

SUBMISSION
OF
CANADIAN ASSOCIATION OF FIRE CHIEFS
TO
RAILWAY SAFETY ACT: REVIEW ADVISORY PANEL

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A. INTRODUCTION

The Canadian Association of Fire Chiefs (CAFC) welcomes the review of the Railway Safety Act that is currently underway and appreciates the opportunity to make its views known to the Review Advisory Panel.

CAFC is a national organization representing almost 1,000 Chief Fire Officers in every Canadian Province and Territory. There are 3,492 Fire Departments in communities of all sizes across Canada of which 3,184 are Volunteer Fire Departments. Of the 108,008 firefighting personnel in Canada, 84,314 are volunteers.

A significant number of Fire Departments in Canada share one important characteristic: railway lines run through the communities they protect. When an accident occurs, they will almost inevitably be the first emergency responders on the scene. In many more isolated parts of Canada, it may be some considerable time before assistance arrives from outside their immediate area.

The *Consultation Guidance Document* states that “The main freight products carried by Canadian railways are grain, coal and coke, forest products, ores and mine products, fertilizer materials industrial products and intermodal containers.” While it is good news that the number of incidents involving the discharge of dangerous goods have decreased in recent years, the potential for major incidents of this nature remains.

The general concerns of the Fire Services are threefold. First, it is important that accident prevention be regarded as the basic building block of railway safety. Second, it is fundamentally important that preparations be made to address incidents as promptly and professionally as possible. Third, it is necessary to consider specific issues that will arise once an accident has occurred and the Fire Services are directly involved. The balance of this submission will examine these three themes.

B. CHANGES IN HOW THE RAILWAY INDUSTRY IS CONTROLLED

The importance to Canada of its railway transportation network, from the time of Confederation up to the present, is well known. The millions of tonnes of cargo of all types that are transported by rail could not be moved by any other means of transportation.

Railways have undergone a significant change in operations with new approaches to providing for the efficient delivery of cargo to destinations across Canada and into the United States and Mexico. The extensive use of technology to allow real time decision-making and benchmarking is impressive. It has been applied to measure performance against benchmarks in a wide array of the railroad business: from car velocity, on-time train performance and locomotive productivity to accident frequency, environmental compliance and employee training records. Railways are moving record amounts of cargo, running longer trains and doing so with fewer employees.

Recent accidents on railways have raised concerns by both the public and government officials that public safety has been put at risk due to a variety of factors that may be contributing to the increased severity of these incidents.

Historically, railroads have been a highly-regulated industry with many practices and operating requirements mandated by government agencies or by the American Association of Railways or the Railway Association of Canada. In recent years, however, both federal and provincial governments have reduced direct involvement in many areas of regulation and oversight in the railway industry. In the past, prescriptive legislation and regulations, with government inspectors enforcing compliance, were seen as the default means of ensuring public safety. This is no longer the case. Various approaches to “self-regulation” of industrial activities have been implemented, largely to allow government to reduce costs with fewer inspectors, compliance officers, etc.

The primary mandate of railways, as private-sector corporations, is to make a profit. Reducing costs, while providing efficient service, helps railways to meet that goal. Operating in a safe manner, while good for business, is not the primary motivation of for-profit corporations.

Public safety is the primary responsibility of governments – federal, provincial and municipal. Section 36 of the Constitution Act, 1982 provides that the Government of Canada and the Provincial Governments must provide essential public services of reasonable quality to all Canadians. Public safety is one such service.

The reduction in recent years of federal government oversight and enforcement of rules and regulations is a significant contributing factor to failures of the “self-regulating” approach to providing for public safety.

C. BILL C-45: CRIMINAL CODE AMENDMENT

Since passage of Bill C-45 amending the Criminal Code (the so-called Westray Mine Bill) Fire Chiefs and other more junior fire officers have been faced with the very real threat of criminal prosecution in cases where extreme negligence is alleged. It is then a matter for the courts to decide whether an individual acted so carelessly or with such reckless disregard for the safety of others as to deserve criminal punishment. Without a doubt, the provisions of Bill C-45 are a serious consideration for Fire Services personnel.

If substantive violations of safety procedures in the railway industry result in injuries or deaths being sustained by railway employees, first responders or the general public, would there be any federal agency responsible for initiating criminal charges against other railway employees under C-45? Transport Canada, the Transportation Safety Board, the Canadian Transportation Agency and the RCMP are all federal agencies

involved in railway regulation. It is unclear to CAFC, however, whether any of them have the authority to lay charges under the Criminal Code in instances where negligence on the part of railway personnel is suspected of being a factor in an injury or death.

Any Fire Chief can file an information with respect to what he or she believes to be negligence. It would be preferable, however, if a procedure was in place within the Government of Canada to determine whether or not negligence is suspected as the cause of an accident. In cases where it is suspected, this Government procedure should then ensure that the negligence is dealt with under the Criminal Code.

D. LESSONS LEARNED – WABAMUN AND OTHER INCIDENTS

The *Consultation Guidance Document* correctly notes the Wabamun incident as follows: “On August 3, 2005, 43 cars of a freight train derailed as Lake Wabamun Alberta spilling bunker fuel oil and other toxic chemicals into the lake.”

That quotation tells only a part of the story. The press reports from the Wabamun incident did not provide a very positive impression of CN or its actions. While the incident was overwhelming, it appeared CN was not communicating effectively with the community. The products that spilled were not regulated and the shipper did not provide complete information to CN during the first few days of the incident. This revealed a weakness in the Emergency Response Plan that caused CN additional credibility problems.

Lesson #1: Emergency Planning - Incident Command - Public Awareness

CN has been conducting a significant number of Incident Command courses with local municipalities. Based on the number of communities along its lines, however, it would be unrealistic to expect a course for all of them. It is suggested that the railways work closely with national and provincial organizations such as CAFC, the Canadian Association of Chiefs of Police, the Federation of Canadian Municipalities and their provincial/territorial counterpart organizations to develop an awareness of the need for joint emergency planning and other CN safety initiatives.

Providing a presence at Conferences (information displays, educational presentations, etc.) held by these organizations would increase and improve the profile of CN among those municipal leaders with whom CN will be required to work during an emergency incident. Training and educational opportunities can be increased when they are coordinated with the national and provincial/territorial associations. The same approach would help maximize the opportunities for other programs such as the “All Aboard for Safety” initiative.

Lesson #2: Railways and Shippers as Resources for Mitigation of an Incident

When incidents take place in urban areas, the resources available both for response and mitigation are usually substantial. In rural (and often remote) communities, the railways have to take more of a leadership role. They also have to ensure open and prompt communications with affected municipalities and their first responders.

Both CN and CP have significant resources and expertise available to them. Shippers of dangerous goods often also have expertise and resources available to help mitigate an incident. They should be encouraged to develop strategies for providing this assistance whenever their products are involved.

Lesson #3: Communications with Local Governments

The railways need to build the trust and confidence of first responders and municipal authorities if they are to be relied upon to “Do the Right Things and to Be Seen to Be Doing the Right Things.” Improved communications with key stakeholders, including Mayors and other Elected Officials, Fire Chiefs, Police Chiefs and Emergency Planners would go far towards ensuring that, during an emergency, there is both a high level of mutual respect among all parties and that they are all working from the same page.

The railways should review how they communicate with key stakeholders adjacent to their lines and properties. As noted previously, participation in federal, provincial and regional meetings and conferences of fire, police and municipal officials would help to raise awareness among senior levels of municipal governments and to build the communications lines and trust that are essential during times of crisis.

There are many existing programs available that can help with education and accident prevention. The Canadian Chemical Producers Association has a detailed safety program called “Responsible Care” There is also its TransCAER program (Transportation Community Awareness and Emergency Response, which is specifically designed to help transportation companies work with communities to develop and test Emergency Plans with respect to transportation crises.

Lesson #4: Hazard Analysis for High-Risk Operations

Railways should have a structured program to identify specific target sites along their rail lines where hazard analysis should be conducted. This analysis would compliment those which are conducted in large rail yards. Some factors that should be considered include: traffic volume, urban settings, mountainous terrain and dangerous goods volume. Operating practices in these high risk areas may have to be adjusted to help minimize the risk of accidents.

E. RAILWAY ASSOCIATION OF CANADA – DG-1 CIRCULAR

In 2004, as the result of concerns from Transport Canada, a Working Group from the Transportation of Dangerous Goods Advisory Committee was formed to review the RAC DG-1 Circular, entitled *Instructions for the Safe Handling of Cars Loaded with Dangerous Goods Delayed in Transit on Railway Property*.

Prior to this Circular being issued, the matter of the safe handling of cars loaded with dangerous goods and delayed in transit on railway property was subject to government regulation and special permits. When the federal government stopped issuing these special permits, the RAC DG-1 Circular was produced as a replacement policy.

The Working Group held a number of meetings to try to improve the DG-1 Circular to satisfy the needs of Transport Canada. The railways were unable to provide any evidence of compliance with the DG-1 Circular. They indicated that they did not track this information.

The RAC accepted the proposed revisions and issued an updated DG-1 Circular in June 2005. As part of the revision, a Section on Site Specific Emergency Plans was added. This Section included a requirement that consultations with local Fire Departments be undertaken and that the final plan and annual updates be forwarded to the municipality in question.

The railways have had an opportunity to use this revised Circular to identify possible sites where these cars can be delayed with reduced risk and adequate emergency planning. Even if the delay in transit is not as long as suggested in the Circular, the safe storage of these cars should be an ongoing consideration to minimize the risks to communities.

It is recommended that the Railway Safety Act Review Advisory Panel request documentation from the railways to determine if they are complying with the DG-1 Circular process. If the Government is unwilling or unable to conduct reviews and issue special permits, and the railways ignore their own Association's procedures, it can be questioned whether voluntary compliance programs such as the Safety Management System are effective. Without Government oversight and enforcement, public safety is at risk.

Buffer Zone Policy – linked to the previous recommendation DG-1, the CN Buffer Zone Policy should be more widely circulated and made known to municipalities, particularly to their planning departments. Many sites currently cannot meet the recommended buffer zones. However, new residential or non-residential developments or the re-zoning of land adjacent to railway property should give due consideration to maintaining the appropriate buffer zones.

The Buffer Zone Policy, along with the DG-1 Circular should be brought to the attention of the Federation of Canadian Municipalities' Proximity Issues Committee. Noise generated by railways may get the greatest amount of attention from municipalities. The potential release of dangerous goods should become vitally important to these communities as well.

F. NATIONAL FIRE ADVISOR

The size and technical complexity of events facing the Fire Services have changed significantly. Densely populated urban areas come into direct contact with the forces of nature (Katrina); trains and trucks regularly transport hazardous materials through most Canadian municipalities; and words such as "Avian Flu" have entered our vocabulary. All are signs to the Fire Services that the range of responses that Canadians are expecting of them will continue to expand.

There is a need for the Fire Services to co-ordinate and standardize their approaches to training and equipment to the greatest extent possible. Faced with major emergencies in the future, it will be imperative for the Fire Services to work collaboratively and inclusively. A National Fire Advisor could make an important contribution by ensuring a strategic co-ordinated approach to planning, including railway safety planning.

G. SUMMARY OF RECOMMENDATIONS

1. The federal government must become re-involved in developing regulations and enforcement mechanisms. From ticketing for minor offences up to and including laying Criminal Code charges for serious safety violations resulting in serious injuries or deaths, major damage to property or severe environmental degradation. Self-regulation, with programs such as Safety Management Systems (SMS), or Internal Accountability only work if there are serious consequences for failure to comply with expected safety standards
2. Railways need to work more closely with municipal officials who are impacted most directly by incidents in their communities. Active participation in emergency planning, training and communications with fire, police and elected and appointed municipal officials prior to incidents is key to their mitigation. The TransCAER program developed by the Canadian Chemical Producers Association is a good example of how to implement this recommendation.
3. Standards and procedures developed by the Railway Association of Canada, such as the DG-1 Circular, are only of value if they are fully implemented. If the federal government cannot obtain compliance with these types of voluntary standards, a return to government regulation and permits should be considered.

4. Municipal planning departments should be required to notify the railways of any development or re-development within buffer zones of rail lines. The railways need to communicate to municipal planning departments the risks associated with permitting residential or non-residential development in close proximity to rail lines and rail yards.
5. Fire Departments need to be more proactive in awareness and training for dealing with railway accidents. Pre-planning, including Mutual Aid agreements for specialized HazMat teams should be considered for small Fire Departments with limited resources.
6. Participation of representatives of the railways, shippers and Transport Canada at conferences such as those of CAFC, the Canadian Association of Chiefs of Police, the Federation of Canadian Municipalities, as well as of their provincial/territorial counterparts should take place. It would improve awareness of railway operations and of training programs available.
7. The Advisory Panel should consider the role that a National Fire Advisor could play in contributing to a co-ordinated approach to railway safety.

H. CONCLUSION

Thank you for your consideration of our views with respect to the important issue of the review of the Railway Safety Act. We particularly appreciate the opportunity that has been provided for Fire Chief Chris Powers, Whitchurch-Stouffville Fire Department, to appear before the panel. As a member of the Advisory Committee to the Minister of Transport on the Transportation of Dangerous Goods, Fire Chief Powers is particularly qualified to represent the positions of the Canadian Fire Services with regard to railway safety.

Respectfully submitted,

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