

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE STATE OF OHIO)	
)	
and)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Plaintiffs,)	
)	
v.)	Civil Case No. 23-cv-517
)	Hon. John R. Adams
)	
NORFOLK SOUTHERN RAILWAY)	
COMPANY)	
)	
and)	
)	
NORFOLK SOUTHERN)	
CORPORATION,)	
)	
Defendants.)	
_____)	

**UNITED STATES OF AMERICA’S
MOTION TO ENTER CONSENT DECREE**

Plaintiff United States of America hereby requests that the Court enter the proposed Consent Decree that was lodged with the Court on May 23, 2024. Dkt. 138-1. The Consent Decree settles the United States’ claims against Norfolk Southern Railway Company and Norfolk Southern Corporation under the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) related to the February 3, 2023, derailment of Train 32N in East Palestine, Ohio.

The United States published notice of the lodging of the proposed Consent Decree in the Federal Register on May 30, 2024, for purposes of soliciting public comment on the proposed Consent Decree under Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R.

§ 50.7. *See* 89 Fed. Reg. 46,908 (May 30, 2024). The notice provided a 30-day period for the public to provide comments. *Id.* The United States subsequently extended the public comment period until August 2, 2024, to provide time for additional public input. *See* 89 Fed. Reg. 50,635 (June 14, 2024). The United States received over 120 comments from the public. As explained in the accompanying *Memorandum in Support*, nothing in the public comments demonstrates that this Consent Decree should not be entered. As explained more fully in the accompanying brief, the United States is proposing one revision to Paragraph 69 of the Consent Decree, consistent with public comments, to clarify the intended scope of the prohibition on DOT-111 tank cars.

As set forth in the Consent Decree, Defendants have agreed not to oppose entry of the Consent Decree by the Court or to challenge any provision of the Consent Decree unless the United States has notified Defendants that it no longer supports entry of the Consent Decree. Dkt. 138-1 at ¶ 173. The accompanying brief in support of this motion demonstrates that the proposed Consent Decree meets the well-established standard for judicial approval of a settlement of environmental claims negotiated by the federal government: it is “fair, adequate, and reasonable, as well as consistent with the public interest.” *United States v. Lexington-Fayette Urban Cnty. Gov’t*, 591 F.3d 484, 489 (6th Cir. 2010) (internal quotations omitted) (CWA case); *accord United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991) (CERCLA case).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *United States of America's Motion to Enter Consent Decree* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. mail. Parties may access this filing through the Court's system.

10/10/24

Date

s/ Jeffrey A. Spector

Jeffrey A. Spector