

U.S. Senator Maria Cantwell

**Senate Commerce, Science, and Transportation Committee Hearing on Improving Rail Safety
in Response to the East Palestine Derailment**

Witnesses:

Panel 1 – U.S. Senator Sherrod Brown; U.S. Senator J.D. Vance; Hon. Mike DeWine, Governor of Ohio; Misti Allison, Resident of East Palestine

Panel 2 - Jennifer Homendy, Chair, National Transportation Safety Board; David Comstock, Chief, Ohio Western Reserve Joint Fire District; Clyde Whitaker, Legislative Director, Ohio State SMART-TD; Alan Shaw, CEO, Norfolk Southern; Ian Jefferies, CEO, Association of American Railroads

March 22nd, 2023

Opening Statement

[\[AUDIO\]](#) [\[VIDEO\]](#)

Senator Cantwell: The Commerce, Science and Transportation Committee will come to order for the purposes of a hearing. We are here this morning, at the full committee, for improving rail safety in response to the East Palestine derailment.

I would ask the witnesses to please join us for the first panel at the witness table.

On February 3rd, the town of East Palestine, Ohio, experienced a hazardous materials event that no community should have to suffer from. A Norfolk Southern train carrying hazardous materials crashed just outside the town and 38 cars – more than a quarter of the train – derailed.

Plastic pellets from one of the derailed cars caught fire which engulfed other railcars including five carrying vinyl chloride. After burning for two days, authorities became concerned the vinyl chloride in one of the tank cars was undergoing a chemical reaction that made it a bigger and more dangerous. The authorities then initiated a controlled burn of the remaining vinyl chloride in five tanks to prevent a greater catastrophe.

Two thousand residents were forced to evacuate and a community was forever changed. We look forward to hearing the witnesses and specially appreciate the Palestine Moms for their leadership and we look forward to hearing from Misti Allison this morning.

Let me be clear. This hearing is not only about the East Palestine derailment. Less than a week ago, a Burlington Northern Santa Fe train derailed in my state of Washington, on the Swinomish Reservation in Skagit County, spilling 5,000 gallons of diesel near the Padilla Bay waterfront, a very sensitive aquatic ecosystem.

These are important issues for all of America. And we look forward to working in a bipartisan basis on this problem.

Fire Chief Comstock, I know will be testifying, and he knows better that a fire department needs to deal with the hazardous materials. And we will be asking you what Congress can do to better equip the firefighters who have to respond.

These derailments have occurred during a concerning trend. That is, we can't have railroads adopt operating models focused on just cutting cost to achieve higher profits and then have higher accident rates. We need to invest in the modernization of equipment that will provide the safety we need.

From 2017 to 2021, railroads cut their workforce by 22% and reduced investment in the network by 24%. And at the same time, accident rates increased by 14%. We will dive into these details today to better understand what that is about.

Today we will hear from senators Brown and Vance about their bipartisan legislation, the Railway Safety Act of 2023, and from Ohio Governor Mike DeWine about his experience in responding to the derailment. We will hear from as I mentioned earlier East Palestine resident Misti Allison, who will give a firsthand account of how the derailment impacted her community.

We will also hear from a second panel of witnesses who will speak to rail and hazardous materials safety policy failures that contributed to the derailment and what steps are necessary to protect communities, employees, and the environment.

NTSB chair Homendy will be here and I look forward to asking her about their agency's recommendations to improve rail safety, and about what investments in detection devices are necessary. Mr. Whitaker, you and your coworkers who have raised questions about safety, we'll hear from you about why you believe these concerns have gone unaddressed. And we will hear from Norfolk Southern CEO Alan Shaw, about these trends and what he is going to do to ensure that safety is the top priority.

A month ago, I sent letters to seven class I freight railroads asking for information about their hazardous materials safety practices. Nearly all of them failed to provide the committee with the specific information that we requested.

I have to say BNSF did provide us with information about past inspections. But we need clear information from organizations where we are today with safety inspections. Let me be clear, we need to know exactly what organizations are doing today to make sure inspections are helping us to detect problems.

I introduced legislation in 2015 that has some of the same provisions that we now see in the Brown-Vance bill. I wish some of those would have been implemented sooner. Our two colleagues, though, are working very diligently to make this a top priority here in Congress and working hard to represent these communities.

I believe that our committee can work in a bipartisan fashion to improve rail safety, but it shouldn't go unnoticed that the same issues are plaguing us in other areas of transportation. If you want to have the safest system, you have to have the most modernized equipment, the most minimal of workforce standards, and you have to continue to improve safety.

With that. I'll turn it over to the ranking member Senator Cruz for his opening comments.

Q&A with Witness Panel 1

[\[AUDIO\]](#) [\[VIDEO\]](#)

Senator Cantwell: Thank you Ms. Allison. And unfortunately, in these safety accidents, we have often found that it is the voice of the families who come forward and help keep the focus onto safety and security. So thank you for helping to lead this charge on this particular issue. We very much appreciate it.

I don't know if anybody has any questions for these panelists here. If not, we will turn to the second panel.

But maybe Ms. Allison, I just wanted to emphasize, maybe for you or the governor, or actually or any of our colleagues, this issue of making sure that there is proper equipment in the community. Everybody is in agreement that we have to come up with something that gives proper equipment to the community in advance. Is that right Governor DeWine? Is that where you are?

Governor DeWine: Well, absolutely, I think Madam Chair, the other thing that I've talked with the CEO quite extensively about is training.

You know, in Ohio, most of our fire departments, particularly in our rural areas, are volunteers. And so the railroad really has unique information and it's important that they share that information about how you deal with these train fires, how you deal with the train wrecks. As you pointed out, you know, that particular night, they didn't know what they were fighting. They didn't know what they were dealing with. At least not for sure.

So training is very, very important and I think, you know, we're making some progress in that regard. And I would like for all the railroads to really participate in that training.

Senator Brown: Madam Chair, could I...?

Senator Cantwell: Yes. Senator Brown and then Senator Vance.

Senator Brown: We are working to create a fund, sort of a regional fund, both for training as a Governor DeWine said, and for equipment.

So East Palestine has one paid firefighter, the Chief and about 20 volunteers, 22, I think, and they obviously are not going to be able to train them all to combat hazmat fires. But we want to look at it a regional way all over the state and all over the country with funding from the chemical companies and the railroads, so that they can all descend on a place like East Palestine from 15 - 20 minutes away with the right equipment and the right training.

Senator Cantwell: Senator Vance?

Senator Vance: Yeah, I just I forgot my manners earlier, Madam Chair, so I appreciate it. I just wanted to, while we still have Governor DeWine, thank him for being here and to thank him for his leadership and his hard work over the last six, seven weeks because he's done a great job. Thank you.

Senator Cantwell: Thank you. Well, the reason I bring this issue up is because we've had the same issue in the Pacific Northwest as it relates to oil train derailments. And unfortunately, they happen in

communities where you might be dealing with a volunteer fire department and what resources are there going to be in that community? So I think the committee here has to really think about how we are going to - what we can do to help communities be prepared in these instances.

Q&A with Witness Panel 2

[\[AUDIO\]](#) [\[VIDEO\]](#)

Senator Cantwell: It's been an interesting hearing for sure. A lot of information, but I'd like to get some clarity because we do want to move legislation in this area.

I do want to start with some information though. My state has definitely seen, you know, there's a debate here about are we seeing an increase in derailments...my state definitely.

It's great that we had a witness who was actually a marketing expert, because Ms. Allison said, 'you can always take numbers and make them mean different things.' So I'm just letting you know, this is a 10-year window in my state, we've definitely seen an increase in derailments. And because we carry so much oil, it's always an issue for us in these communities. It goes through every area.

So I wanted to start with you, Ms. Homendy, as it relates to legislation I originally introduced in 2015 saying let's get rid of DOT-111s. And now in the infrastructure bill, we got a 2029 date. This legislation says let's do it by 2025. Do you agree that that's the right.

Jennifer Homendy: Yes, the NTSB agrees that we should move up the date and eliminate the DOT-111s from hazmat service, not just from class three flammable liquid service, but all hazmat service in this train. We had 16 DOT-111s carrying hazmat, only three of them though would be covered under that final rule and the FAST Act.

Senator Cantwell: Do the rest of the witnesses agree?

Ian Jefferies: 100%. We filed jointly with shippers in 2011 to upgrade DOT-111s. And following the 2014 rule, came to Congress because there was a 20 car loophole, there wasn't thermal protection, there weren't top fittings protection. So we're 100% on board. It's got to be done in a way that the manufacturers can achieve

Senator Cantwell: I'm asking you whether you support the legislation to move the date to 2025.

Ian Jefferies: I support moving it forward as feasibly as possible.

Senator Cantwell: 2025?

Jefferies: Whatever the manufacturers can make happen.

Senator Cantwell: Mr. Shaw?

Alan Shaw: Yes, we support the component of the Vance-Brown for accelerating safer tank car standards.

Senator Cantwell: Okay, let's turn to other issues if we could on your investments.

One of the things I want to ask you about, Mr. Shaw, is you've been talking about how you've had less derailments, but I'm pretty sure we've seen an increase in accidents, we think of 14. So this issue is about the number of accidents.

Ms. Homendy was talking about this video issue of the DuPont accident. And so it doesn't matter, you know, issues are issues. And at the same time period as this increase 14%, you stated earlier that you invested \$1 billion in safety last year, that was at the EPW hearing. However, data from your company provided to the Surface Transportation Board says you've cut network investments by 30% in just five years, and at the same time accident rates increased by 60%. Meanwhile, the company made a record \$4.2 billion in profits. So this is a discussion about are we putting the right resources into the network? Are we putting the right resources, in your opinion?

Alan Shaw: Yes Senator, we are. We're investing over a billion dollars a year and safety improvements. Our capital budget over the last couple of years overall has increased about 30%. We're hiring at a record clip.

Senator Cantwell: But this chart shows...this is your own information from the Surface Transportation Board, a 25% decrease in infrastructure investment, and a 22% decrease in the number of employees.

Alan Shaw: Senator, when I became CEO of Norfolk Southern in May of last year, we went on an aggressive hiring spree and that continues to this day. And I'll note that last year, the number of derailments on Norfolk Southern was the lowest in the last two decades.

Senator Cantwell: I think that Ms. Allison made it quite clear the damaging impact of these accidents and the lasting impacts on our children. No, you can't look at that stat and saying you feel comfort. She can't put her kids to bed at night and feel comfortable about that.

So what we have to do is figure out are we shortchanging infrastructure investment. This is an issue across the board, in aviation, in transportation, hear it through. We're not going to take profits over safety investments. We are going to require, now I don't even think that's good business, but here we're going to make sure that those investments are made across the board for safety.

So I want to get to this issue as it relates to the workforce. You know, particularly this issue of what role they play in the inspection process. Do you think that your current system works or do you think we need more enhancements there in workforce? The brown Vance Bill obviously increases the workforce. Some of the testimony by Mr. Whittaker would say that we need more on the workforce side.

Alan Shaw: Senator, with respect to the Brown-Vance bill, we certainly support the provision that requires FRA audits of railroad compliance with railcar safety inspection programs. We also fully support the concept of a triennial review of railcar safety standards.

Senator Cantwell: A triennial review? What does that mean?

Alan Shaw: Senator, my understanding is there's a provision in the bill that allows for updates every three years.

Senator Cantwell: Okay, so you're saying if we could look at this chart here. In March 17, we asked you to send us information about standards here, and you stated that Norfolk Southern does not have policies that mandate a minimum or maximum amount of time needed for the inspection of a railcar. And yet this information shows that it is part of this document for railcar inspection that you are saying

to your employees, that the cycle time for a 50 car cut is at 0.5 minutes per car with one inspection. So you're saying that you have to inspect one side of that car within 30 seconds.

Mr. Whitaker, do you know about this?

Clyde Whitaker: I'm aware of this issue here. I know there's 90 points per side of a railcar that need to be inspected. Conductors, we know how to inspect most of those. But a mechanical force person always attribute they have the doctorate degree. And they need to take their time. And we should not be putting safety on a timeline here when inspecting railcars. We're going through communities with hazardous materials and very unforgiving equipment.

Senator Cantwell: I agree, safety should not be on a timeline. So Mr. Shaw, what what's going on here? I think you don't support the Brown bill as it relates to a requirement of more people than just the conductor on a railcar. But this is just an example of how I think the system is being shortchanged. And while the information age gives us all sorts of ideas about efficiency, we can't take that to the extreme, when you end up cutting safety and the safety standards. We have to have minimum safety standards. We have to have modernization of safety technology. And we have to have the minimum amount of people to do the job.

So that's what's going to be required across every sector of transportation. And this Committee is going to make sure that we get there because we're not going to let people just keep you know putting money in the bank and thinking that you can shortchange safety. We can't shortchange Ms. Allison, and we can't shortchange East Palestine. So what are your thoughts about at least getting rid of this, getting rid of this notion that it's 30 seconds?

Alan Shaw: Senator, I'm not familiar with a minimum or a maximum on railcar inspection duration. We do support evidence-based approach to enhance safety and improve outcomes for the industry, for our customers, and the communities we serve.

Senator Cantwell: Well, maybe you can find somebody in your organization to get you this document. But it's clearly your document. And it's clearly what's being implemented. And I don't think it's the standard that we want. And I don't think it's a safe idea.

Now I'd like to go to this larger issue which we might be able to get some agreement on.

Mr. Comstock, in the underlying bill is a requirement for training of local firefighting teams on dealing with this kind of material. Is this enough? Is there enough in there, or do we need to put something in here about equipment? I asked the first panel about this.

David Comstock: I think it goes hand in hand. I mean, I think we have to have training. But I think we have to have specialized equipment, whether it's for monitoring or suits. And I also raised in my initial submittal, that we need a second set of turnout gear. And the best example for everyday firefighting is, we have one set of turnout gear. And when I have to wash that, I'm out of service. In this railcar instance, I had three firefighters who were exposed, their gears were contaminated. I can't use it.

It takes six months to get replacement gear. That means I have three firefighters who are out of service for six months who can't respond to auto accidents, or to structure fires. I was able to find one spare set of gear and on to I had to rent some. So we have throughout this country, we're lucky in many departments have good one set of gear. Departments that have money have two sets so you can wash one. And so that's just an everyday use that we need.

And then when it comes to equipment on a hazmat incident, the specialized suits, which can cost \$15,000 or more or the specialized monitoring equipment, it's unrealistic for the federal government, to provide that to every department. But we do need to look at a regional approach, so we can call in those teams that can supplement what we're trying to do.

Senator Cantwell: So we need to do more than what we have in the bill.

David Comstock: Yes.

Senator Cantwell: I know this already from my work in 2015. Trust me, I already know this because I've talked to lots of firefighters across the state of Washington. And believe me, rail goes everywhere in our state.

So Mr. Shaw, are you willing to support what's in the underlying bill? Are you willing to do more than in the underlying bill to make sure local firefighting teams have the equipment they need?

Alan Shaw: Senator, we absolutely support what's in the underlying bill and we are willing to do more to support firefighters. We just opened up a regional training facility in Ohio for first responders.

Senator Cantwell: Yeah, I'm thinking something a little different. I think this committee has dealt with the Oil Spill Trust Fund. Senator Stevens did great work on that. It literally is about having the resources up front in a timely manner to have in a community and the challenge here is going to be to figure out how to do that and where to do that.

But I think if we're going to continue to move product like this and have this level of risk, we can't just leave it up to volunteer firefighters to be on the front line. So I do think we have to think about what is a way to put resources into the local community. So I appreciate the fact that you're willing to consider that. Mr. Jefferies would you like to comment?

Ian Jefferies: I 100% agree and would love to work with the committee on how we best approach that right.

Senator Cantwell: Great I like that. Okay, Ms. Homendy, did you have a comment about that?

Jennifer Homendy: A great place to look is PHMSA's Hazardous Materials Emergency Preparedness Program, which is about \$28.3 million annually and has been there like that for years. It needs to increase, it is paid for by fees from the shippers and the transporters of hazmat.

Senator Cantwell: Okay, so good. We get some consensus there. Okay.

And what about, in general, the - one thing actually isn't in the bill, I don't think the video that you brought up earlier, is in there. But you're saying Ms. Homendy that there should be some video communication, you're saying that there is missing video from this accident? Is that what you're saying?

You're just saying you don't have video that it wasn't required. But there was video, but we don't have it because the engine moved on and went somewhere else and was videotaped over?

Jennifer Homendy: Yes.

Senator Cantwell: Okay. And in the DuPont accident, you were mentioning how valuable that was? Why was it valuable in the DuPont accident?

Jennifer Homendy: Very valuable. The first week some assumed early on, not us, that there was distraction and the locomotive cab, and we could see in the video that that did not occur. We also could see that there was some hesitation by the engineer around the controls. It was a new locomotive, and we determined through the investigation, including looking at the video, that they weren't provided adequate training, the train crew.

So right now the requirement and law is on Amtrak and the commuter railroads not on the class I freight railroads. And we would advocate for that.

Senator Cantwell: Mr. Whitaker.

Clyde Whitaker: I'd just like to piggyback on what the chair is saying. In regards to training these class I railroads have reduced their training programs down to bare minimum. When I was hired on the railroad 2000 I had 26 weeks training. Nowadays, its six weeks or less on these class I railroads.

We're hauling 200+ car trains and hazardous materials, and that's not right. You're putting too much pressure on employees right now with inadequate training. And I'm sure these numbers, I would be curious to see what the retention rate is. I know Mr. Shaw brags about how much they've hired people. What's the retention rate of people sticking around?

I'm an advocate for two person crew, obviously. But if I'm not hearing the CEO of my company, tell me I'm going to have a job. I'm going to be looking somewhere else.

Senator Cantwell: Mr. Whitaker, what standards should we be looking at given that we have had this transformation into longer trains? I don't think that we've heard this intermittently through the committee, but this is a sea change.

Clyde Whitaker: Right. So to Ms. Homendy's pointed about how much technology is on a locomotive. As an engineer by craft I'm looking at four computer screens, I am busy. I don't even have time to look out the window on my locomotive half the time. I'm depending on the conductor over there to be my eyes and ears, and keep me in check.

Enhanced training for that conductor would greatly assist the locomotive engineer, greatly. And I think in the railroad industry as a whole, we've lost a lot of our expertise over the years because we have people that have zero railroad experience running our railroads.

We could be so much more efficient, and do so much better if railroad management would just listen to labor. We can move trains without incident, we can make things more safe. But they just got to listen.

Senator Cantwell: What would you have done in this instance do you think? Given that we were talking about a wheel bearing.

Clyde Whitaker: What I feel should have been done with the trending defect detector technology. And this is something going back to last year that I sounded a whistle on.

We need to eliminate trending defect detector keeping that information to ourselves in our headquarters. Okay, let's just take the chance, let's move this train on down the line. That's what they're doing.

Senator Cantwell: You're saying that they knew that this train had a weak spot? Is that what you're saying?

Clyde Whitaker: Absolutely.

Senator Cantwell: You're saying they knew the train had a weak spot?

Clyde Whitaker: If they're a trending defect detector, according to the NTSB report that I've read, they've seen this car trend hotter and hotter over the course of three detectors, I believe.

That information is going to somebody at Norfolk Southern, and they're not conveying that information to the railroad crews.

Senator Cantwell: Mr. Shaw, did someone at Norfolk Southern have that information?

Alan Shaw: Senator, my understanding from the NTSB report is once they hit the third detector, which showed that we hit the threshold then the crew acted appropriately. However, the part had already failed.

Senator Cantwell: Why did you keep putting the car on is the question. I think Mr. Whitaker is saying you should have had a signal.

Listen, this is definitely where I'm going. I don't know, I have to ask Senator Cruz and my other colleagues where they're going. But I'm telling you right now, we are going to use transparency, and technology, and make sure that people are getting that information as fast as possible.

We are going to use NTSB to help us hold the FAA accountable. And we're going to help them as they are today, hold this accountable.

We have to look at safety trends, we have to look at what's coming at us because they are telling us in advance. That's what technology can do. Tell us in advance where there's a problem, but we can't ignore that because we want to make some more money. We have to go and say we're going to make the investment and we're going to make sure everybody has the information and that's how we keep on top of safety.

Ms. Homendy?

Jennifer Homendy: I would just add, so in Atlanta, Norfolk Southern has an advanced train control desk. And what they saw there at the second wayside defect detector was a non-critical alert. It wasn't a critical alarm because the threshold at the time was 103 plus about 10 degrees from underneath the train of above ambient.

And so they got a critical alarm at the last one, but it by that time the train was in the process of derailling because there is a little bit of a delay. The crew will get information, but in at the train control desk the entire train needs to move past that wayside detector before the train control desk has that information. With that said, they're also, at the same time dealing with other trains that may have warm or hot bearings.

Senator Cantwell: So you're saying, Mr. Whitaker, what are you saying? That before this, knowing that the information was there something should have happened on these cars. And somebody, if you would

have the information and the workforce would have the information, they would have asked for some further inspection? Is that what you're saying?

Clyde Whitaker: That is what I'm saying. When you're on a train, and you're passing over a defect detector, if that detector senses a wheel bearing hits a threshold, we hear a beep alarm. That tells me as a locomotive engineer, all right, I'm not going to apply the train brakes on the train, because I don't know what's wrong with them. I'm going to go into what's called dynamic braking, which slows the locomotive down and slows the train down. So I'm going to come to a safe stop and once I clear that detector, it's going to tell me what's wrong.

But in this case, if I see my tire pressure on my car, losing air, I'm going to pull over and stop and check that out, right? If I own a railroad, and I see a wheel heating up, I'm going to protect my investment and I'm going to call that train crew.

"Hey, I know you're not meeting the threshold here, but maybe you guys need to stop and go back and check this out." It could be something like a handbrake applied on a car or a stuck brake, something that can be addressed right then and there.

So once it starts trending, we need to stop and check it out. No matter if we don't even hit that threshold. Let's take the safest course of action.

Senator Cantwell: Thank you. All right. Senator Cruz. Thank you. Do you have a follow up for a second round? Sorry, I kind of took my first and second round together.

I think we're nearing the end for our witnesses. You've been very patient and thank you, we've been here for a long time here. So we appreciate it.