cost-cutting trend of freight trains being controlled remotely, without a conductor or engineer onboard or at least in the cab, leading to a “recent rash of accidents. ...Many now run through residential and commercial neighborhoods, sometimes carrying hazardous cargo such as petroleum or hydrochloric acid.”⁶
- Faced with competition from the long-haul trucking industry,⁷ railroad corporations have followed a moneymaking strategy known as precision scheduled railroading “to move cargo faster than ever, with fewer workers on trains that are consistently longer than at any time in history.”⁸

The two federal agencies responsible for overseeing hazmat rail safety – the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad Administration (FRA) – often bow to industry pressure to weaken existing regulations and fail to remedy urgent problems. Issues include:

- Failure to promulgate a rule requiring flammable hazmat-carrying rail cars to have electronically controlled pneumatic brakes (ECP),⁹ which can prevent or reduce the size of a derailment pile-up.¹⁰

- Maintaining an overly narrow definition of “high-hazard flammable train,” which requires more stringent safety requirements.¹¹
- Failure to require companies to equip trains or tracks with systems to detect defects, increasing the likelihood of derailments.¹²
- Lack of real-time tracking of hazardous cargo by the Federal Railroad Administration.¹³
- Paltry fines even for egregious safety violations involving hazardous materials when people die.¹⁴

Victims may turn to the civil courts after a crash or release. Below are some recent cases.

- Hundreds of Libby, MT residents filed lawsuits against BNSF Railway for asbestos exposure from tainted mining material hauled through the town over the course of decades. As of publication, the cases remain unresolved.¹⁵
- Victims filed a class action against CSX when a train derailed in Rockcastle County, KY causing the release and spillage of extremely dangerous chemicals and poisonous gas, some of which caught fire and burned for nearly a day. The case is pending.¹⁶
- When a BNSF oil train derailed near Doon, IA, it spilled approximately 160,000 gallons of oil into nearby water and contaminated nearby property; the rail company settled with property owners.¹⁷
- A Union tank car on a CSX train, which was carrying approximately 24,000 gallons of the carcinogenic and highly toxic acrylonitrile, overheated and derailed in Blount County, TN. Acrylonitrile burned for more than 19 hours. Area residents filed a class action against CSX and Union; both companies settled.¹⁸
- Residents, businesses, and property owners injured by the East Palestine, OH train derailment filed a class action against Norfolk Southern. The company agreed to a \$600 million settlement.¹⁹ However, a number of residents are concerned the amount is too low.²⁰ In addition, those who agree to settle would be releasing from additional liability not only Norfolk Southern but also other third-party defendants.²¹ On May 21, 2024, the court issued preliminary approval of a settlement,²² a final approval hearing is scheduled for September 25, 2024.²³

Notes

¹ Among the hazmat that trains transported in 2023: over 73 million tons of natural gas and other fossil fuel products, more than 28 million tons of gasoline, over 24 million tons of fuel oils, and more than 22 million tons of crude petroleum through the land/communities. Bureau of Transportation Statistics, “Moving Goods in the United States,” <https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcvt-rqmu/#commodities> (viewed April 20, 2024).

² Jayme Fraser and Tami Abdollah, “How often do train wrecks spill hazardous chemicals into neighborhoods? Here’s what data shows,” *USA TODAY*, March 31, 2023, <https://www.usatoday.com/story/news/2023/02/09/did-train-wrecks-spill-hazardous-chemicals-near-your-home-look-data/11197948002/>

³ Pipeline and Hazardous Materials Safety Administration, “Yearly Incident Summary Report: 2024 FRA-RAILWAY Hazmat Summary by Transportation Phase,” <https://portal.phmsa.dot.gov/PDMPublicReport/?url=https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&Portal>

[Path=%2Fshared%2FPublic%20Website%20Pages%2F_portal%2FYearly%20Incident%20Summary%20Reports](#) (data as of May 19, 2024). Per the Federal Railroad Administration, the term “incident” vis-à-vis reportable events includes “collisions, derailments, and other events involving the operation of on-track equipment and causing reportable damage above an established threshold; impacts between railroad on-track equipment and highway users at crossings; and all other incidents or exposures that cause a fatality or injury to any person, or an occupational illness to a railroad employee.” Office of Safety Analysis, Federal Railroad Administration, “9.12 – Definitions,” <https://safetydata.fra.dot.gov/officeofsafety/publicsite/definitions.aspx> (viewed April 28, 2024).

⁴ Pipeline and Hazardous Materials Safety Administration, “10 Year Incident Summary Reports: All Incidents,” https://portal.phmsa.dot.gov/PDMPublicReport/?url=https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPublic%20Website%20Pages%2F_portal%2F10%20Year%20Incident%20Summary%20Reports (data as of May 19, 2024); Pipeline and Hazardous Materials Safety Administration, “Yearly Incident Summary Report: 2023 FRA-RAILWAY Hazmat Summary by Transportation Phase,”

https://portal.phmsa.dot.gov/PDMPublicReport/?url=https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPublic%20Website%20Pages%2F_portal%2FYearly%20Incident%20Summary%20Reports (data as of May 19, 2024).

⁵ Josh Funk, “After Ohio train derailment, tank cars didn’t need to be blown open to release chemical, NTSB says,” *Associated Press*, March 6, 2024, <https://apnews.com/article/norfolk-southern-train-derailment-east-palestine-2df45af31d48bee51098991f5250b232>; Christine Hauser, “After the Ohio Train Derailment: Evacuations, Toxic Chemicals and Water Worries,” *New York Times*, June 23, 2023, <https://www.nytimes.com/article/ohio-train-derailment.html>; CUNY Graduate Center, “The Ohio Train Derailment and Its Toxic Aftermath,” April 21, 2023, <https://www.gc.cuny.edu/news/ohio-train-derailment-and-its-toxic-aftermath>; Benji Jones, “What the Ohio train derailment teaches us about poisoning public trust,” *Vox* (March 2023), <https://www.vox.com/science/23624376/east-palestine-derailment-air-quality-safety>; Testimony of National Transportation Safety Board Chair Jennifer Homendy before the U.S. Senate Committee on Commerce, Science, and Transportation, hearing on “Improving Rail Safety in the Aftermath of the East Palestine Derailment,” March 22, 2023, <https://www.nts.gov/news/Testimony/Pages/Homendy-20230322.aspx>

⁶ Frances Robles et al., “A 100-Ton Locomotive With No One in the Cab,” *New York Times*, May 27, 2024, <https://www.nytimes.com/2024/05/27/us/train-safety-crashes-union.html>

⁷ Tami Abdollah, “Trains are becoming less safe. Why the Ohio derailment disaster could happen more often,” *USA TODAY*, February 16, 2023, <https://www.usatoday.com/story/news/2023/02/14/norfolk-southern-ohio-train-derailment-emblematic-rail-trends/11248956002/>

⁸ Dan Schwartz and Topher Sanders, “The True Dangers of Long Trains,” *ProPublica*, April 3, 2023, <https://www.propublica.org/article/train-derailment-long-trains>

⁹ Lee Fang, “Years Before East Palestine Disaster, Congressional Allies of the Rail Industry Intervened to Block Safety Regulations,” *Intercept*, February 21 2023, <https://theintercept.com/2023/02/21/east-palestine-rail-safety-congress/>; David Sirota et al., “Rail Companies Blocked Safety Rules Before Ohio Derailment,” *The Lever*, February 8, 2023, <https://www.levernews.com/rail-companies-blocked-safety-rules-before-ohio-derailment/>; Pipeline and Hazardous Materials Safety Administration, “USDOT Announces Intent to Repeal Electronically Controlled Pneumatic Brake Mandate,” December 13, 2017, <https://www.phmsa.dot.gov/news/usdot-announces-intent-repeal-electronically-controlled-pneumatic-brake-mandate>

¹⁰ Tami Abdollah, “Trains are becoming less safe. Why the Ohio derailment disaster could happen more often,” *USA TODAY*, February 16, 2023, <https://www.usatoday.com/story/news/2023/02/14/norfolk-southern-ohio-train-derailment-emblematic-rail-trends/11248956002/>. “As one railroad industry insider told The Washington Post anonymously in 2016: ‘Trains are like giant Slinkies. When you have that back of the train running into the front of the train, they can actually push cars out, cause a derailment and cause a hell of a mess.’ ECP braking, the analyst said, takes ‘the energy out of the train quicker, so when a train does derail there is less energy that has to be absorbed by crushing tank cars.’” David Sirota et al., “Rail Companies Blocked Safety Rules Before Ohio Derailment,” *The Lever*, February 8, 2023, <https://www.levernews.com/rail-companies-blocked-safety-rules-before-ohio-derailment/>

¹¹ 49 CFR § 171.8, <https://www.law.cornell.edu/cfr/text/49/171.8>; 49 CFR § 174.310,

<https://www.law.cornell.edu/cfr/text/49/174.310>; 49 CFR § 174.312, <https://www.law.cornell.edu/cfr/text/49/174.312>

¹² National Transportation Safety Board, *Derailment of Amtrak Passenger 7 Train on BNSF Railway Track*, Railroad Investigation Report RIR-23-08, July 5, 2023,

<https://www.nts.gov/investigations/AccidentReports/Reports/RIR2308.pdf>

¹³ Ted Daniel and Marina Villeneuve, “‘Relying on luck rather than the law’: Transport of hazmat by rail still big, risky secret in Mass.,” *Boston 25 News*, May 3, 2023, <https://www.boston25news.com/news/local/relying-luck-rather-than-law-transport-hazmat-by-rail-still-big-risky-secret-mass/W72W7GRPMNFHZKV77PP6AXCOZ4/>

¹⁴ Until recently, these companies faced a maximum fine of only \$225,455. In late December 2023, federal regulations raised the amount to \$232,762, still a rounding error for companies that make billions of dollars each year, too paltry to deter them from committing serious violations. The maximum penalty for “ordinary hazardous materials violations”

was raised from \$96,624 to \$99,756. “Revisions to Civil Penalty Amounts, 2024,” 88 FR 89551, December 28, 2023, <https://www.federalregister.gov/documents/2023/12/28/2023-28066/revisions-to-civil-penalty-amounts-2024>.

¹⁵ Aaron Bolton, “BNSF Railway appeals asbestos trial verdict, putting another trial on hold,” *Montana Public Radio*, May 8, 2024, <https://www.mtpr.org/montana-news/2024-05-08/bnsf-railway-appeals-asbestos-trial-verdict-putting-another-trial-on-hold>; Spencer Brewer, “BNSF Says Zurich Should Pay For Defense In Asbestos Cases,” *Law360*, April 23, 2024, <https://www.law360.com/transportation/articles/1828813/bnsf-says-zurich-should-pay-for-defense-in-asbestos-cases>; Amy Beth Hanson and Matthew Brown, “Jury: BNSF Railway contributed to 2 deaths in Montana town where asbestos sickened thousands,” *Associated Press*, April 22, 2024, <https://apnews.com/article/buffett-railroad-trial-asbestos-montana-town-18b38ddf8ca43646b81748c5102f889f>; Amy Beth Hanson and Matthew Brown, “Asbestos victims in Montana want Buffett’s railroad company held responsible,” *Associated Press*, April 8, 2024, <https://apnews.com/article/bnsf-railway-libby-asbestos-vermiculite-lawsuit-25783f61a393b3aa3a7286e6aeca4356>; *Wells v. BNSF Railway*, Case No. 4:21-cv-00097-BMM (D. Mont.) (complaint, September 23, 2021).

¹⁶ *Webb v. CSX Transportation*, Case No. 6:23-cv-00211-REW (E.D. Ky.) (docket viewed May 21, 2024); Aleks Phillips, “Residents Launch Class Action Lawsuit Over ‘Devastating’ Train Derailment,” *Newsweek*, November 30, 2023, <https://www.newsweek.com/kentucky-residents-class-action-lawsuit-train-derailment-1848440>; *Webb v. CSX Transportation*, Case No. 6:23-cv-00211-REW (E.D. Ky.) (complaint, November 29, 2023), <https://www.courthousenews.com/wp-content/uploads/2023/11/webb-v-csx-transportation-complaint-eastern-district-kentucky-train.pdf>

¹⁷ Nick Hytrek, “Lyon County landowners settle lawsuit over train derailment,” *Sioux City Journal*, February 16, 2024, https://siouxcityjournal.com/news/local/crime-courts/lawsuit-settlement-train-derailment-bnsf-doon/article_a78702a-cc13-11ee-a849-afe9651237b1.html; “Landowners, BNSF settle suit over 2018 oil train derailment,” *Trains*, February 16, 2024, <https://www.trains.com/trn/news-reviews/news-wire/landowners-bnsf-settle-suit-over-2018-oil-train-derailment/>; *Kooima v. BNSF Railway Company*, Case No. 5:23-cv-04041 (Lyon County Dist. Ct., IA) (complaint, August 4, 2023).

¹⁸ *Tipton v. Union Tank Car Co.*, 2019 WL 13491187 (order); *Tipton v. CSX*, 2017 WL 8315589 (amended master consolidated class action complaint); James Satterfield, “Blount train derailment evacuees settle with railroad; trial begins against rail car maker,” *Knoxville Sentinel News*, February 16, 2018, <https://www.knoxnews.com/story/news/crime/2018/02/26/train-crash-derailment-lawsuit-tennessee-maryville-blount-county/360457002/>; Hayes Hickman, “Investigation fails to find exact cause of disastrous 2015 Maryville train derailment,” *Knoxville News Sentinel*, November 2, 2017, <https://www.knoxnews.com/story/news/local/2017/11/02/2015-csx-train-derailment-maryville-cause-undetermined-after-investigation/824510001/>; Adam Lidgett, “Tenn. Residents Want Class Cert. In Train Derailment Row,” *Law360*, October 17, 2016, <https://www.law360.com/productliability/articles/852110/tenn-residents-want-class-cert-in-train-derailment-row>; Ben Klayman and Suzannah Gonzales, “Thousands evacuated after freight train derails, catches fire, in Tennessee,” *Reuters*, July 2, 2015, <https://www.reuters.com/article/idUSKCN0PC1L8/>

¹⁹ Linda Chiem, “What’s In The Norfolk Southern \$600M Derailment Deal,” *Law360*, April 9, 2024, <https://www.law360.com/articles/1823628/what-s-in-the-norfolk-southern-600m-derailment-deal>; David Shepardson and Clark Mindock, “Norfolk Southern agrees to pay \$600 million to settle Ohio derailment lawsuit,” *Reuters*, April 9, 2024, <https://www.reuters.com/legal/norfolk-settle-ohio-derailment-class-action-lawsuit-600-mln-2024-04-09/>; Clark Mindock, “Norfolk Southern must face East Palestine residents’ lawsuit, judge rules,” *Reuters*, March 13, 2024, <https://www.reuters.com/legal/litigation/norfolk-southern-must-face-east-palestine-residents-lawsuit-judge-rules-2024-03-13/>; Clark Mindock, “Norfolk Southern says East Palestine residents’ suit barred by US law,” *Reuters*, June 5, 2023, <https://www.reuters.com/legal/norfolk-southern-says-east-palestine-residents-suit-barred-by-us-law-2023-06-05/>; Zack Budryk, “East Palestine residents file class-action against Norfolk,” *The Hill*, February 24, 2023, <https://thehill.com/policy/energy-environment/3872818-east-palestine-residents-file-class-action-against-norfolk-southern/>

²⁰ Josh Funk, “Norfolk Southern agrees to \$600M settlement in fiery Ohio derailment. Locals fear it’s not enough,” *Associated Press*, April 9, 2024, <https://apnews.com/article/norfolk-southern-ohio-bd020560b01f5cb58bb6e15072ca97a1>. According to *AP*, “Residents can decide to accept money for property damage without taking the personal injury payment. ... Residents who don’t think the settlement provides enough have until July 1 to opt out of the deal and preserve their right to file an individual lawsuit later. That means they will have time to read the National Transportation Safety Board’s final report on the derailment that will be released at a June 25 hearing in East Palestine.” Josh Funk, “Judge signs off on \$600 million Ohio train derailment settlement but residents still have questions,” *Associated Press*, May 22, 2023, <https://apnews.com/article/east-palestine-ohio-train-derailment-settlement-464c1312b19dc075ea159ae0e7ee0b0a>

²¹ Stephanie Elverd, “Settlement will release long list of parties,” *Morning Journal*, May 3, 2024, <https://www.morningjournalnews.com/news/local-news/2024/05/settlement-will-release-long-list-of-parties/>

²² Josh Funk, “Judge signs off on \$600 million Ohio train derailment settlement but residents still have questions,” *Associated Press*, May 22, 2023, <https://apnews.com/article/east-palestine-ohio-train-derailment-settlement>

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²³ Stephanie Elverd, “Class action counsel asks settlement be approved,” *Morning Journal*, April 30, 2024, <https://www.morningjournalnews.com/news/local-news/2024/04/class-action-counsel-asks-settlement-be-approved/>