

ATTACHMENT A

NORFOLK SOUTHERN RESPONSE AND COMMENTS TO OXY VINYLs' PARTY SUBMISSION

Norfolk Southern is attaching this appendix response to the November 17, 2023 party submission of Oxy Vinyls. As it has continuously done throughout this investigation, in its most recent submission Oxy Vinyls again introduces improper litigation-style briefing, argument, and advocacy. Oxy Vinyls continues to disregard the NTSB's clear guidance to all Parties to its investigation, which requires that Oxy Vinyls and all other Parties set aside their own self-interests to enhance overall safety across this country by supporting the NTSB's neutral and objective fact-finding investigation.

Oxy Vinyls has ignored the NTSB's process by including Appendix A to its party submission, which seeks to revisit factually incorrect, immaterial, and argumentative edits it had proposed to the timeline included in the NTSB's Hazardous Materials ("HAZMAT") Group Chair's Supplemental Report. Oxy Vinyls already had the opportunity to comment on the timeline during this process. The NTSB already considered and rejected many of the same edits Oxy Vinyls is proposing again in the attachment to its party submission. Undeterred, Oxy Vinyls persists in its litigation-driven advocacy through the submission of Appendix A.¹ Norfolk Southern recognizes and supports that the HAZMAT Group's Report is intended to be an objective, non-advocacy-oriented timeline developed after the participation and feedback of all Parties following an established process led by the NTSB. This is still true even if there may be elements of the final version adopted by the NTSB with which Norfolk Southern will continue to disagree.

Oxy Vinyls' consistent disregard for the NTSB's instructions leaves Norfolk Southern with no choice but to respond to Oxy Vinyls' submission. That submission largely comprises unsubstantiated attacks that Norfolk Southern and its contractors acted improperly when assisting with the East Palestine derailment response.² Of particular note are Oxy Vinyls' baseless and inflammatory statements that there was a "failure to share accurate and complete information [that] denied the governors and other decision makers the opportunity to question [in] what now appears to be a rushed and premature decision by NS and its emergency response contractors to conduct

¹ For example, Oxy Vinyls' Appendix A indicates an email from Norfolk Southern to CTEH sharing the train consist was sent on 2/3/2023 at 21:08 EST. However, the HAZMAT Group's Supplemental Report dated October 25, 2023 reflects the accurate time stamp of the email communication at 22:08 EST. Additionally, Oxy Vinyls' Appendix A reintroduces unsubstantiated post-hoc commentary by Oxy Vinyls' party representative, Karenanne Stegmann, that was removed from the HAZMAT Group's Supplemental Report. Oxy Vinyls' Appendix A has an entry on 2/4/2023 at 20:49 regarding a "Telephone conference between Oxy Vinyls' Vice President of Supply Chain (Karenanne Stegmann) and NS' Group Vice President Chemicals (Meghan Achimasi)" and states "Oxy Vinyls once again expressed concern that only SPSP's views of the potential for a BLEVE were expressed during the telephone conference on Saturday, February 4 at 19:15. NS' silence continued to concern Oxy Vinyls." There is no such corresponding entry in the HAZMAT Group's Supplemental Report regarding Oxy Vinyls' concerns about Norfolk Southern's incident response because it was removed from the final draft as it was post-hoc commentary.

² Oxy Vinyls inconsistently argues that "NTSB investigations are not intended to find fault or apportion blame," when responding to the FRA's review of Oxy Vinyls' railcar documentation. Oxy Vinyls' Submission at 6 (discussing Ex. H-1 and 49 C.F.R. § 831.4(c)).

the vent and burn operation and return the NS Fort Wayne Line to service.”³ As Norfolk Southern has detailed in its submission, Oxy Vinyls’ conclusions are baseless and are improper attempts to persuade the NTSB to further Oxy Vinyls’ litigation goals, while adding nothing to the fact-finding purpose of the NTSB’s investigation.

Oxy Vinyls’ party submission also raises serious concerns regarding its own pre-derailment documentation and its approach to communication with relevant parties during the East Palestine derailment response. With respect to documentation, the submission’s assertion that the vinyl chloride monomer (“VCM”) in the derailed railcars could not have been polymerizing is ***unequivocally at odds with Oxy Vinyls’ safety data sheet*** (“SDS”): the SDS clearly and repeatedly states that VCM polymerizes under the exact circumstances of the East Palestine derailment. Either (1) Oxy Vinyls’ party submission is wrong about the science of VCM polymerization, or (2) Oxy Vinyls’ SDS contains scientifically inaccurate information.

Assuming Oxy Vinyls’ SDS is accurate and means what it says—as Norfolk Southern, its contractors, and first responders believed in responding to the derailment⁴—Oxy Vinyls should have provided Norfolk Southern and, more importantly, Unified Command and the Incident Commander consistent, confident, and unequivocal guidance aligned with the SDS—which Oxy Vinyls did not. Oxy Vinyls should not now repudiate its SDS in public submissions and testimony, as this could spread dangerous misinformation about when VCM can polymerize. For instance, the VCM railcars were exposed to extreme heat and contained aluminum components.⁵ According to Oxy Vinyls’ SDS, heat and aluminum may cause VCM to polymerize.⁶ Yet Oxy Vinyls’ party submission states that the VCM railcars could not have been polymerizing,⁷ which is unequivocally contrary to the SDS and could mislead responders in future emergency responses involving VCM or similar chemicals.

Alternatively, if Oxy Vinyls’ SDS contains scientifically inaccurate information, and (contrary to multiple sources) it is true that VCM cannot polymerize under the circumstances of the derailment as Oxy Vinyls’ party submission now claims, ***Oxy Vinyls should have corrected the guidance well before the derailment***. If Oxy Vinyls learned during the incident response that its SDS contained inaccurate information, ***Oxy Vinyls should have explained this*** to Unified Command. Instead, as Oxy Vinyls’ submission admits, Oxy Vinyls’ multiple representatives on

³ Oxy Vinyl’s Submission at 2, 33.

⁴ See Norfolk Southern Party Submission at V.B.i.

⁵ See Oxy Vinyls’ Submission at 2 (“All of these railcar fires were near the five VCM tank cars.”); *id.* at 5 (“Several of the tank cars had aluminum housing covers . . . and aluminum valve handwheels . . .”).

⁶ See, e.g., Oxy Vinyls’ Submission at 37 (“[T]he Oxy Vinyls SDS states that polymerization of VCM can occur when exposed to excessive heat . . . [and identifies] a possible reaction between VCM and aluminum. . . .”).

⁷ See Oxy Vinyls’ Submission at 1–2 (“The inescapable conclusion from the NTSB investigation is that polymerization of the VCM did not occur at any time, including prior to the vent and burn operation.”).

site did not actively participate in the response in the pivotal days and hours leading to the vent and burn operation.⁸

To clarify the multiple misleading and accusatory statements in Oxy Vinyls’ submission, Norfolk Southern provides the following table, which addresses many of Oxy Vinyls’ “proposed findings:”⁹

Oxy Vinyls’ Proposed Findings	Norfolk Southern’s Response
<p>6. “The five stabilized VCM tank cars did not breach upon derailment.”</p> <p>7. “The five stabilized VCM tank cars remained intact until they were purposefully breached during the vent and burn operation.”</p> <p>8. “The five stabilized VCM tank cars exhibited effective mechanical integrity and functioned as designed during the derailment.”</p>	<p>The VCM railcars, which derailed at approximately 41 miles per hour and were exposed to fires, were likely compromised, posing a significant explosion hazard. <i>See</i> NS Party Submission at V.A.ii, V.C–D.</p>
<p>15. “PRDs on the five stabilized VCM tank cars functioned as intended during the Incident by relieving internal pressure.”</p>	<p>The pressure relief devices (“PRDs”) were likely compromised by mechanical damage (such as fire or impact damage) or polymerization. <i>See</i> NS Party Submission at V.C–D.</p>
<p>9. “The use of aluminum external components is authorized by the hazardous materials regulations.”</p> <p>10. “The five stabilized VCM tank cars were appropriate for the transport of VCM.”</p>	<p>Shippers should not use aluminum components on railcars when they can cause the shipped chemical to polymerize or undergo other unintentional reactions. <i>See</i> NS Party Submission at V.B.i–v.</p>
<p>16. “Polymerization of the VCM within the five stabilized VCM tank cars did not occur.”</p>	<p>Evidence gathered during the derailment response and relevant documentation indicate that Norfolk Southern and its expert contractors had a well-founded belief that the VCM involved in the derailment was polymerizing. <i>See</i> NS Party Submission at V.A–B.</p>

⁸ *See, e.g.*, Oxy Vinyl’s Submission at 3 (“Oxy Vinyls was not a member of the Unified Command and never spoke directly to the Incident Commander.”); *id.* at 22 (“Oxy Vinyls did not participate in managing the incident response, nor did it recommend any mitigating actions for addressing the five stabilized VCM tank cars.”).

⁹ Norfolk Southern has grouped Oxy Vinyls’ overlapping proposed findings. It also has omitted proposed findings in Oxy Vinyls’ party submission regarding railcar documentation and VCM shipping procedures because Norfolk Southern does not believe it appropriate or necessary to comment on them at this time.

Oxy Vinyls’ Proposed Findings	Norfolk Southern’s Response
<p>17. “Spontaneous polymerization of stabilized VCM will not occur in the absence of an initiator.”</p> <p>18. “A polymerization initiator was not present in the five stabilized VCM tank cars.”</p> <p>19. “Thermally initiated polymerization of stabilized VCM will not occur.”</p> <p>40. “Stabilized VCM is compatible with aluminum.”</p> <p>41. “Aluminum does not catalyze stabilized VCM polymerization in the presence of oxygen.”</p>	<p>The VCM involved in the derailment was exposed to extreme heat and aluminum components. Prevailing guidance, including Oxy Vinyls’ SDS, explain that VCM polymerizes when exposed to heat or aluminum and does not qualify that these only cause polymerization in certain, narrow circumstances. <i>See</i> NS Party Submission at V.A–B.</p>
<p>20. “Polymerization is a highly exothermic reaction with a distinct heat signature.”</p> <p>28. “Temperature data obtained by NS and its emergency response contractors was not indicative of polymerization.”</p>	<p>Oxy Vinyls’ SDS and other relevant documents do not include temperature data for when polymerization will occur or is occurring. <i>See</i> NS Party Submission at V.B.i–iv. Waiting for the railcars to become very hot due to the polymerization reaction would have been exceedingly dangerous. <i>Id.</i> at V.B.vii, V.C–D.</p>
<p>21. “Post-incident testing did not detect PVC in any of the tank car samples.”</p>	<p>Oxy Vinyls’ conclusions from its post-incident testing are fundamentally scientifically flawed. Norfolk Southern expects that third-party testing would find that Oxy Vinyls’ own testing indicates the presence of PVC, not the lack of it. <i>See</i> NS Party Submission at V.B.viii–ix.</p>

Oxy Vinyls’ Proposed Findings	Norfolk Southern’s Response
<p>36. “The Oxy Vinyls’ VCM SDS is intended to be a conservative document that covers a wide range of possible scenarios in accordance with 29 C.F.R. § 1200(a)(2).”</p> <p>37. “The Oxy Vinyls’ SDS was developed and maintained consistent with the intent of OSHA’s Hazard Communication Standard SDS requirements and the VCM scientific literature.”</p> <p>38. “The Oxy Vinyls’ SDS appropriately documented potential hazards, including polymerization and incompatible materials, consistent with other company SDSs, scientific literature, and OSHA requirements.”</p>	<p>Oxy Vinyls’ SDS must be accurate and not misleading. Inaccurate or misleading SDSes are potentially dangerous, as they are critical documents for emergency responders. <i>See</i> NS Party Submission at V.B.i–v. If Oxy Vinyls’ SDS is inaccurate or misleading, Oxy Vinyls should amend it immediately, which to date Oxy Vinyls has not. <i>See</i> Attachment A.1.</p>
<p>22. “Oxy Vinyls did not participate in managing the incident response, nor did it recommend any mitigating actions for addressing the five stabilized VCM tank cars.”</p>	<p>During the East Palestine incident response, Oxy Vinyls had multiple representatives on-site as well as individuals monitoring the situation remotely. If Oxy Vinyls had information that it believed was material to Unified Command’s decision to vent and burn the VCM railcars, Oxy Vinyls’ representatives should have immediately conveyed that information to Unified Command.¹⁰ <i>See</i> NS Party Submission at V.B.iii.</p>
<p>23. “Oxy Vinyls was instructed by NS to only communicate with NS’ emergency response contractors, who would then communicate any information they deemed necessary to NS. NS would then convey the information to the Unified Command.”</p>	<p>Norfolk Southern could not and did not limit Oxy Vinyls’ involvement in the incident response or ability to communicate with Unified Command. <i>See</i> NS Party Submission at V.B.v.</p>

¹⁰ Chief Drabick, the Incident Commander, testified that “[a]ll stakeholders involved in the incident are part of and invited to be part of the [U]nified [C]ommand. If Oxy Vinyls would have made their presence known and requested to, they absolutely would have been part of that as well.” *See* Day 1 Tr. at 236:16–19.

Oxy Vinyls’ Proposed Findings	Norfolk Southern’s Response
<p>24. “Oxy Vinyls communicated its belief that polymerization was not occurring to NS and its emergency response contractors on three occasions.”</p> <p>25. “As acknowledged by NS and its emergency response contractors, Oxy Vinyls communicated the significance of monitoring the temperature.”</p> <p>29. “NS and its emergency response contractors favored their own experience and judgment over Oxy Vinyls’ conclusion regarding polymerization.”</p> <p>31. “NS failed to exercise effective oversight of its emergency response operations, including clearly established communications regarding technical advice.”</p> <p>32. “NS and its emergency response contractors failed to communicate to the Unified Command that Oxy Vinyls believed that polymerization was not occurring.”</p> <p>39. “NS and its emergency response contractors had the benefit of hearing directly from Oxy Vinyls—the manufacturer of the VCM and author of the SDS—on the question of potential for polymerization in this specific context. They simply elected to discount the manufacturer’s perspective.”</p>	<p>Oxy Vinyls never clearly and consistently communicated a belief that polymerization was not occurring to Norfolk Southern, its contractors, or Unified Command. There was disagreement among Oxy Vinyls’ representatives as to whether polymerization was occurring, as Oxy Vinyls’ Technical Manager admitted at the NTSB’s hearing.¹¹ Any communication that polymerization was not occurring was directly contradicted by Oxy Vinyls’ SDS and other industry knowledge and documentation. Norfolk Southern and its contractors did not disregard Oxy Vinyls’ conflicting advice in making their recommendation to Unified Command. However, absent unequivocal and clear communication from Oxy Vinyls, substantiated by evidence that clearly contradicted the guidance of its SDS and the experience of Norfolk Southern’s expert contractors with a combined 200 years¹² of experience in these situations, it would have been irresponsible to credit the ambiguous and contradictory discussions with Oxy Vinyls, given the potential catastrophic consequences. <i>See</i> NS Party Submission at V.B.v.</p> <p>To the extent Oxy Vinyls disagreed with Norfolk Southern and its contractors’ recommendation to Unified Command, Oxy Vinyls could and should have immediately brought this information to Unified Command, which it did not. <i>Id.</i></p>

¹¹ *See* Day 1 Tr. at 176:16–20 (Smith testifying, “when we got to the firehouse and talked with NTSB and Norfolk Southern, at some point during that conversation, my partner received a text indicating that the temperature had gone up three degrees on that western-most car. And at that point I made a comment that it could be polymerization occurring”).

¹² Day 1 Tr. at 264:6–9 (McCarty testimony).

Oxy Vinyls’ Proposed Findings	Norfolk Southern’s Response
<p>26. “NS and its emergency response contractors failed to effectively and consistently monitor the temperature of the stabilized VCM tank cars.”</p>	<p>Norfolk Southern and its contractors monitored and documented the temperature of the VCM railcars to the best of their ability, given the conditions of the derailment, which made obtaining temperature recordings exceedingly difficult and dangerous. The recorded temperatures indicated a significant risk that the railcars were at a risk of exploding. <i>See</i> NS Party Submission at V.B.vii, V.C–D.</p>
<p>27. “NS and its emergency response contractors failed to effectively communicate and record the temperatures of the stabilized VCM tank cars.”</p> <p>33. “NS and its emergency response contractors failed to communicate to the Unified Command that the temperatures of the five VCM tank cars were stable and/or decreasing.”</p>	<p>Norfolk Southern and its contractors met with Unified Command multiple times to explain the situation and their recommendation. There is no evidence the temperatures were ineffectively communicated to Unified Command or ineffectively recorded. <i>See</i> NS Party Submission at V.F.</p>
<p>30. “NS and its emergency response contractors failed to effectively consider other options by prematurely implementing the vent and burn operation.”</p>	<p>Norfolk Southern, its contractors, and Unified Command considered an entire decision tree of alternate options, before agreeing that the vent and burn operation was the only feasible option. Evidence gathered on-site, which has been confirmed by the NTSB’s record, indicate that the situation was critical, and completing the vent and burn as soon as possible therefore was necessary to protect responders and the surrounding communities. <i>See</i> NS Party Submission at V.E.</p>
<p>34. “NS and its emergency response contractors’ failure to communicate this information [<i>sic</i>] denied the Unified Command and other governmental entities information relevant to the response, including the need for / urgency of the vent and burn operation.”</p>	<p>Unified Command had approximately 20 hours to call off the vent and burn operation, from the time the Incident Commander made the decision to begin preparations to when the charges were detonated. Oxy Vinyls, including its on-site representatives, did not recommend calling off the vent and burn at any time, including while preparations were being made. <i>See</i> NS Party Submission at V.F.</p>


Oxy Vinyls’ Proposed Findings	Norfolk Southern’s Response
<p>35. “NS and its emergency response contractors’ decision to conduct the vent and burn operation was not based on Oxy Vinyls’ SDS.”</p>	<p>As Chief Drabick explained, Unified Command decided to conduct the vent and burn operation. Day 1 Tr. at 39:19–24. Norfolk Southern and its contractors recommended the vent and burn operation to Unified Command and assisted in completing it. <i>See</i> NS Party Submission at V.A, V.F.</p> <p>As the NTSB has found, Norfolk Southern, its contractors, and Unified Command possessed Oxy Vinyls’ SDS and referred to it as a source of guidance for potential hazards and the physical and chemical behavior of the VCM contained in the derailed railcars. HAZMAT Group Chair’s Factual Report at 20; <i>see also</i> NS Party Submission at V.B.i. They also relied on their knowledge gained from similar industry documentation on VCM and relevant experience and training. <i>See</i> NS Party Submission at V.A–E.</p>

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Train derailment response operations, like that which occurred in East Palestine, are unquestionably complex and require technical, experienced, and decisive action to protect lives and communities. The NTSB should not be misled by Oxy Vinyls to make factual findings or legislative recommendations that could result in the dissemination of misinformation about the East Palestine derailment or disincentivize future responders from taking reasonable actions necessary to prevent potential catastrophic events, such as HAZMAT railcar explosions.

ATTACHMENT A.1

11/28/23, 7:09 PM Search Results

 **Oxy's Product Safety Data Sheet**

[Help](#)

Total results : 1
1

Product Name	GHS Type	MSDS	Supplier	Revised	Language
1. VINYL CHLORIDE (MONOMER)		M9192 ANSI EN - PDF	OXY VINYLS, LP	11/30/2020	ENGLISH (US)

https://sds.oxy.com/private/results.aspx?page=NewSearch&__VIEWSTATEGENERATOR=D6323F43&productName=vinyl chloride&productName_option=d__value-&language=d_EN 1/1