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## **BY E-FILING**

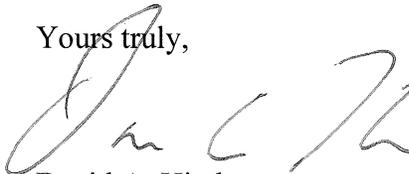
Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0012

**Re: *Canadian National Railway Company and Grand Trunk Corporation –  
Control – EJ&E West Company* (STB Finance Docket No. 35087)**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find CN's Comments on the Compliance Support Verification Final Report of HDR Engineering, Inc.

Yours truly,



David A. Hirsh

Counsel for Canadian National Railway Company  
and Grand Trunk Corporation

Enclosure

Cc: All parties of record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35087

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CANADIAN NATIONAL RAILWAY COMPANY  
AND GRAND TRUNK CORPORATION  
– CONTROL –  
EJ&E WEST COMPANY

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**CN'S COMMENTS ON THE COMPLIANCE SUPPORT VERIFICATION  
FINAL REPORT OF HDR ENGINEERING, INC.**

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SURFACE TRANSPORTATION BOARD**

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CANADIAN NATIONAL RAILWAY CORPORATION  
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– CONTROL –  
EJ&E WEST COMPANY

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**CN'S COMMENTS ON THE COMPLIANCE SUPPORT VERIFICATION  
FINAL REPORT OF HDR ENGINEERING, INC.**

Pursuant to Decision No. 23, served by the Board in this proceeding on April 21, 2009, CN<sup>1</sup> hereby submits these comments on the Compliance Support Verification Final Report (“Final Report”) submitted to the Board by HDR Engineering, Inc. (“HDR”) on April 14, 2010. The Final Report was produced at the Board’s request in order to provide an independent audit and verification of CN’s compliance with the environmental mitigation conditions and the operational reporting requirements that were imposed on CN in this proceeding by the Board’s decision approving CN’s acquisition of EJ&E West Company (“EJ&EW”), now renamed the Elgin, Joliet and Eastern Railway Company (“EJ&E”) (“Approval Decision”).

CN takes seriously its obligations under the mitigation conditions and reporting requirements imposed in the Approval Decision, and it has devoted thousands of personnel hours to compliance with the Board’s operational and informational requirements. CN is faithfully

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<sup>1</sup> As used herein, “CN” refers to Canadian National Railway Company, Grand Trunk Corporation, and their U.S. railroad subsidiaries. Unless otherwise defined, other short forms and abbreviations have the meanings set forth in the Table of Abbreviations in the Application (CN-2 at 8-11), which CN hereby incorporates by reference.

seeking to implement all of the conditions imposed in the Approval Decision.<sup>2</sup> CN will continue to seek guidance from the Board or its personnel if it has any questions regarding the specific details of CN's obligations under the Approval Decision, and provide information that the Board may require for its oversight of the Transaction. CN will also continue to be attentive to community complaints, and where an investigation reveals that a complaint is well founded, mitigate the source of the complaint as much as practicable.

The Final Report generally confirms that CN is complying with its obligations under the Approval Decision and is cooperating with local communities to mitigate the adverse impacts of additional rail traffic expected as a result of the CN/EJ&E transaction. It also points out areas where CN's performance requires improvement. CN here offers observations and comments on specific points raised by HDR in the Final Report.<sup>3</sup>

#### **I. Community Coordination (HDR Task 1)**

HDR's first task was to send questionnaires to the communities along the EJ&E arc seeking to verify the reports CN has been filing with the Board pursuant to the Approval Decision and to identify appropriate follow-up actions. For the communities along the EJ&E rail line that negotiated voluntary mitigation agreements ("VMAs"), CN's mitigation obligations are found in those agreements.<sup>4</sup> Because the Board wanted to understand the views of both the

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<sup>2</sup> CN has appealed one condition of the Board's Approval Decision regarding grade separation requirements at Aurora and Lynwood, Illinois (Final Mitigation Condition ("FMC") 14). Despite that appeal, FMC 14 has not been stayed and, in parallel with its implementation of all other conditions, CN has been holding ongoing discussions with the Illinois Department of Transportation ("IDOT") regarding construction of the separations.

<sup>3</sup> Attached to CN's reply is the verification of James Kvedaras, CN's Director of U.S. Government Affairs (and also CN's Community Liaison for EJ&E matters), with respect to CN's discussion of community contacts in Section I, below.

<sup>4</sup> All but one of these agreements is in the form of a "Memorandum of Agreement."

communities with VMAs and those without, HDR prepared different questionnaires for each. Final Report, App. 1 at 2. Although the questionnaire responses might appear to indicate greater satisfaction among the communities with VMAs,<sup>5</sup> CN shows no partiality toward the communities that have entered into such agreements. CN views its responsibilities under the Approval Decision toward communities that have not entered into VMAs as equally important to its obligations under VMAs.

#### A. VMA Communities

Since CN announced the CN/EJ&E Transaction in 2007, it has been reaching out to affected communities in an effort to keep them apprised of implementation progress, to engage them in discussions concerning how the railroad and their communities can successfully coexist, and to allay their concerns about adverse impacts of the Transaction. In addition, with the Board's encouragement (*see id.* at 1), CN has sought to negotiate VMAs with each of the 33 communities along the EJ&E arc. That effort has met with significant success – CN has concluded agreements with 22 of those 33 communities, representing two-thirds of the total population of those affected communities.

According to HDR's report, none of the VMA communities believed that CN had violated the terms of its VMA. HDR concluded that VMA communities are generally pleased with the coordination and implementation efforts CN has undertaken, that they believe they are making satisfactory progress toward implementation of the VMAs, and that CN is responsive when these communities have specific questions.

A few VMA communities, however, raised concerns, to which CN would like to respond.

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<sup>5</sup> VMA communities may be more satisfied generally since each VMA is designed to address the community's specific concerns.

Noise and Safety. Although the Village of Mokena, in response to HDR's questionnaire, said (a) that "CN's community liaison has generally been responsive to our community inquiries," (b) that CN had honored the terms and conditions of its VMA with Mokena, and (c) that Mokena had been making progress toward implementing the terms of that VMA, it also stated that CN had not been in contact concerning implementation pertaining to noise or safety. The person responding on behalf of Mokena may have been unaware of the fact, but CN has been in contact with Mokena in order to implement the provisions of the VMA, including those dealing with noise and safety. Further, CN believes that it is making satisfactory progress toward implementation of Mokena's VMA (as Mokena's own questionnaire responses appear to confirm). Indeed, CN is unaware of any noise or safety implementation issues that remain to be discussed with Mokena. Nevertheless, because Mokena's questionnaire response indicated that it may believe there are some outstanding issues regarding noise or safety that remain unresolved, CN contacted Mokena to determine what, if any, such issues remain outstanding and how they might be addressed. CN was told that Mokena's response primarily reflected citizens' complaints about horn noise at Mokena's one grade crossing – a subject covered by Mokena's VMA and one which the parties are already working cooperatively to address.

Unresolved Disputes. HDR's questionnaire asked VMA communities whether they had "any unresolved disputes with CN concerning implementation or interpretation of your negotiated agreement." Only Warrenville responded in the affirmative, stating that "our community will be forced to purchase insurance to insure the crossing" (*i.e.*, insure CN against liability from operations across Batavia Road) and that "[t]his is the only way CN will cooperate with the creation of a quiet zone." Warrenville was apparently referring to the fact that CN has said it does not wish to lose the protection from liability that it currently has for Batavia Road,

which is a private crossing subject to an indemnity agreement in CN's favor. Under Warrenville's initial quiet zone plan, that protection would have been lost. CN has been exploring with Warrenville a possible solution that would allow establishment of a quiet zone that would include Batavia Road, without exposing CN to greater liability than it presently bears for operations at that crossing.

Emergency Response Training. Elgin, Warrenville, and West Chicago told HDR that they had not received hazardous materials training from CN, although Warrenville and West Chicago reported that CN had discussed or offered the training. According to CN's records, approximately 90 members of the Elgin fire department attended TransCAER training held November 2-4 and November 9-11, 2009, and approximately 50 members of the West Chicago fire department attended TransCAER presentations between December 7 and 9, 2009.<sup>6</sup> Warrenville reported that CN had offered or discussed the training; this is consistent with CN's records, which show that Warrenville attended an information meeting held by CN on April 21, 2009, and received two information packets identifying all hazmat training opportunities.

Notification of Grade Crossing Blockages. HDR's questionnaire asked VMA communities whether CN had "notified your local emergency responders every time a crossing in your community has been blocked by a train for 10 minutes or more." Griffith, Lake Zurich, and Schererville responded that CN had not contacted their emergency dispatchers when crossings had been blocked for 10 minutes or more. But the relevant mitigation condition (VM 42) requires that Emergency Services Dispatching Centers be notified, not of all blockages of 10

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<sup>6</sup> See CN's Quarterly Environmental Report, 4th Quarter 2009, VM #20 Attachment (submitted to STB January 10, 2010). HDR reported that, "in follow up telephone conversations, the responders from Elgin and West Chicago indicated they had not consulted with emergency service personnel who were shown in CN's quarterly environmental reports as attending the training."

minutes or more, but of all instances in which crossings are “blocked by trains that are stopped and may be unable to move for a significant period of time.” As CN’s monthly operating reports have shown, lengthy blockages caused by stopped trains are relatively infrequent occurrences. Nevertheless, CN will continue to work with its crews and dispatchers to ensure that responsibilities are well defined and lines of communication are clearly established so that prompt notification of blockages covered by VM 42 is reliably made to the appropriate Emergency Services Dispatching Centers.

#### B. Non-VMA Communities

According to HDR’s report, several of the non-VMA communities located on the EJ&E line (plus Will County, which asked to be included in HDR’s survey) have raised concerns regarding CN’s compliance with the requirements of the Approval Decision. Many of these concerns appear to be the result of misunderstandings or miscommunication, including, as HDR notes,<sup>7</sup> the fact that, in some communities, the questionnaire may have been completed by persons within the local governments who were unaware of the contacts CN had made with those communities regarding various mitigation issues. CN’s comments on specific questionnaire responses are presented below.

Noise. In response to HDR’s question, Will County and Lynwood reported that CN had not contacted them regarding noise. In accordance with the noise mitigation conditions, CN has discussed noise issues with local communities rather than with counties (as the issues tend to be local and only local communities are covered by the conditions) and generally with communities

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<sup>7</sup> Final Report, App. 1 at 2, 6.

that have expressed concerns about noise, which, to CN's knowledge, Lynwood has not done.<sup>8</sup>

In any event, in order to discuss noise and any other issues of potential interest to Lynwood concerning EJ&E, CN's Community Liaison (Jim Kvedaras) met with the Mayor of Lynwood in late April 2010. Like Lynwood, Will County has not, to CN's knowledge, raised any noise issues for discussion. If Will County informs CN that there are county-wide noise issues for discussion, however, or issues specifically affecting unincorporated areas of Will County, CN will gladly review those issues with them.

New Lenox answered that it has requested CN's assistance with the establishment of a quiet zone, but that CN has not cooperated with that request. CN met with New Lenox Mayor Timothy Baldermann and Village Administrator Russ Loebe on March 6, 2008, and with Mayor Baldermann again on September 24, 2008, to discuss quiet zones and other issues of concern to the community. CN is fully prepared to support a request New Lenox may make to the Federal Railroad Administration ("FRA") for the establishment of a quiet zone, and to work with New Lenox, as required by VM 5, to identify supplemental or alternative safety measures, practical operational methods, or technologies that may enable New Lenox to establish a quiet zone. Based on its discussions with New Lenox, CN believes that the basis for New Lenox's complaint is that it would like CN to pay for the municipality's costs in implementing a quiet zone.

Although the Board's mitigation conditions do not require that CN do so, CN is willing to

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<sup>8</sup> See, e.g., VM 5 (requiring CN to "cooperate with interested communities" regarding establishment of quiet zones); FMC 26 (requiring CN, "[u]pon request," to consult with communities affected by wheel squeal).

VM 4 requires CN to "cooperate with municipalities affected" to determine which improvements would be necessary for existing quiet zones to maintain FRA compliance. Barrington is the only municipality for which this condition is relevant, and CN has been consulting with Barrington about necessary improvements. Also, VM 77 requires CN to "work with affected communities that have sensitive receptors" that would experience certain transaction-related noise increases, but neither the Approval Decision nor the Board's Environmental Impact Statement identifies any such receptors in Lynwood.

discuss possible funding of a quiet zone, but would expect to do so only as part of a comprehensive VMA.

Bartlett stated that CN would only provide money for a quiet zone as part of a VMA. As with New Lenox, CN is willing to consider contributing financially to the establishment of a quiet zone in the context of a broader VMA. And, in any event, as with New Lenox, CN is prepared to support a request by Bartlett to the FRA for establishment of a quiet zone, and to work with Bartlett to identify supplemental or alternative safety measures, practical operational methods, or technologies that may enable Bartlett to establish a quiet zone.

Finally, although Barrington acknowledges that CN has been in contact with Barrington regarding noise mitigation, it claims that “no action or results are seen in most instances.” CN has installed curve lubricators at two locations in Barrington to address noise, and it has installed constant warning time (“CWT”) circuitry (which monitors the speed of approaching trains so that the gate is not lowered an unnecessarily long time before arrival of a train) at Route 59, as a preliminary step to creation of a quiet zone there. In addition, CN has been in contact with IDOT to discuss when the median barrier required for the Route 59 quiet zone may be installed. IDOT has requested that work on the barrier be delayed until the fourth quarter of 2010, when IDOT expects to have completed a nearby project. CN is unaware of any other noise-related issues raised by Barrington.

Safety. In response to HDR’s question, Lynwood, Naperville, New Lenox, and Will County reported that CN had not contacted them regarding safety, and all of the non-VMA communities other than New Lenox said that CN failed to contact them about fencing or other pedestrian safety issues. As HDR observed, however, many of CN’s contacts with regard to these issues have been with schools and park districts that may not have informed the community

representatives responding to the questionnaire about such contacts.<sup>9</sup> CN has written to all schools located within one-half mile of the EJ&E line, offering them Operation Lifesaver presentations.<sup>10</sup> CN has made numerous presentations at the request of local schools, including, on October 19-20, 2009, 15 presentations for students at Peterson Elementary School in Naperville.<sup>11</sup>

Further, with regard to VM 10 and FMC 11, which require fencing as a pedestrian safety measure in selected locations, no locations requiring fencing were identified in Lynwood, and CN has paid for the installation of fencing in Naperville and New Lenox.

Finally, as CN has previously reported, although not a requirement of the Approval Decision, CN conducted a Grade Crossing Collision Investigation training class on March 19, 2009 that included, among others, representatives of Lynwood and the Illinois Commerce Commission. This was followed up on January 25, 2010, with two classes attended by the Illinois State Police and 30 police officers and one fire chief employed by seven different agencies within Will County.<sup>12</sup> As part of Naperville and all of New Lenox are within Will County, Illinois, this training should also benefit those communities.

Hazardous Materials; Emergency Response. In response to HDR's question, Lynwood and Will County answered that CN had not contacted them regarding hazardous materials ("response training, drills, response plans, etc."), and Lynwood answered that CN had not

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<sup>9</sup> Final Report, Appendix 1 at 6.

<sup>10</sup> See CN Quarterly Environmental Report, 1st Quarter 2010, Updated VM #20 Attachment (submitted Apr. 12, 2010), for list of schools at which Operation Lifesaver presentations have been made, and number of students attending each presentation.

<sup>11</sup> See Letter from Karen Borlaug Phillips to Matthew T. Wallen at 3 (Nov. 10, 2009) (transmitting CN Monthly Operational Report, Oct. 2009).

<sup>12</sup> See Letter from Karen Borlaug Phillips to Matthew T. Wallen at 2 (Feb. 10, 2010) (transmitting CN Monthly Operational Report, Jan. 2010).

contacted it regarding emergency response. As HDR observed, however, all of the non-VMA communities that responded to the questionnaire either had sent at least one representative to CN-sponsored hazardous material training or were represented by a neighboring community.<sup>13</sup> Russell Pearson, Chief, and Greg Szmanski, Deputy Chief, of the Lynwood Police Department attended an informational meeting on April 23, 2009, that dealt with safety, environment, hazardous materials, police, public and government affairs, and took two copies of an informational packet provided by CN, which included the Emergency Response Plan.<sup>14</sup> Moreover, on November 9, 2009, CN notified fire departments in affected communities, including Lynwood, of the availability of TransCAER training, a Railroad Emergency Response (“RER”) course, and Tank Car Specialist training.<sup>15</sup> This message included copies of the “Outreach Programs” document that had been part of the packet distributed at community meetings held earlier in 2009 (including the April 23, 2009 meeting attended by Chief Pearson and Deputy Chief Szmanski). And most recently, during the late April 2010 meeting between CN’s Community Liason and Lynwood’s mayor CN reviewed the prior information shared with Lynwood concerning hazardous materials and emergency response and reviewed a handout describing hazmat training opportunities available free of charge to Lynwood and other communities, as well as a copy of CN’s current Emergency Response Plan.

Barrington, Bartlett, Lynwood, Naperville, New Lenox, and Will County claimed that they had not been provided a copy of CN’s emergency response plan. As HDR notes, however,

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<sup>13</sup> Final Report, Appendix 1 at 3.

<sup>14</sup> See CN Quarterly Environmental Report, 3d Quarter 2009, VM #16 Attachment (submitted to STB Oct. 13, 2009) (reproducing sign-in sheet for “EJ&E Community ER Meeting[]” held at Schererville Town Hall, Apr. 23, 2009).

<sup>15</sup> See CN Quarterly Environmental Report, 1st Quarter 2010, VM #20 Attachment (copy of message sent to fire chiefs, including “fire@lynwoodil.us”).

all of the non-VMA communities that responded to the questionnaire had sent representatives to meetings where the plan was distributed.<sup>16</sup> Because respondents from these communities did not confirm that their representatives received copies of the plan, CN has sent an additional copy to each of them.

According to HDR, Lynwood stated that none of its emergency response providers had attended CN-sponsored hazmat training and that such training had not been discussed with or offered by CN, and Bartlett stated that none of its police officers had been offered hazmat training because they did not have hazmat certification. CN believes these communities may be referring to the Tank Car Specialist training program offered in Pueblo, Colorado, and described in CN's November 9, 2009 message. Certification as a hazardous materials Technician is a prerequisite for this training, which is a highly specialized course building upon skills that those attending the course are assumed to have acquired previously. (Apparently, none of Bartlett's police officers and none of Lynwood's emergency service providers have received the necessary certification for this course.) For those not qualified for this specialized course, as CN explained at the April 23, 2009 informational meeting, CN offers several different types of hazmat training to all emergency service providers free of charge to the communities including TransCAER training, which does not require advanced specialized training, and this training remains available to personnel from Bartlett and Lynwood.

Emergency Response Notification Telephone Number. Lynwood and New Lenox claimed that CN did not provide them with CN's dedicated toll-free number for reporting train accidents and hazardous materials release emergencies. CN provided the required toll-free number, but it appears that the individuals responding for Lynwood and New Lenox were

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<sup>16</sup> Final Report, App. 1 at 4.

unaware of that fact. HDR reports that in follow-up conversations with those responders, one of them indicated that the number had in fact been provided, while the other indicated that the number had initially been provided to a fire protection district not under the responder's jurisdiction and has since been provided to the responder's police department.<sup>17</sup>

Notification of Grade Crossing Blockages. HDR's questionnaire asked communities whether CN had "notified your local emergency responders every time a crossing in your community has been blocked by a train for 10 minutes or more." In response, only Will County said that CN had done so. This issue is addressed above under the heading "VMA Communities." The discussion there of the actual requirements of VM 42 and of CN's commitment to comply with that condition is equally applicable to all communities along the EJ&E arc, including those without VMAs with CN.

Dispatching Monitor. Lynwood reported to HDR that it had not been offered a dispatching monitor pursuant to VM 42 to allow its dispatching personnel to see real-time crossing activations. CN understands from subsequent discussions with Lynwood that its respondent was unaware that CN has had discussions concerning this issue with Lynwood's police and fire departments. As an alternative to dispatching monitors, CN has offered free of charge to all communities located along the EJ&E arc, including Lynwood, its Active Crossing System ("ACS") software program, which other communities have preferred to dispatching monitors and accepted as satisfying CN's obligations under VM 42.<sup>18</sup> This software provides each emergency response dispatch agency with an electronic map of its service area, in which

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<sup>17</sup> Final Report, App. 1 at 3.

<sup>18</sup> CN's Community Liaison distributed letters in mid-January 2010, reminding Lynwood and other communities that the ACS software program is available to them, and explaining the terms by which CN would reimburse communities for the cost of an appropriate computer and/or monitor should they be required. A copy of CN's letter offering this software to Lynwood is attached as Exhibit 1.

each at-grade crossing with active warning devices would be symbolized with a dot. The dot would change colors as the warning devices at the crossing are activated (*i.e.*, a green dot would indicate that the warning devices are not activated (and that the crossing is therefore clear) while a red dot would indicate that the warning devices are activated (and that an emergency response vehicle would therefore be blocked from using the crossing)). ACS would thus allow emergency response dispatchers to view multiple crossings on a single screen and to see locations where the warning devices are activated and the order in which they are activated, making it possible to observe the progression of approaching trains. (A dispatching monitor, by contrast, displays line segments but not crossings, much less their status.)

Miscellaneous. HDR reports that Deer Park has complained about frequent 10-minute blockages at Cuba Road. HDR's crossing blockage data show, however, that such occurrences under CN control are relatively rare (once a month) and are also less frequent than they were under EJ&E control.<sup>19</sup> Nonetheless, CN has been in contact with Deer Park's current Village Administrator in order to set up a meeting to discuss the community's concerns with regard to these blockages. Moreover, Cuba Road's infrequent blockages should become even rarer as a result of CN's planned double-tracking of the EJ&E line between Diamond Lake Road and Gilmer Road, which after its completion (planned for 2011) will provide a place to hold southbound trains without blocking any crossings as they wait for clearance to proceed through the Barrington interlocking. (At present, if a southbound train receives an unexpected red signal and has to stop, it will block either Cuba Road or Ela Road.)

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<sup>19</sup> The HDR data included in the Final Report shows only one such blockage during the two-month period November-December, 2009 (under CN control), as compared to four during November-December, 2008 (under EJ&E control).

In addition, according to HDR, Deer Park claims that CN has never offered or planned a meeting with its representatives. CN first contacted Deer Park about the CN/EJ&E transaction immediately after announcement of the transaction in 2007, as it did with all affected communities. CN also placed calls to the prior administration of Deer Park to discuss negotiation of a VMA, and to notify those officials when CN began re-routing trains to the EJ&E from their pre-transaction CN routes. Deer Park only recently requested to meet with CN. CN has made several attempts to arrange such a meeting, including a recent visit by CN's Community Liaison to Village Hall for an anticipated meeting with the Village President that, unfortunately, Deer Park ultimately postponed.

HDR also reports that Lynwood stated that it would have thought that someone at CN might reach out to them regarding the proposed grade separation at Lincoln Highway. As far as CN can determine, however, Lynwood, which noted in a preliminary meeting that it desired the grade separation, has never raised any concerns with CN regarding that grade separation. This is consistent with the relevant mitigation condition, FMC 14, which contemplates that "IDOT will be the lead agency for the development of these grade separations."<sup>20</sup> Accordingly, CN has been consulting and meeting with IDOT about implementation of FMC 14. CN has expected, consistent with the language of that condition, that any coordination with Lynwood regarding the grade separation would be arranged through IDOT, and that if Lynwood had particular concerns about the separation, it would make contact with IDOT regarding them. Nevertheless, CN's Community Liaison met with the mayor of Lynwood in late April 2010 and discussed, among other things, grade separation issues and progress, including CN's meetings with IDOT and its consultants and ways in which CN has and can assist with preliminary information gathering.

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<sup>20</sup> Approval Decision at 76.

According to HDR, Naperville opined that CN had not been as proactive on some of the voluntary mitigation items as Naperville would like. CN is cooperating with Naperville and DuPage County Forest Preserve District regarding pedestrian path issues, has met with Naperville and Wheaton Township representatives about placement of a railroad communications tower, and has paid for installation of fencing at two schools in Naperville. CN is unaware of any additional pending issues concerning Naperville, but it has nevertheless contacted Naperville assistant city manager in order to determine whether there are other matters of concern to the community.

Finally, New Lenox and Will County told HDR that they have not been informed of when hazmat traffic has been scheduled to pass through their territory. This is correct and is consistent with sound operating practice and recommendations of the Department of Homeland Security and Transportation Security Administration. Information of this kind is highly sensitive and is not generally shared with communities along a railroad's line because of security concerns.

### C. HDR Conclusion and Recommendations

HDR concludes that the responses to its questionnaire indicate that, in most instances, CN's communications with affected communities have been in accordance with the conditions imposed in the Approval Decision. HDR notes, however, that in some instances communities do not appear to have received copies of CN's emergency response plan. CN has sent additional copies of this plan to the communities reporting that they had not received it, and CN's next quarterly environmental report will document its provision of these documents, as recommended by HDR. Also as recommended by HDR, CN's quarterly environmental reports will provide additional documentation, on a community-by-community basis, of CN's compliance with VM

5, regarding cooperation in the establishment of quiet zones. HDR further recommends that CN provide additional detailed information in its quarterly reports regarding VM 42's requirement that CN notify emergency service dispatchers when crossings will be blocked for substantial periods of time and install dispatching monitors upon request. As noted above, CN has taken added steps to assure its compliance with VM 42's notification requirement. Further, in order to document CN's compliance with VM 42, CN will provide information in its quarterly reports on CN's progress in providing requesting communities with CN's ACS software, which it has offered free of charge to all communities along the EJ&E.

## **II. Complaints of Train Noise and Vibration (HDR Task 2)**

HDR's second task was to review complaints submitted to the Board concerning engineers purportedly sounding their locomotives' horns in existing quiet zones, as well as other Transaction-related noise and vibration issues. HDR concluded that "CN's activities and responses to written complaints about noise and vibration appear reasonable" and that it was "satisfied with CN's response considering the FRA requirements for locomotive horn use." Final Report, App. 2 at 6. CN's responses to the specific areas analyzed by HDR follow.

Excessive Noise. CN agrees with HDR's assessment that complaints of excessive noise were "brief and anecdotal,"<sup>21</sup> "subjective,"<sup>22</sup> and "do not contain sufficient detail to allow for action by STB or CN."<sup>23</sup> CN also agrees that there is nothing in these complaints to suggest that residents are being exposed to more noise than was expected.<sup>24</sup>

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<sup>21</sup> *Id.*, App. 2 at 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See id.* ("None of these items confirm that residents' exposure to post-acquisition noise is somehow different than what the FEIS identified."); *id.*, App. 2 at 6 ("The complaints about

Wheel Squeal. HDR identified wheel squeal as one source of noise that “merits further consideration and potential action.”<sup>25</sup> As part of its compliance with VM 80, CN identified 17 locations where it believes curve lubricators would be useful to reduce wheel squeal.<sup>26</sup> All but two of these lubricators have already been installed, and, of the last two that need to be installed, one is in place but only lubricating one of the two tracks that it will eventually serve, and the other is awaiting the completion of track work before it can be installed. CN expects these remaining two lubricators to be in place and fully functional by the end of 2010.<sup>27</sup> CN is unaware of any request by a community to consult on wheel squeal. Nevertheless, as required by VM 80 and FMC 26, CN remains available for such consultations, and if it is shown that CN missed a curve or curves where lubrication would both be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors, then CN will consider lubricating them as well.

Nighttime Noise. The Final Report suggests that CN may be operating more trains at night “[d]uring this interim phase of integrating the CN and EJ&E,” so as “to minimize interference with Metra schedules,”<sup>28</sup> and that this may be leading to complaints of excessive train noise and of horn use in quiet zones. Although CN does have to reduce its operations on portions of the EJ&E during Metra rush hours, it has not attempted to schedule a

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noise and vibration appear consistent with the results of the noise and vibration studies performed for the EIS.”)

<sup>25</sup> *Id.*, App. 2 at 3.

<sup>26</sup> *See* CN Quarterly Environmental Report, 4th Quarter 2009, VM #80 and Condition #26 Attachment (submitted to STB Jan. 11, 2010).

<sup>27</sup> *Id.*

<sup>28</sup> Final Report, App. 2 at 4.

disproportionate number of trains for nighttime, and does not foresee a significant change in the distribution of its operations by time of day after full integration.<sup>29</sup>

Horn Use in Quiet Zones. CN believes its train crews have done an excellent job complying with the FRA requirements for locomotive horn use. It agrees with HDR's analysis that most complaints of horn use in quiet zones are based on misunderstandings by individuals as to where quiet zones are located and not located and when horn use is required even in a quiet zone. There is already much information available on the STB's EJ&E Compliance and Monitoring Website concerning when horns are required to be used in a quiet zone. CN would be happy to work with local communities to assure that this information is made available to and understood by their citizens.

The Final Report suggests three steps to address the use of horns in quiet zones.<sup>30</sup> The first is a review of CN maintenance practices, so that entry of workers and equipment on the right-of-way between 10:00 p.m. and 6:00 a.m. will be limited to when it is absolutely necessary. Even if CN were to institute such a policy, it would not likely reduce nighttime horn use significantly. CN rarely performs right-of-way maintenance at night, so it is unlikely that much nighttime horn noise is caused by use of the horn (as required by FRA rules) when a locomotive approaches people or equipment working in the right-of-way. The Final Report also suggests that communities be informed "that horn use may occur during nighttime more often than in the past during this interim period of CN-EJ&E integration when CN is operating more trains at

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<sup>29</sup> CN also notes that in terms of community impacts, both daytime and nighttime each operations offer advantages and disadvantages. Daytime operations may reduce noise concerns, since noise at night is generally perceived as more annoying, but it would likely result in increased vehicle delays at rail/highway grade crossings, since vehicular traffic tends to be greater during daytime.

<sup>30</sup> Final Report, App. 2 at 5.

night to minimize schedule conflicts with Metra.” For the reasons discussed above, CN believes such a notification would be inaccurate and is thus inadvisable.

Finally, HDR suggests that CN provide records of horn use in quiet zones, so they may be compared with claims by the public concerning such horn use. It suggests that such data might show a difference between actual use of horns in quiet zones and complaints about the use of horns in quiet zones and further suggests that if such a disparity exists, the Board “could consider alternative actions including a noise monitoring task.” CN believes that the issues raised concerning horn use in quiet zones does not require imposition of a broad new record-keeping and reporting requirement. There is little or no evidence of horn misuse and only a relatively small number of horn use complaints, which should diminish further as additional quiet zones are created and citizens gain a better understanding of horn use requirements.

Further, CN believes HDR’s suggested reporting would not benefit the public or the Board. Horn sounding records are not required in order to establish that some individuals confuse horns sounding on nearby crossings with horns sounding in a quiet zone or that some people fail to appreciate that it may be appropriate to sound a horn even, at times, in a quiet zone. And another means of demonstrating these facts would not in any way justify noise monitoring, which HDR suggests is the ultimate potential goal of its record keeping suggestion, but which is a different subject altogether.

Instead, CN believes that the Board’s and CN’s own focus on public education and the creation of new quiet zones is the correct approach. Moreover, to the extent there are specific concerns or complaints about horn use in quiet zones, as CN has repeatedly shown, it can and will work with Board personnel to investigate and determine the facts and circumstances

surrounding them. For all of these reasons, a general horn sounding reporting requirement would be an unjustified burden of little practical value.

Vibration. CN agrees with HDR that there is no evidence that current levels and occurrences of ground-borne vibration are substantially different than expected.

Idling Locomotives. CN agrees with HDR's assessment that idling locomotives would not expose residents to noise levels in excess of the Board's noise assessment thresholds. Some idling of locomotives is an unavoidable part of railroading. For example, idling will occur if a train must take a siding to allow another train to pass or if a train must await a clear signal to proceed through an interlocking. CN, however, tries to avoid unnecessary idling and idling close to residences. After being apprised of complaints about idling maintenance-of-way equipment, for example, CN instructed its maintenance-of-way crews to avoid whenever practicable unnecessary extensive idling near homes.

HDR Recommendations. In keeping with HDR's recommendations, CN remains willing to discuss noise-related issues with any community, will respond appropriately to all reasonable requests, and, as suggested by HDR, will reach out to communities on noise-related issues.

### **III. Train Volumes and Street Blockages (HDR Task 3)**

#### **A. Train Volumes**

As CN discussed with HDR during the audit process, and as noted by CN in its March 10, 2010 cover letter to the STB for its February 2010 operating report, CN has over time discovered a number of areas in which improvements can and should be made to its methodology for generating train counts. HDR's Final Report highlights a number of these areas,<sup>31</sup> which include challenges related to such things as accurately accounting for reverse

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<sup>31</sup> Final Report, App. 3 at 8.

movements, truncated movements, boundaries between adjacent segments, and foreign trains operated on the EJE. HDR's Final Report also noted that an apparent source of variances in CN's train counts is also related to its transfer of automated data to the summary reports filed with the STB.<sup>32</sup>

CN has been working diligently to address and resolve all of these issues. For example, beginning with its report for February 2010, CN used improved methodologies for counting round trip trains and foreign trains. Nonetheless, in order to further improve its train count reporting, CN is now in the process of creating a more automated approach to its reporting of train counts that will rely more heavily on automated train readings, thereby minimizing the need for personnel to identify reportable trains, and will eliminate the need to manually transfer data between data bases and the final report to the STB, thereby further reducing the possibility of human error. Rather than restate its prior train count reports piecemeal, CN intends to complete the development of this improved methodology, which it hopes to complete in approximately four weeks, and then to confer with Board personnel as to the best approach to restating its prior reports as accurately as possible. CN believes that the resulting changes in train counts will be modest, but it wishes to provide the most accurate information reasonably possible.

#### B. Street Blockages

Prior to HDR's submission of its Final Report, CN's monthly reports to the Board had reported blockages of grade crossings caused by trains stopped for 10 minutes or more. HDR's audit concluded that CN's reports of crossings blocked due to such stopped trains were generally accurate, but raised the issue of whether CN should be reporting only blockages due to stopped trains or should report all blockages of 10 minutes or more, even those caused by trains

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<sup>32</sup> *Id.*

continuously moving through the crossing. HDR recommended that the Board clarify CN's reporting obligations with respect to crossing blockages.

The Board did so in Decision No. 23. On April 26, 2010, pursuant to that decision, CN resubmitted past blocked crossing reports supplemented with data from Cellular Remote Terminal Units ("cRTU") (also sometimes simply referred to as "RTU" in other documents) that are installed as supplemental equipment at most of the EJ&E grade crossings equipped with active crossing warning devices ("ACWD"). CN also submitted all available historical cRTU data for months that predated CN's control of EJ&E. As discussed in CN's April 26, 2010 cover letter, these historic data are not processed or stored by CN, but are kept on the servers of the vendor of the system, Progress Rail, which only recently purchased this business from General Electric. Progress Rail does not typically assist its railroad clients in interpreting and/or reporting data, and it does not generally do so with respect to notifications that gates have been down 10 minutes or more.<sup>33</sup> CN has had to rely on Progress Rail to provide the raw historic data on ACWD activations, to provide useful summaries of those data, and to populate the blocked crossing reports that CN resubmitted. CN has continued to work with Progress Rail to address certain problems with those data and enhance their usefulness, and CN expects to resubmit the results of that effort shortly.

In addition to these historical data, commencing with its report on operations for April 2010 (filed May 10, 2010), CN is reporting all known instances of ACWD activations of 10 minutes or more, whatever the cause. Unlike the cRTU data provided by HDR in its audit report, which are limited to the crossings on segments over which rail traffic volumes are expected to

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<sup>33</sup> In fact, according to Progress Rail, of all of its cRTUs nationwide, only CN's are programmed to provide notifications of ACWD activation for 10 minutes or more.

increase as a result of the CN/EJ&E Transaction, both the report of historical data filed April 26 and subsequent reports cover all crossings on all segments of EJ&E.

In testimony before the Board in this proceeding on April 28, 2010, Gordon T. Trafton II, Special Advisor to the CN Leadership Team, explained CN's general perspective on crossing blockages in complex operating environments in metropolitan areas.<sup>34</sup> Crossing blockages are often a necessary consequence of such operations, and it appears that even before CN's acquisition of the EJ&E line, pre-existing EJ&E traffic caused a significant number of such blockages. The available data suggest that CN's operating practices have permitted CN to add trains to that pre-existing traffic without materially increasing the frequency of grade crossing blockages of 10 or more minutes.<sup>35</sup>

CN is continuing to work, whenever practical and consistent with its common carrier obligation, to reduce such blockages further. CN's management has identified grade crossing delay on the EJ&E as a top priority, and it is pursuing general and specific analyses and initiatives to reduce the number and duration of blockages.

Most crossings that experience a high level of 10-minute blockages are near areas where CN trains slow or stop to (a) move between the EJ&E line and other CN lines (*e.g.*, Leighton, Matteson, and Griffith), (b) interchange with other carriers (*e.g.*, with BNSF at Eola, and with UP at Chicago Heights and West Chicago), or (c) perform switching for individual customers (*e.g.*, Tabler Road and Marina Lot Drive (which is a seldom used, private road locked by a gate)).

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<sup>34</sup> Mr. Trafton's prepared statement was submitted to the Board on April 29, 2010, for inclusion on the record in this proceeding.

<sup>35</sup> HDR reported that, for the period it analyzed (November and December 2009), there were 201 fewer 10-minute crossing blockages than for the same two months of 2008, when EJ&E controlled the railroad. *See* Final Report, App. 3, Attachment 4.

To help increase train speed in problem locations, CN has planned, among others, the following capital improvements, which should significantly reduce recurring blockage problems.

- In Mundelein, trains must slow down to 10 mph to operate over the connection between CN's Waukesha Subdivision and its Leithton Subdivision (formerly the EJ&E Western Subdivision), causing a significant number of blockages at the Route 60/83 and Diamond Lake Road crossings. CN has planned to upgrade this connection to allow trains to operate at 25 mph instead of 10 mph through the connection, which should reduce the number and duration of blockages at those crossings.
- CN trains moving eastbound on the Freeport Subdivision, in order to turn south on the Leithton Subdivision, must first pass over the crossing between the two subdivisions at Munger, then shove back over the connection in the northeast quadrant of the crossing and onto the Leithton Subdivision before switching direction and moving southward. The connection planned for the southwest quadrant of the crossing should eliminate the need for this reverse move, which presently causes many blockages of 10 minutes or more on Stearns Road, Bartlett Road, and Spaulding Road near Bartlett.
- At Eola, many grade crossing blockages (for example, at Diehl Road and Liberty Street) are caused by trains slowing down to enter or exit BNSF's Eola Yard for interchange between BNSF and CN. CN plans a siding extension and track work (including installation of power switches) that should reduce the frequency and duration of blockages at crossings near the yard.

- A large number of blockages have been reported at Division Street, Gaylord Road, and Oakland Avenue in and near Crest Hill. CN plans to reduce blockages at these crossings by installing a span lock on the Des Plaines River bridge and by making improvements on one of the two main tracks on the EJ&E line through Crest Hill to allow for potential speed increases above the present 10 mph limit.
- In Joliet, the EJ&E main line passes through East Joliet Yard, so that even trains that do not stop at the yard must observe the yard's 10 mph speed limit, causing delays at Woodruff Road, Oakland Avenue, and North Rowell Avenue. CN has constructed a bypass track that, once new signals become operational, will permit trains through trains to bypass the yard at 20 to 25 mph. While this new configuration will not eliminate delays at crossings in and around Joliet, especially for those trains that must still enter the yard, it should help to reduce delays.
- In Matteson, trains must slow down as they move between CN's Chicago Subdivision (Illinois Central) and its EJ&E Matteson Subdivision (formerly the EJ&E Eastern Subdivision), causing a significant number of blockages at Main Street and Western Avenue. CN has planned extensive changes to this connection that would allow trains to operate through the connection at 15 mph instead of 5 mph, allow many trains moving between the subdivisions to avoid crossing Main Street at all, and reduce the number of blockages at these (and other) crossings in and around Matteson.
- Many 10-minute grade crossing blockages have been reported at Broad Street at Griffith, where both CN's Elsdon Subdivision and the EJ&E Matteson

Subdivision cross the highway a short distance from where the two lines meet.<sup>36</sup>

CN plans to replace the crossover on the EJ&E line west of the diamond where the Elsdon and Matteson subdivisions cross, which will allow CN to increase the speed of trains on the EJ&E line from 10 mph to 25 mph, making it possible for them to pass over Broad Street more quickly and reduce blockages there.

These and other planned yard expansions and improvements, double tracking, extended sidings, and other infrastructure improvements are designed to increase the effective storage capacity of the EJ&E line, speed up trains, and increase fluidity on EJ&E, all of which will help to reduce vehicular delay from grade crossing blockages.

CN also plans to reduce the frequency and duration of blockages even further through changes to its operating practices. Measures CN is implementing include the following:

- CN is adopting a new operating practice so that when trains approach Gilmer Road (in Hawthorne Woods) from opposite directions the southbound train will take the siding so that the northbound trains can continue on the main line without stopping. Northbound trains between Hawthorne Woods and Leithton move on an ascending grade; therefore, if they must stop in a siding for a meet with oncoming trains, they take longer than southbound trains to build up speed. Allowing the northbound trains to continue moving on the main line should therefore reduce the amount of time grade crossings are blocked by slow-moving trains.

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<sup>36</sup> A single set of crossing gates governs the crossing of Broad Street by both the Elsdon Subdivision and the Matteson Subdivision, and many of the activations of these gates are caused by CN trains on the Elsdon Subdivision rather than by trains on the EJ&E line.

- CN has instructed its operating personnel that, when trains make the reverse move at the Munger connection described above, they should move the entire train north of Stearns Road and permit traffic to clear the grade crossing, before moving forward on the southbound Leithton Subdivision. This practice should reduce the frequency of lengthy blockages of Stearns Road.
- At West Chicago, many blockages are caused by trains slowing down to enter UP's West Chicago Yard. CN hopes to reduce the frequency of these blockages by working with UP to reduce the need for UP coal trains to move onto the EJ&E until the train can operate south on the EJ&E line.

### C. HDR's Recommendations

HDR's recommendations focus on three subjects.

First, HDR recommends that the Board clarify aspects of its reporting requirements,<sup>37</sup> which it has already done.

Second, HDR suggests that a more accurate system of reporting crossing blockages may require verification of the functionality of the cRTUs at each crossing. Progress Rail has in the past verified that all of CN's cRTUs are functional, and CN itself has also recently verified that fact. Checking on the functionality of CN's cRTUs is a relatively simple process that can be done through a secure website maintained by Progress Rail that allows users to see whether cRTUs are communicating. CN will continue to confirm periodically that the cRTUs on the EJ&E are functioning.

Third, HDR suggests institution of an automated recording system for cRTU information, in order to eliminate any transcription errors or under-reporting when cRTU information is

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<sup>37</sup> Final Report, App. 3 at 9.

transcribed to the dispatcher's log.<sup>38</sup> CN had in development at the time of the HDR audit and has now begun using a new system that automatically captures and records cRTU information as it is received by CN from Progress Rail. In addition, CN has been working with Progress Rail to improve the accuracy of cRTU reports and enhance the quality of the cRTU data by eliminating insofar as practicable known overstatements of both the number and duration of ACWD events of ten minutes or more.<sup>39</sup> CN has also instituted an improved system to assure that all ACWD notices of 10 minutes or more, from both crew reports and cRTUs, are reported to a newly assigned coordinator located with EJ&E dispatchers to assure that all such reports are available for proper treatment at the time they are received and to assure greater consistency of data.

Finally, in response to HDR's suggestion that it may be advisable to install cRTUs at crossings not presently equipped with them,<sup>40</sup> CN is reviewing whether and where additional cRTUs might materially enhance CN's capacity to capture ACWD events of 10 minutes or more. CN will inform the Board's staff of the results of that review.

With respect to all of these cRTU-related issues, CN would point out that, among other things, the efficient gathering of cRTU data, establishing the accuracy and completeness of those data, the proper interpretation and classification of those data, the synchronization of those data with the reports of EJ&E personnel, and the process of making those data available almost immediately in a form that would be useful for management purposes and subsequently for reporting to the Board are highly complex matters. CN is dedicated to the continuous

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<sup>38</sup> *Id.*, App. 3 at 8.

<sup>39</sup> This has proven to be challenging. For example, Progress Rail has identified two different sources of overstatement for the duration of some ACWD activations. It has developed an algorithm to address one of those issues, but believes the other can only be addressed through significant reprogramming of each cRTU.

<sup>40</sup> *Id.*, App. 3 at 9.

development of and integration of the cRTU data system into its management of the EJ&E and its reporting to the Board, and will keep the Board apprised as it is able to make such improvements.

Finally, HDR lists various possible means to reduce crossing blockages from normal operations such as (a) the construction of grade separations that eliminate the crossing and (b) “changes in operating practices that result in a reduction in the frequency of trains that occupy crossings for more than 10 minutes regardless of whether or not the train is continuously moving” that could include:

- a. increases in average train speeds;
- b. decreases in average train length;
- c. construction of rail infrastructure along the EJ&E rail line that enables trains to conduct a more rapid movement through grade crossings without encountering rail traffic congestion on the downstream side of the crossing (such as additional second main track, siding extensions, power switches, or wayside signaling and train-control system improvements);
- d. reduction in train frequency; or
- e. changes in train operational patterns and/or construction of additional rail infrastructure on railroads adjacent to the EJ&E, particularly for trains entering and exiting the EJ&E rail line or switching industrial customers along the EJ&E rail line.<sup>41</sup>

As discussed above, CN is already utilizing many of these approaches in an effort to reduce lengthy street blockages, and CN believes those efforts will succeed. CN, however, does not believe it is either justified on the record or in the public interest to adopt sweeping or extreme measures that could impair its ability to operate efficiently in serving its customers. Nor does CN believe that there is any general panacea or set of solutions that can be abstractly derived from EJ&E’s complex operations or very complex operating environment. Instead,

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<sup>41</sup> Final Report, App. 3 at 9.

solutions, whether for specific identified operating issues, or more general operating issues, must be derived from careful study and analysis of the facts.

Accordingly, while CN will continue to work on these issues internally, it encourages the Board to engage with CN to the extent the Board thinks appropriate, in the process of identifying (a) crossing blockage issues that appear to be capable of being reasonably remedied and (b) reasonable means for addressing such blockages. CN offers the same encouragement to affected communities.

#### **IV. Vehicle Delay and Traffic Congestion (HDR Task 4)**

HDR's fourth task was to analyze grade crossing delays. In its Technical Memorandum on Vehicle Delay and Traffic Congestion, HDR reports that grade crossing blockages are concentrated at a relatively small number of crossings. Specifically, HDR states that 12% (11 of 91) of the cRTU-equipped crossings on EJ&E accounted for 62% (908 of 1457) of the crossing blockages of 10 minutes or more reported by the cRTUs.<sup>42</sup>

Blockages at seven of these eleven crossings (Main Street (ranked #1 in number of 10-minute blockages in November and December 2009), Route 60/83 (#2), Oakland Avenue (#3), Diamond Lake Road (#4), North Rowell (#7), Western Avenue (#8), and Broad Street (#9)) should be reduced once CN completes its planned infrastructure improvements described above. The other four crossings (Hawthorne Lane (#5), West Washington Street (#6), Church Street (#10), and Ann Street (#11)) have, according to HDR's data, experienced fewer blockages in November and December 2009 than they did in the same period in 2008, before CN acquired control of EJ&E. And, as discussed above, CN hopes to further reduce blockages at Hawthorne

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<sup>42</sup> Final Report, App. 4 at 3.

Lane by working with UP to revise the operating practices that currently lead to high levels of blockages.

HDR also states that blockages at Diehl Road (#12) and Liberty Street (#13) have been mentioned in letters or complaints about blockages. Both crossings experienced fewer blockages in November and December 2009 than they did in the same period in 2008, and both should see blockages further reduced once CN completes its infrastructure improvements near BNSF's Eola Yard. Finally, HDR notes that blockages at Bartlett Road (#17) are problematic because of the high ADT at the crossing. As discussed above, CN plans to install a new connection at Munger, which will eliminate the reverse move that currently accounts for many of the 10 minute or longer blockages at Bartlett Road.

#### **V. Review of Operational Accidents (HDR Task 5)**

HDR audited the information reported by CN to the Board concerning rail operational accidents and injuries, and to verify that the information submitted to the Board was consistent with the information CN submits to the FRA. HDR determined that "CN appear[ed] to be consistently reporting to the Board all accidents/incidents and injuries occurring either on the EJ&E rail line or on CN lines inside the EJ&E arc that exceed[ed] either the FRA's \$8,900 threshold for reporting rail equipment accident/incident (\$9,200 in 2010), or the FRA threshold for reporting death, injury or occupational illness."<sup>43</sup> As described in its report, the one inconsistency it found was related to a grade crossing accident with minimal damage that did not exceed these FRA reporting thresholds.

CN's accident and injury reports covering all months through March 2010 included the accidents, incidents, and injuries reported by CN to FRA on FRA Form F6180.54 (Rail

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<sup>43</sup> Final Report, App. 5 at 3.

Equipment Accident/Incident Report) or FRA Form F6180.55a (Railroad Injury or Illness Summary). Accidents, incidents, and injuries reported on these forms exceed either FRA's monetary threshold for reporting rail equipment accidents and incidents or FRA's threshold for reporting death, injury or occupational illness. As noted by HDR, CN's reports to the Board did not include accidents and injuries included on other FRA reports that did not meet those reporting thresholds.

Pursuant to guidance from the Board's staff, CN is in the process of expanding its accident and injury report to include all accidents and injuries, regardless of FRA reporting thresholds. CN intends to include this additional information in its future accident and injury reports and also to refile all prior accident and injury reports supplemented to include this information.

## **VI. Public Grade Crossing Signs (HDR Task 6)**

HDR determined that CN's compliance with the grade crossing signage requirements under VM 2 and VM 9 has been reasonable. VM 2 required CN to install temporary notification signs (of future increased rail traffic) conforming to the Federal Highway Administration's Manual on Uniform Traffic Control Devices ("MUTCD"), at grade crossings along EJ&E. As noted in CN's February 15, 2010 memorandum to HDR, which was attached to the Final Report,<sup>44</sup> CN completed its compliance with the temporary sign requirements of VM 2 in 2009. Although no specific MUTCD standards applied for this precise kind of notification, CN followed the prescribed color scheme for emergency notification signs at railroad grade crossings (white letters on blue background) and filed a diagram of the signs as Attachment VM2 to its April 10, 2009 quarterly environmental report.

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<sup>44</sup> Final Report, App. 6, Attachment #1.

VM 9 requires CN to install permanent signs at each grade crossing on EJ&E displaying a toll-free telephone number and unique grade crossing identification number. As CN informed the STB in the December 10, 2009 cover letter to its monthly operating report for November 2009, CN planned to await the new National MUTCD standards that were expected to be published before the end of 2009 and to include new requirements for emergency notification signs, before replacing existing EJ&E signs (which provided a crossing street name, DOT number, and emergency contact phone number) with new permanent signs.<sup>45</sup> Those new regulations, including new standards for emergency notification signs, were published on December 16, 2009. CN noted in its February 15, 2010 memorandum to HDR that it would be moving forward on the basis of those standards and that it anticipates completing installation of new signs by the end of June 2010.

CN is well on its way to meeting this target date for completing installation of these permanent signs. Attached as Exhibit 2 are pictures of the permanent signs that show both their design and size. The signs are reflective and, as required by the MUTCD, have a white border and white lettering against a blue background.<sup>46</sup> The letters are 1.5 inches high, and the dimensions of the signs are 16 inches by 9 inches, in accordance with the MUTCD guidance that emergency notification signs “should only be large enough to provide the necessary contact information” and should not “obstruct the view of rail traffic or other highway vehicles.”<sup>47</sup> As

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<sup>45</sup> VM 9 requires that these signs conform to the Federal Highway Regulations (23 C.F.R. Part 655). Those regulations in turn adopt MUTCD as “the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel.” 23 C.F.R. § 655.603(a). Thus, compliance with the MUTCD assures compliance with VM 9’s referenced regulations.

<sup>46</sup> Federal Highway Administration, U.S. Department of Transportation, Manual on Uniform Traffic Control Devices for Streets and Highways, Section 8B.18, P1, P4 (2009 ed.)

<sup>47</sup> *Id.*, Section 8B.18, P.9.

recommended by HDR, CN will further update the Board on the status of its compliance with this condition in its second quarter 2010 environmental report.

Finally, VM 9 also includes a requirement that CN identify EJ&E crossings that are close to another railroad's grade crossing and coordinate with those other carriers to establish a procedure to share information regarding reported accidents and grade crossing device malfunctions. As described in HDR's Technical Memorandum on Task 6, and previously reported by CN,<sup>48</sup> CN has identified ten grade crossings it believes are appropriate for such coordination. CN has now drafted a communication protocol to implement the reporting requirements of VM 9 and is in the process of discussing it with other carriers to determine if they are willing to provide reciprocal notification to CN when they learn of accidents or gate malfunctions. In the meantime, CN intends to follow this draft protocol for its notification of other carriers. A copy of the protocol is attached as Exhibit 3. CN welcomes any comments or guidance the Board or its staff may have with respect to that protocol or CN's approach to compliance with VM 9.

## **CONCLUSION**

CN appreciates this opportunity to comment on HDR's Final Report. CN looks forward to continuing to work closely with local communities and Board personnel to assure that its implementation of the Transaction proceeds safely and smoothly and that CN's reporting meets the Board's oversight requirements and needs.

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<sup>48</sup> CN Quarterly Environmental Report, 2d Quarter 2009, VM #9 Attachment (submitted to STB July 10, 2009).

Respectfully submitted,



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*Counsel for Canadian National Railway Company  
and Grand Trunk Corporation*

May 28, 2010

## CERTIFICATE OF SERVICE

I certify that I have this 28th day of May, 2010, served copies of CN's Comments on the Compliance Support Verification Final Report of HDR Engineering, Inc. (CN-62) upon all known parties of record in this proceeding by first-class mail or a more expeditious method.

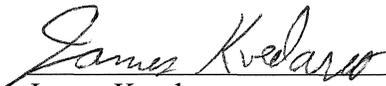


Christine A. Mellen

**VERIFICATION**

I, James Kvedaras, Director of U.S. Government Affairs for CN, verify under penalty of perjury under the laws of the United States that the facts recited in Section I of the foregoing CN's Comments on Audit Report of HDR Engineering, Inc. are true and correct. Further, I certify that I have personal knowledge of the facts stated in Section I and that I am authorized to verify the facts stated in Section I of these Comments.

Executed on May 28, 2010



James Kvedaras  
Director, U.S. Government Affairs

# EXHIBIT 1



PROJECT  
LIMITED  
DRAIN  
1980  
RANGE



REPORT  
EMERGENCY TO **CN**  
1-800-465-9239  
DOT # 260 905 R



# EXHIBIT 2

Southern Region



Jim Kvedaras

Director – U.S. Government Affairs  
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T 708-332-3508  
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January 15, 2010

Eugene Williams  
Mayor  
Village of Lynwood  
21460 Lincoln Highway  
Lynwood, IL 60411

Dear Mayor Williams,

At public hearings and meetings held during 2008 in connection with the Surface Transportation Board's (STB) review of Canadian National's (CN) proposal to acquire the major part of Elgin Joliet & Eastern Railway Company (EJ&E), a number of emergency response agencies expressed concern about the potential impact of the acquisition on their ability to dispatch and route personnel in response to emergencies. These agencies expressed a particular interest in whether CN could provide them with real time information showing when warning devices at grade crossings have been activated by train traffic.

The STB's final approval decision imposed a condition requiring CN to notify affected communities of certain blocked crossings and, if requested, to install dispatching monitors that allow Emergency Response Center dispatching personnel to see real-time train locations.

As CN has explained in prior discussions and meetings, in response to requests from affected communities along the EJ&E, CN has developed for signalized crossings on the EJ&E line a web-based, password-controlled application that can be used by emergency responders to obtain real time information showing street crossings with a red indicator when a warning device is active and a green indicator when it is clear. We and other emergency response agencies that have reviewed this technology believe it not only meets general real-time train monitoring requirements, but is actually superior to and provides even more dependable and useful information than what a video monitoring system can provide, for example.

CN previously announced that it would make this system available to you at no cost, but it has received no final response from you or your emergency services dispatching agency. We are hoping you will accept this exciting technology for your emergency responders, so we would like to repeat our offer. This application is ready for installation. It can be used on a dedicated computer or accessed by your existing systems, and CN will maintain the software for you at its own expense.

Acceptance is simple. I have enclosed two copies of a no-cost license application form for you to fill out. It explains what the system may be used for and who may use it. After your review, if you have questions, please have your technology expert contact me for more information.

Once I receive both copies of your executed License Agreement, I will have it executed on behalf of CN and return one fully-signed original for your files, and will put our technical expert in contact with yours to begin implementation.

Sincerely,

A handwritten signature in black ink that reads "Jim Kvedaras". The signature is written in a cursive, flowing style.

Jim Kvedaras  
Director U.S. Government Affairs  
Community Liaison  
CN  
708-332-3508 office  
[jim.kvedaras@cn.ca](mailto:jim.kvedaras@cn.ca)

Enclosure

# EXHIBIT 3

## CN PROTOCOL FOR VM 9<sup>1</sup>

With respect to each EJ&E crossing within 250 feet of another railroad's crossing as shown on the attached list (Attachment 1), CN has proposed to the other carriers listed that each will do the following:

1. The Contact List attached as Attachment 2 identifies the 24-hour phone number for each railroad's Signal and Communications Help Desk, to which calls shall be placed in order to share information regarding relevant accidents and grade-crossing device malfunctions.
2. The Chief Dispatcher or other Responsible Person for each railroad shall receive and review reports from any source (including train crews, dispatchers, automated reporting devices, local police departments, or the public) of incidents regarding accidents and grade-crossing device malfunctions at listed crossing(s) for which that person is responsible.
3. The Chief Dispatcher or other Responsible Person for the railroad experiencing an incident on a listed crossing shall call or cause another person to call the Signal and Communications Help Desk for the adjacent railroad, as listed on the Contact List the other railroad and advise that person of the incident.
4. In the case of an incident occurring on the railroad of the caller, the Chief Dispatcher or Responsible Person shall use the following message format in making the call:

“This is \_\_\_\_\_, the [Chief Dispatcher or other title] for [name of railroad]. I am calling to advise you that we have had an [accident/grade-crossing device malfunction] at \_\_\_\_\_ crossing in \_\_\_\_\_ (community and state). Your track and crossing at \_\_\_\_\_ are in close proximity. Please advise your appropriate personnel to be alert for unusual activity as a result of this situation. The current local time is [hhmm, ddmmy].”

5. In the case of an incident occurring on the railroad adjacent to that of the caller, the Chief Dispatcher or Responsible Person shall use the following message format in making the call:

“This is \_\_\_\_\_, the [Chief Dispatcher or other title] for [name of railroad]. I am calling to advise you that we have observed an [accident/grade-crossing device malfunction] on your railroad at \_\_\_\_\_ crossing in \_\_\_\_\_ (community and state). Please advise your appropriate personnel to be alert for

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<sup>1</sup> As relevant to this protocol, VM 9 provides the following: “At crossings where EJ&E's ROW is close to another rail carrier's crossing, Applicants shall coordinate with the other rail carrier to establish a procedure and share information regarding reported accidents and grade-crossing device malfunctions.”

unusual activity as a result of this situation. The current local time is [hhmm, ddmmyy].”

6. For all such calls:
  - a. If no one answers the phone, the Chief Dispatcher or Responsible Person calling shall leave a message in the above-described format and call again within five minutes of the first call.
  - b. If there is no response the second time, the caller shall again leave a message in the above-described format.

A written record shall be made by CN’s Chief Dispatcher or designee or of any such call, and shall include the name and railroad of the caller and of the person (if any) receiving the call, and the date and time of communication.

On or before the fifth day of the next month, a written list of all calls made pursuant to this protocol to or from CN shall be tabulated and submitted by CN’s Chief Dispatcher or designee to Jim Kvedaras for inclusion in CN’s regular reports to the STB on the EJ&E Transaction.

CN has implemented this protocol pending agreement from the other railroads. It is subject to modification as may required to reflect subsequent agreements with those railroads.

## EJ&amp;E GRADE CROSSINGS WITHIN 250 FEET OF ANOTHER RAILROAD'S GRADE CROSSINGS

<b>RAILROAD</b>	<b>EJE XING #</b>	<b>EJ&amp;E SUB</b>	<b>HIGHWAY</b>	<b>STREET</b>	<b>BRANCH</b>	<b>MILEPOST</b>	<b>SEPRR</b>	<b>Other RR Xing #</b>	<b>DIST. FROM EJE Xing</b>	<b>LATITUDE</b>	<b>LONGITUD</b>	<b>CNTYNAM</b>	<b>TIMETABLE STA.</b>	<b>CITYNAM</b>
EJE	260465C	Leithton	MS4055	MADISON ST	YARD LEAD	73.10	UP	176624D	250' W	423572200	-878272200	LAKE-IL	WAUKEGAN	WAUKEGAN
EJE	260815S	Leithton		GIFFORD RD	INDUSTRY	NA	CP	372214T	200' N	NA	NA	COOK	SPAULDING	ELGIN
EJE	260538K	Leithton	FAU1389	HAWTHORNE LA	MAINLINE	30.24	UP	174532J	100' W	418997200	-882208300	DU PAGE	WEST CHICAGO	WEST CHICAGO
EJE	260541T	Leithton	FAU1397	WASHINGTON ST	MAINLINE	28.39	UP	174973G	140' E	418830500	-882091600	DU PAGE	WEST CHICAGO	WEST CHICAGO
EJE	260644T	Matteson	MUN1480	WENTWORTH AV	MAINLINE	25.92	UP	260644T	40' S*	414988800	-876211100	COOK	CHICAGO HGTS	CHICAGO HTS
EJE	260645A	Matteson	FAU2916	STATE ST	MAINLINE	26.16	UP	260645A	30' S*	414986100	-876161100	COOK	CHICAGO HGTS	CHICAGO HTS
EJE	260646G	Matteson	FAU2920	COTTAGE GROVE AV	MAINLINE	27.17	NS	522100W	90' N	414994400	-875969400	COOK	CHICAGO HGTS	CHICAGO HTS
EJE	260649C	Matteson	FAU2937	TORRENCE AV	MAINLINE	29.18	NS	260649C	90' N*	414988800	-875580500	COOK	CHICAGO HGTS	SAUK VILLAGE
EJE	260655F	Matteson		AIRPORT RD (213TH)	MAINLINE	33.66	NS	522093N	90' N	415074400	-874739600	LAKE-IN	HARTSDALE	SCHERERVILLE
EJE	260657U	Matteson		KENNEDY AVE	MAINLINE	34.36	NS	522092G	100' N	415109350	-874609390	LAKE-IN	HARTSDALE	SCHERERVILLE

\*NOTE: BOTH RAILROADS USE EJ&amp;E CROSSING NUMBER

**CONTACT LIST**  
(SIGNAL AND COMMUNICATIONS 24-HOUR HELP DESK)

<b><i>RAILROAD</i></b>	<b><i>CONTACT NUMBER</i></b>
CN	1-800-465-9239
CP	1-800-777-8117
NS	1-800-680-0400
UP	1-800-848-8715