



March 25, 2009

Mr. Matthew T. Wallen
Director
Office of Public Assistance, Government Affairs &
Compliance
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

VIA E-MAIL

Dear Mr. Wallen,

On behalf of the local governments that comprise the TRAC Coalition, please find the attached document that enumerates deficiencies in the March 15, 2010 Technical Memorandum on Community Coordination that was prepared by HDR. We believe the HDR memorandum demonstrates the veracity of the deficiencies of the HDR-prepared survey as TRAC had outlined to your office in early February. Despite the consultant's efforts, no amount of bar charts can substitute for a paucity of data. As we did on February 2, TRAC would urge the Board to start at the beginning with this process and open a dialogue with communities prior to circulating a quantitative survey so that you have some basis of knowledge from which to ask the right questions. As indicated in our letter of March 24 to Chairman Oberstar of the House Transportation & Infrastructure Committee (attached) we have requested our federal elected representatives to convene a session in the region which should allow us to address these issues.

Sincerely,

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Tom Weisner
TRAC Co-Chair
Mayor, City of Aurora
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Copies to:

Transportation Secretary Ray LaHood
House Transportation & Infrastructure Committee Chairman James Oberstar
House Transportation & Infrastructure Committee Ranking Member John Mica
Members of the Illinois Congressional Delegation
STB Chairman Daniel Elliott III
Ray Atkins, Chief of Staff, Office of the Chairman
SEA Chief Victoria Rutson

Deficiencies Identified in the March 15, 2010 HDR Technical Memorandum on Community Coordination

March 23, 2010

General Comments:

1. Rather than detailing the various shortcomings with the survey's design & circulation again, TRAC has attached its original February 2, 2010 letter to the Board. To the extent that TRAC's critique of this document is identical to the critique outlined on February 2, we will not be redundant in this communication. TRAC believes that the HDR memorandum released on March 15, 2010 affirms the validity of TRAC's February 2 concerns.

Section I. Introduction:

2. HDR defines the purpose of the survey:
"The questionnaires sought information from each community concerning CN's compliance with negotiated agreements, and CN's compliance with the Board's conditions relating to emergency protocols, emergency communication, fire prevention, hazardous-materials training, grade-crossing improvements, and quiet-zone implementation.

The intent of the questionnaires was to assist the Board in determining that either CN has complied with the agreements or conditions, as applicable, or that CN is making appropriate progress"

Even a cursory review of the actual survey instrument demonstrates that the questions did NOT center on **compliance** (aka action) but only on CN **communications** with communities (aka talk.) No one questions CN's ability to communicate; TRAC questions CN's commitment to action on compliance.

Section III. Method and Analysis:

3. HDR fails to discuss the problems with the quick turn-around time for completing the survey and the reality that it was not necessarily directed to the right individuals in each community. Perhaps it would have made sense for HDR to provide in this section some explanation as to why speed was prioritized over accuracy and completeness of data gathering in the questionnaire project.

Section IV. Results:

HDR broke the results into two distinct sections: results from communities without mitigation agreements with CN and those that had entered into such agreements. We will discuss deficiencies with each subset separately.

Communities without Mitigation Agreements:

4. For communities without mitigation agreements with CN, the response rate was 7 of the 13 communities participating in the survey – a 54% participation rate. Additionally, HDR notes throughout this result memo that many questions were left unanswered:
 - Only 38% of the total pool of communities w/o agreements responded to questions on noise and hazmat issues.
 - Only 23% of the total pool of communities w/o agreements responded to questions on safety issues

Simply put, HDR's copious use of bar charts to present the data cannot make up for the dearth of data gathered in the survey project. As the Board's oversight consultant, it was incumbent upon HDR to go beyond a quick survey to get feedback from communities. Additionally, HDR should have acknowledged in this memorandum presenting the findings from the survey that the response rates were statistically insufficient to enable anyone to come to data-based and quantitative conclusions.

5. In discussing particulars of communication with each community, HDR notes confusion surrounding just about every issue the survey queried communities on:
 - Toll-free numbers for use in hazmat emergencies;
 - CN's compliance with providing emergency response plans to communities;
 - Whether CN is regularly providing communities with notice when its trains are blocking crossings for 10 minutes or more; etc.

This level of confusion indicates that at some point it would have been rational for HDR to come to the conclusion that the survey project was **NOT** providing the needed information to determine whether CN is living up to its obligations. Launching of a "Plan B" approach would have been in order, instead of continuing to move forward with a fundamentally flawed effort.

6. Based on the data provided about Lynwood, it seems that there might be the possibility that those communities without mitigation agreements with CN and that also lacked representation by TRAC may have been virtually ignored by CN in its mitigation compliance efforts. Based on the shortcomings HDR documented in CN efforts vis-a-vis Lynwood, perhaps HDR should have looked more closely into CN compliance outreach and activity in Ford Heights and Sauk Village.
7. HDR notes that CN is not working cooperatively with either New Lenox or Bartlett in its efforts to establish quiet zones since they have not entered into "voluntary" mitigation agreements with CN. TRAC would ask how CN's practice of holding hostage a Board-mandated mitigation requirement to force communities to enter into "voluntary" mitigation agreements with it lives up to either the spirit or letter of the Board mitigation requirement. Rather than asking that germane question as it should have as the Board's monitor, HDR states, *"In its response (sic) CN stated preliminary discussions were underway with several communities on this issue, studies were under review and work was anticipated for 2010."*

Since HDR provided a chart of all survey documentation it received from communities, TRAC asks why documentation supporting CN's claims that demonstrates its commitment to working with these communities on quiet zones was not also provided.

Communities with Mitigation Agreements:

TRAC would not presume to speak to the specifics of what is occurring in communities that have entered into mitigation agreements with CN. Instead, TRAC makes two observations relevant to this results section of the HDR document:

8. To the extent that private conversations do occur between local elected officials throughout the region, we have reason to believe that despite HDR's conclusion that, *"communities with a VMA are generally pleased with the coordination and implementation efforts CN has undertaken"* this may not actually be the case. In fact, TRAC questions HDR's ability to determine how "pleased" or "not

pleased” any community would be with CN’s actions since the questionnaire asked no questions whatsoever on communities’ qualitative emotional state.

9. As a compliance progress indicator, HDR asks these communities if they had resorted to a “formal dispute resolution” mechanism or if they believed CN had “violated the terms of the negotiated agreement.” Such a question is meaningless given the short timeframe for action, and seems to have been included in the survey for the purposes of eliciting unanimous “no” and “yes” answers these questions would inevitably receive at this point in time.

Section V. Conclusions and Recommendations:

10. HDR states: *“CN has initiated extensive communication with the affected communities. The surveyed responses indicate that in most instances, the communication has been consistent with the Board’s Conditions.”* TRAC would like to remind HDR that the Board’s Conditions did not require CN to “communicate about” but instead, “to act” upon its conditions. Until and unless HDR focuses its conclusions on that goal, anything it says on the matter is quite irrelevant to impacted communities in the region.
11. HDR notes that CN *“should provide documentation”* in future environmental reports to support its claims on STB Condition 9, VM 101, VM 16, VM 23, VM 5 and VM 42. We would expect that HDR has already reviewed all of this documentation in its capacity as oversight monitor, so TRAC wonders why it cannot be produced for the Board and the public to review at this time. Additionally, since the role of oversight monitor seems proactive by its very nature, perhaps it would have been sensible for HDR to define for CN the documentation it expects it to provide in future environmental reports. The fact the HDR has failed to provide CN with such compliance directives would lead one to assume that HDR feels it is reporting to CN, rather than the Board.