



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

April 27, 2016

Norfolk Southern Railway Company
1200 Peachtree Street NE – Box 13
Atlanta, Georgia 30309

Re: **Norfolk Southern Railway Company
Director's Final Findings and Orders (DFFO)
DFFO
RCRA C - Hazardous Waste
Mercer County
OHR 000 181 271**

Subject: Final Findings and Orders
Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Norfolk Southern Railway Company.

Enclosed are invoices for the total penalty amount of \$4,800.00 required by the orders. The penalty payment(s) shall be made by official check(s) made payable to "Treasurer, State of Ohio."
If you have any questions, please contact Andrea Smoktonowicz at (614) 644-3180.

Sincerely,

A handwritten signature in cursive script that reads "D. Crumiell-Hagens".

Demitria Crumiell-Hagens, Administrative Professional II
Division of Materials & Waste Management

Enclosure

cc: Mitch Mathews, Kelly Smith, DMWM, CO
Erik Hagen, Don Vogel, DERR, CO
Andrea Smoktonowicz, Legal
Dawn Pleiman, DERR, NWDO
Coleen Weaver, Donald North, DMWM, NWDO

OHIO E.P.A.

APR 27 2016

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Norfolk Southern Railway Company
1200 Peachtree Street, NE – Box 13
Atlanta, GA 30309

Respondent

Director's Final
Findings and Orders

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: Jerry Cassler Date: 4-27-16

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Norfolk Southern Railway Company (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.02(G), 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Rail Line (hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings

shall be considered to be an admission by Respondent of any matter of fact, violation, or liability. The Director of Ohio EPA has determined the following findings:

1. Pursuant to ORC § 3734.02(G) and Ohio Administrative Code (OAC) rule 3745-50-31, the Director may by order exempt any person generating, collecting, storing, treating, disposing of, or transporting hazardous wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment, from any requirement to obtain a hazardous waste facility installation and operation permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 41 U.S.C. § 6921 et seq., as amended.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and OAC rule 3745-50-10(A). Respondent is an "owner" as defined in OAC rule 3745-50-10(A)(94) of a hazardous waste facility.
3. Respondent owns a portion of the railway known as the Lima Line that extends between mile post (MP) 120.0 west and MP 136.3 (this section of the railway referred to herein as the Rail Line), and has leased the Rail Line to R.J. Corman Railroad Company/Western Ohio Line (RJC) since approximately 1993. For purposes of these Orders, the hazardous waste management units along the Rail Line are being treated, collectively, as a "facility" as defined under OAC rule 3745-50-10(A). RJC owns and operates the portion of the Lima Line that extends between MP 95.5 and MP 120.0, which also has hazardous waste management units along it and which is not a part of the Rail Line but is the subject of a separate Director's Final Findings and Orders not involving Respondent as either an "owner" or "operator," as those terms are defined in OAC rule 3745-50-10(A)(94) and (93).
4. On August 23, 2013, Ohio EPA conducted a complaint investigation near the Rail Line in the vicinity of 945 S. Main Street in Celina, Ohio at MP 120.5.¹ During the investigation, Ohio EPA observed an underground vault containing batteries and other liquid and solid wastes. The vault was not secured and there were signs of vandalism. Later that day, Ohio EPA met with RJC to discuss the waste observed in the vault at MP 120.5. Ohio EPA learned the batteries likely were used historically as part of a backup power supply for rail signals and switches on the Rail Line. The Federal Railroad Administration authorized abandonment of the signal systems along the Rail Line coincident with the commencement of the lease between Respondent and RJC. It is presumed that the batteries may have

¹ The NOV initially labeled the MP as 120.8 but it was later determined to be MP 120.5. This is the same MP.

been stored in this vault for at least twenty-three years and Ohio EPA considers the batteries to have been abandoned. U.S. EPA ID Number OHR000181271 has been assigned to the vault at MP 120.5 and also covers any other hazardous waste management units along the Rail Line, and Respondent is associated with this U.S. EPA ID Number.

5. With regard to the lease with RJC, by electronic email dated March 2, 2016, Respondent asserts that RJC has all maintenance responsibility along the Rail Line under the lease, including responsibility to maintain any and all signal equipment whether or not operational, and including the batteries and units that are the subject of these Orders. It is Respondent's position that RJC is an "operator" as defined in OAC rule 3745-50-10(A)(93).
6. On October 2, 2013, Ohio EPA observed RJC remove twenty-six batteries from the vault at MP 120.5. RJC transported these batteries to its rail yard office in Celina, Ohio. Ohio EPA observed additional batteries in the vault, but RJC was unable to remove these batteries due to other liquid and solid waste in the bottom of the vault.
7. On November 21, 2013, Ohio EPA received analytical results from RJC for the wastes from the vault at MP 120.5. These analytical results showed the liquid waste was characteristic hazardous waste for toxicity (lead (D008) and mercury (D009)) and the batteries were characteristic hazardous waste for corrosivity (D002) and toxicity (mercury (D009)) as described in OAC rules 3745-51-22 and 3745-51-24.
8. On November 25, 2013, Ohio EPA contacted Respondent by telephone to discuss the hazardous waste that had been observed by Ohio EPA in the vault at MP 120.5.
9. As a result of the waste analysis results referenced in Finding No. 7. of these Orders and the August 23, 2013 complaint investigation, Ohio EPA determined that Respondent, *inter alia*:
 - a. Stored hazardous waste liquid and batteries for greater than 90 days in the vault at MP 120.5, thereby causing the establishment of a hazardous waste facility without a hazardous waste facility installation and operation permit, in violation of ORC § 3734.02(E) and (F); and
 - b. Failed to evaluate waste in the vault at MP 120.5 to determine if the waste is a hazardous waste in violation of OAC rule 3745-52-11.
10. In a letter dated December 31, 2013, Ohio EPA notified Respondent of the violations in Finding No. 9. of these Orders.

11. By letter dated February 18, 2014, Respondent submitted information responding to the violations cited in the December 31, 2013 letter from Ohio EPA and referenced in Finding No. 10. of these Orders. This information indicated that Respondent had conducted a survey along the Rail Line and observed approximately ten additional units, and were in the process of evaluating these units to determine if they contained hazardous waste liquids or batteries. Respondent proposed developing a plan for removal of waste from the units and sampling and analysis of the wastes to determine if they are hazardous waste.
12. On February 25, 2014, Ohio EPA, accompanied by Respondent, conducted a follow-up inspection which included examining batteries removed from the vault at MP 120.5 that were being stored at a warehouse at RJC's rail yard office in Celina, and observed Respondent's consultant collecting samples of the waste liquid and solids from the vault at MP 120.5. Additionally, the parties discussed the waste battery management in the warehouse, closure in accordance with OAC rule 3745-55-10 through 3745-55-20 for the vault(s), and investigating the Rail Line for additional units.
13. On March 27, 2014, in conjunction with an inspection of the portion of the Lima Line owned and operated by RJC extending from MP 95.5 to MP 119.8, Ohio EPA conducted a compliance evaluation inspection of the Rail Line from MP 120.0 west to an unmarked MP just past MP 134.8 near Ft. Recovery, Ohio. Ohio EPA was accompanied by Respondent on this inspection. During the inspection, Ohio EPA observed approximately thirty additional units along the Rail Line, some of which contained waste.
14. As a result of the March 27, 2014 inspection, Ohio EPA determined Respondent failed to evaluate waste stored in up to thirty units along the Rail Line in violation of OAC rule 3745-52-11. Respondent was notified of this violation in a letter dated May 20, 2014. Ohio EPA requested Respondent submit a plan for sampling and analyzing the wastes found in the units.
15. By letter dated April 2, 2014, Respondent submitted a draft closure plan entitled *Closure Plan – Signal Battery Storage Vault, Mile Post 120.5 in Celina, Ohio* in response to the December 31, 2013 letter from Ohio EPA to address the violation referenced in Finding Nos. 9.a. and 9.b. of these Orders.
16. By electronic mail on June 6, 2014, Respondent responded to the May 20, 2014 letter from Ohio EPA referenced in Finding No. 14. of these Orders. Respondent provided analytical results of the waste from the units indicating that the units at MP 120.0 and MP 130.6 contained hazardous waste that exhibited the toxicity characteristic for selenium (D010) (as to MP 120.0) and for mercury (D009) (as to MP 130.6). Respondent also indicated that six of the remaining units, MP

120.4, MP 125.5 (2 units), MP 126.6, MP 133.2, and MP 134.8 contained batteries that may constitute universal waste for disposal purposes.

17. By letter dated July 22, 2014, Ohio EPA notified Respondent that the violations discovered during the August 23, 2013 inspection and referenced in Finding No. 9.b. of these Orders had been abated, but Respondent remained in violation of ORC § 3734.02(E) and (F) for the illegal storage of hazardous waste as described in Finding No. 9.a. of these Orders.
18. By letter dated July 24, 2014, Ohio EPA requested that RJC provide information regarding the batteries that had been removed from the vault and stored at RJC's rail yard office referenced in Finding No. 6. of these Orders. By electronic mail on September 8, 2014, RJC responded to the July 24, 2014 letter and informed Ohio EPA that a gaylord box containing batteries had been shipped to an authorized facility on June 27, 2014. The response included a manifest and also described how the batteries were managed while they were being stored at RJC's rail yard office and how the area where the batteries were stored at the rail yard office was cleaned up after the batteries were shipped.
19. By letter dated August 6, 2014, Ohio EPA notified Respondent of the results of a review of the information submitted in the June 6, 2014 electronic mail communication referenced in Finding No. 16. of these Orders. Ohio EPA stated that up to twenty-two of the units that Respondent had identified along the Rail Line contained wastes for which Respondent had violated OAC rule 3745-52-11 for failing to evaluate to determine if the wastes were a hazardous waste.
20. By electronic mail on September 8, 2014, Respondent submitted information in response to Ohio EPA's August 6, 2014 letter referenced in Finding No. 19. of these Orders, which addressed units along the Rail Line. Respondent also submitted the plan titled *Sampling and Analysis Plan Signal Battery Storage Vaults Mile Post 120.0 to Mile Post 136.4 Lima, Ohio to Celina, Ohio*, which proposed collecting additional samples at some units, and for other units, proposed the use of information regarding the hazardous characteristics of the batteries and electrical components found in certain units to characterize the waste.
21. By letter dated November 24, 2014, Respondent submitted additional information to address the violations referenced in Ohio EPA's August 6, 2014 letter. This information included memorializing a proposal discussed between Respondent and Ohio EPA to characterize batteries and certain electrical components as hazardous waste in lieu of sampling these wastes.

22. On December 9, 2014, Ohio EPA accompanied Respondent on a field investigation of the units along the Rail Line and observed the collection of samples of waste from several of the units.
23. By electronic mail on February 27, 2015, Respondent submitted the report *Sampling and Analysis Evaluation Report Signal Battery Storage Vaults and Structures Mile Post 120.0 to Mile Post 136.4 Celina, Ohio to Fort Recovery, Ohio*.
24. By letter dated April 10, 2015, Ohio EPA notified Respondent of the results of the observations made during the December 9, 2014 field investigation and review of the analytical report submitted on February 27, 2015, referenced in Finding No. 23. of these Orders. Based on these findings, Ohio EPA informed Respondent it had violated ORC § 3734.02(E) and (F) for illegal storage of hazardous waste containing at least lead (D008), mercury (D009) and/or selenium (D010) in approximately 20 units along the Rail Line for which Respondent does not possess a hazardous waste installation and operation permit. Additionally, Ohio EPA informed Respondent that based on the information submitted on August 20, September 8, and November 24, 2014, and February 27, 2015, the violation of OAC rule 3745-52-11 was abated.
25. Due to Respondent's ownership of a hazardous waste facility consisting of numerous hazardous waste storage units as described in Finding Nos. 9.a., 17. and 24. of these Orders, Respondent is required to have a hazardous waste facility and installation permit and is subject to all general facility standards found in OAC Chapter 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101. To obtain a hazardous waste facility installation and operation permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.
26. Respondent's submittal of a Closure Plan(s) for all units along the Rail Line where hazardous was stored, in lieu of the submittal of an application for a hazardous waste facility installation and operation permit, is unlikely to adversely affect the public health or safety or the environment. The Closure Plan(s) shall comply with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55 including but not limited to the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100. Therefore, the Director finds that the issuance to Respondent of an exemption from the requirement to submit an application for a hazardous waste facility installation and operation permit is unlikely to adversely affect the public health or safety or the environment within the meaning

of ORC § 3734.02(G) provided Respondent meets the conditions set forth in the Orders.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Respondent is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the hazardous waste management units along the Rail Line, *provided that* Respondent complies with the following:
 - a. Within 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a Closure Plan(s) for the units along the Rail Line where Ohio EPA has determined hazardous waste was stored or disposed. A copy of the Closure Plan(s) shall be submitted in accordance with Section X. of these Orders and an additional copy submitted to Ohio EPA, Division of Environmental Response and Revitalization, Manager, Engineering Section, P.O. Box 1049, Columbus, Ohio 43216-1049;
 - b. This Closure Plan(s) shall comply with the administrative requirements of OAC Chapters 3745-65 and 3745-66 and the substantive requirements of OAC Chapters 3745-54 and 3745-55, including but not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 54-100. The Closure Plan(s) is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan and provides Respondent with a written statement of deficiencies, Respondent shall submit a revised Closure Plan(s) for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan. Upon Ohio EPA's written approval of the Closure Plan(s), Respondent shall implement the approved Closure Plan(s) in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13;
 - c. Within 30 days after approval of the Closure Plan(s) pursuant to Order No. 1.a., Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the hazardous waste management units along the Rail Line that are subject to closure, in accordance with OAC rules 3745-55-42 through 3745-55-47; and

- d. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15. Ohio EPA's acceptance of the closure certification shall abate the violations referenced in Finding Nos. 9.a., 17. and 24., of these Orders.
2. Respondent shall pay to Ohio EPA the amount of \$4,800.00 in settlement of Ohio EPA's claims for civil penalties. Within 30 days after the effective date of these Orders, Respondent shall pay the amount of \$4,800.00 which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by corporate check(s) made payable to "Treasurer, State of Ohio" totaling \$4,800.00. The official check(s) shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent, the Rail Line, and the EPA ID Number referenced in Finding No. 4. of these Orders. A copy of this check(s) shall be sent to Ohio EPA Division of Materials and Waste Management, Supervisor, Administrative Processing Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete to the best of my knowledge and belief."

This certification shall be submitted by Respondent to Ohio EPA in accordance with Section X. of these Orders and shall be signed by a responsible official of the certifying Respondent. For purposes of these Orders, a responsible official is, e.g., a corporate officer who is in charge of a principal business function of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of the Rail Line.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent. Respondent does not waive and expressly preserve any claims or defenses related to preemption of certain state and local approvals and conflicting requirements as applied to rail facilities operating in interstate commerce under the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), 49 U.S.C. §10501, and/or Federal Railway Safety Act of 1970 ("FRSA"), 49 U.S.C. § 20101.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Materials and Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager
and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Manager, Hazardous Waste Compliance Assurance Section
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building:

Manager, Hazardous Waste Compliance Assurance Section
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
50 West Town Street
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to exercise its lawful authority to require Respondent to perform corrective action at the Rail Line, at some time in the future, pursuant to ORC Chapter 3734, or any other applicable law. Respondent reserves its rights to raise any administrative, legal or equitable claim or defense with respect to performing such corrective action. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek corrective action at the Rail Line by Respondent, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein or hazardous waste violations under ORC Chapter 3734 that are known to Ohio EPA at the time of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

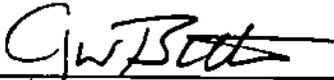
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



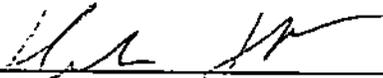
Craig W. Butler
Director

APR 27 2016

Date

IT IS SO AGREED:

Norfolk Southern Railway Company



Helen M. Hart
Signature

April 8, 2016

Date

Helen M. Hart
Printed or Typed Name

General Solicitor
Title