



October 14, 2010

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

Dear Mr. Wallen,

We are contacting you to seek a status report on when the Board will resolve two outstanding issues of concern to TRAC, as well as make you aware of (1) an additional safety-related problem in need of the Board's attention as it relates to oversight of CN's acquisition of the EJ&E rail line; and, (2) the fact that Hoffmann Estates believes that CN is violating its 2008 negotiated mitigation settlement.

TWO OUTSTANDING ISSUES:

The first outstanding issue involves the Board making a final decision with regard to blocked grade crossings on the EJ&E and the consequences for CN resulting from its misinformation to the Board and the public on the frequency of these blockages. Blocked crossings are a growing problem along the EJ&E as is obvious from reviewing CN's monthly operations reports. The rise in blocked crossings is trending worse post-transaction -- except for the 2009 data that is reflective of an economy in profound recession rather than any positive action taken by CN to reduce instances of blocked crossings. In comparing 2010 data to 2008 data (the proper comparison), we see that blockages occur more frequently now than even a minor portion of CN freight traffic has been diverted onto the EJ&E. Additionally, the monthly CN operations reports provide no information as to how the causal factors of these blocked crossing instances will be remedied by CN infrastructure upgrades or operating practices.

The second issue involves CN's questionable claims to have met the mitigation mandate of VM9 as it relates to emergency contact signage at all grade crossings on the EJ&E. As you know from the September 15, 2010 Chicago Tribune article (*see attachment 1*) that we shared with you via e-mail, this issue is of great concern to the region and needs to be addressed by the Board in a prompt and forthright manner. It appears to TRAC that CN is again thwarting the Board's intent on this matter -- as it has installed signs that are anything but "prominent" and will clearly not "enable drivers to report accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions." (VM 9; Page 60 of 12/24/08 Board Decision.)

NEW ISSUES:

Issue 1: In addition to the above-stated issues, TRAC (in partnership with Will County officials) are also contacting you to seek the Board's assistance in securing a prompt and impartial investigation into what appears to be a serious safety issue as it relates to the EJ&E rail line that runs through a residential subdivision

in unincorporated Will County, Illinois. As you know, TRAC has been a resource to residents of the region in serving as a mechanism for bringing to the attention of governmental authorities any concerns they have about environmental conditions along the EJ&E as well as CN operations along the rail line. It has been brought to TRAC's attention by a group of Pinecrest Subdivision residents that they have identified a concern as it relates to rail bed stability that has the potential to cause a derailment based on the saturated topography that the EJ&E line runs through behind their homes. The feedback this community has received from CN and various governmental authorities has been contradictory, so we believe it is imperative that the Board order CN to underwrite the full costs of engaging a third-party engineering firm with no history of involvement in this acquisition to shed some light on the issue by undertaking a thorough investigation and preparing a comprehensive public report on the matter. We are taking the liberty of providing a detailed outline of the situation for you in "**Attachment 2**" of this document.

After reviewing the attached timeline, we ask Board decision-makers to put themselves in the shoes of the Pinecrest subdivision residents in determining how best to respond to this situation. This community has received conflicting feedback from the FRA and from CN personnel. As the Board knows, federal law requires that railroads transport hazardous materials on the safest and most practicable route available in heavily populated areas. Although local governments are not privy to which routes the railroads and the FRA have determined meet such criteria in the greater Chicagoland area, it is likely that CN may have determined that the EJ&E is preferable to sending such shipments through the Chicago core.

Given the fact that a local government engineer has told residents that their homes would not now be permitted as the topography would prohibit it, can one imagine the level of anxiety they must have to know that high tonnage freight trains – potentially carrying hazmat cargo – will be rolling through their neighborhood up to 45 times daily? With the June 19, 2009 Rockford derailment of a CN train apparently due to water-induced erosion still in the consciousness of the region, to have their concerns about an unstable rail bed in their backyards responded to only based on a CN engineering report is a clear injustice that must be remedied.

TRAC believes it is imperative that an impartial engineering firm with no history of involvement in performing the environmental review of this transaction be brought in to investigate and report upon the situation that exists in the Pinecrest subdivision. This is definitely not a task that should be relegated to the original oversight consultant – HDR. In the first place, environmental issues relating to water had been raised by the Pinecrest residents during the environmental review process preceding the approval of this transaction, but their concerns were apparently ignored in the rush to get the EIS out the door. TRAC notes that HDR's marketing brochure about its role on the EIS for this transaction highlights the fact that its experts "pulled on their boots to walk through wetlands to search for evidence of the Hines Emerald Dragonfly." We now need a similar zeal to assure human life is protected in the Pinecrest subdivision. We urge the Board to rectify this apparent lapse in analysis by ordering that CN underwrite the full costs of an engineering investigation into this matter by a firm that is acceptable to the local elected officials in Will County.

Issue 2: A recent regional media report (**Attachment 3**) indicates that Hoffmann Estates believes that CN is violating the terms of its negotiated settlement with the town. Given the reality that the Board encouraged impacted local governments to negotiate with CN to resolve mitigation issues, it is imperative that the Board hold CN's feet to the fire when it comes to abiding by these agreements. TRAC had informed the Board in February and March of this year that HDR's effort to vet CN's community coordination efforts was

flawed as HDR did **not** center its audit focus on **compliance** (aka action) but only on CN **communications** with communities (aka talk.) In March, TRAC informed the Board that no one questions CN's ability to communicate, but that we question its commitment to executing mitigation activities in a good-faith and timely manner. In this case, CN appears to be living up to its ongoing record of trying to evade the Board's required mandates that accompanied its decision to approve the transaction. It is time for the Board to take decisive action across the board vis-à-vis CN because these negotiated agreements are components of the final decision and have the force of law. It is time for the Board to demonstrate that it is in charge, and not allow CN to ride roughshod over its authority. Board intervention and instruction to CN to live up to the letter and the intent of its settlement agreement with Hoffmann Estates is warranted.

Thank you, in advance, for a prompt resolution of the four issues we have raised in this letter.

Sincerely,

Karen Darch
TRAC Co-Chair & President, Barrington
kdarch@barrington-il.gov

Lawrence M. Walsh
Will County Executive
lwalsh@willcountyillinois.com

Tom Weisner
TRAC Co-Chair & Mayor, Aurora
tweisner@aurora-il.gov

James Moustis
Will County Board Chairman
countyboard@willcountyillinois.com

cc: The Honorable Ray LaHood

The Honorable Joseph C. Szabo

The Honorable Richard J. Durbin

The Honorable Roland Burris

The Honorable James L. Oberstar

The Honorable John L. Mica

The Honorable Jerry F. Costello

The Honorable Daniel Lipinski

The Honorable Phil Hare

The Honorable Timothy V. Johnson

The Honorable Aaron Schock

The Honorable Melissa L. Bean

The Honorable Judy Biggert

The Honorable Bill Foster

The Honorable Debbie Halvorson

The Honorable Mark Kirk

The Honorable Donald Manzullo

The Honorable Peter Roskam

ATTACHMENT 1 – CHICAGO TRIBUNE ARTICLE DATED 9/15/10 OS CROSSING SIGNS

www.chicagotribune.com/news/local/northnorthwest/ct-x-n-cn-railroad-0915-20100914,0,3668682.story

chicagotribune.com

Opponents say tiny emergency signs add to CN's already rocky road

By Robert Channick, Special to the Tribune

10:30 AM CDT, September 15, 2010

When Canadian National Railway posted emergency contact information at more than 100 grade crossings this summer, it was a seemingly small requirement in its \$300 million acquisition of the EJ&E freight line — perhaps a little too small.

Concerned that the license plate-size signs posted near the tracks are not readable by motorists, suburban officials along the route see it as another indication that the Montreal-based railroad is not operating in good faith.

"It doesn't really serve any purpose if people can't see the sign, and the only way you could get the information off of it is stop, park and walk up to it," said Karen Darch, president of Barrington and co-chair of a group of suburbs opposed to the purchase.

The blue and white signs include contact information and a locator ID to call the railroad in the event of accidents or malfunctions. Required to be "prominent," the notices are mounted on the trackside crossbucks, signs fashioned in the shape of X.

"There's nothing prominent about these signs," said Mayor Tom Weisner of Aurora. "They don't want anybody to call. I think that's pretty clear."

CN says the new signs meet federal requirements and serve their primary purpose — providing an emergency phone number for vehicles stuck on the tracks.

"You look up and there's the sign," said CN spokesman Patrick Waldron, advising stalled motorists to first get out of their vehicles and off the tracks. "That's the best place for that information to be."

The sign issue is the latest salvo in a contentious process that dates to 2007, when CN announced its intention to buy the Elgin, Joliet and Eastern Railway, a sleepy 198-mile freight line looping Chicago.

Hoping to bypass urban rail congestion, the carrier's plan to increase outlying traffic from about five to 20 trains a day didn't sit well with communities along the line.

Nearly two dozen suburbs have since gotten on board with CN — opting to participate in a \$60 million mitigation program offered by the railroad.

But a handful of municipalities, including Will County, New Lenox, Naperville, Aurora and the Barrington-area communities, filed an appeal last year seeking to have the decision remanded to the U.S. Surface Transportation Board for additional CN-funded mitigation. The communities are members of a group called The Regional Answer to Canadian National, or TRAC.

The approval requires CN to help pay for two grade separation projects — funding 67 percent at Ogden Avenue in Aurora and 78 percent at U.S. Highway 30 in Lynwood, near the Indiana border. Expected to cost CN upward of \$100 million, the railroad has challenged the mandated mitigation in the same D.C. appeals court.

"Typically railroads across the United States have contributed 5 percent to grade crossing separation projects, and our legal appeal is seeking a mitigation measure more consistent with that past practice," Waldron said.

Under a five-year oversight process with the STB, CN was called to task by federal regulators in April for underreporting delays of 10 minutes or more, another requirement of the approval.

The carrier claimed only 14 such delays over a two-month period when the actual number was closer to 1,500. CN since has adjusted its reporting methods, logging more than 1,300 delays in July, according to Waldron.

The discrepancy was first brought to light by residents and communities along the line, who experienced the delays firsthand.

"We're getting more and more calls from people saying they are sitting there stuck, waiting for a train for 15 minutes," said Jamy Lyne, planning and policy director for Will County. "We didn't get these calls before the transaction. "

The phones may soon get busier. Although well into a three-year, \$100 million infrastructure improvement plan, the EJ&E line is not yet fully up to speed, with both operational and economic factors limiting the ramp-up, Waldron said. In Barrington, about eight trains a day traversed its three downtown grade crossings in July, nearly double its pre-acquisition total, but far short of projections.

"The EJ&E has not been fully integrated into the CN network," Waldron said. "The buildup of train traffic will be gradual and over time. That's what we've started to see, and will continue to see moving forward."

With the line operating at 40 percent of capacity, TRAC members say prominent warning signs — and the ability to easily notify the railroad about potentially dangerous situations — will take on even greater importance in the years ahead.

"With more trains, obviously more things are bound to happen," Darch said.

In southwest suburban New Lenox, which has five grade crossings, officials are most concerned about Gougar Road, a county highway that intersects the year-old Lincoln-Way West High School campus.

With the tracks abutting the school's athletic fields, both the village and the county are hoping the appeal process will eventually spur CN to help fund a \$31 million grade separation there.

In the meantime, with more than 1,000 students navigating the crossing on a daily basis, officials would settle for some larger emergency notification signs.

"They're ridiculously small," Lyne said. "These signs should be three to four times as large as they are."

ATTACHMENT 2
PINECREST SUBDIVISION ISSUE SUMMARY

SUMMARY:

Since July 2009, the residents of the Pinecrest Subdivision have been concerned about sinkholes on the EJ&E right of way (ROW) behind their homes, as well as an increasingly eroded culvert at the base of the EJ&E track bed (photographs of the culvert and a sinkhole can be found at the conclusion of this attachment.) Even though the residents have raised these concerns to the proper local authorities, they have not been provided with any impartial documented evidence indicating these conditions do not pose a hazard to their community. To the contrary, they have received conflicting viewpoints. CN has assured all parties that they have looked into the situation and responded in an e-mail to Will County officials on April 27, 2010: *"... a CN Geotechnical Engineer again inspected the site on April 20 and again determined the roadbed to be stable. Our Regional Chief Engineer conducted his own inspection of the area on the 22nd and he also confirmed that the depressions were not compromising the integrity of the track roadbed."*

However, the communications residents have had with CN personnel and governmental authorities as detailed below has not been wholly reassuring.

COMMUNICATIONS TIMELINE:

- **July 14, 2009** -- Ten Pinecrest residents presented many concerns about CN railway to the Will County Board Legislative and Policy Committee, including but not limited to serious water issues. As evidence, they presented photos of flooded ditches and yards, as well as power line towers surrounded by high water near the Essington Road railroad crossing. In addition, they notified Will County of what they believed to be erosion of the track bed, caused by excessive water. Howard Hamilton, a representative engineer for Will County inspected the tracks and agreed there was reason for concern. Residents were informed by Will County that Mr. Hamilton had notified CN of the water problems and erosion of the ground beneath the tracks. By January 2010, some culvert work had been performed by CN near the crossing in an attempt to alleviate the standing water along the south side of the tracks.
- **July 24, 2009** -- The Will County Executive's Office assigns Chief Subdivision Engineer/Stormwater Administrator Howard Hamilton, PE-CFM to investigate the drainage complaint.
- **September 9, 2009** -- After several failed attempts at arranging a meeting, Mr. Hamilton meets with the Plainfield Township Highway Commissioner and a representative of the City of Joliet's Engineering Department to discuss a proposed drainage design by Mr. Hamilton that will be in the CN drainage system but will affect a Joliet storm sewer and a Township roadway. All parties agree that the proposal is acceptable.
- **September 21, 2009** -- Will County Executive Larry Walsh sends a letter to CN requesting that Mr. Hamilton's design be implemented by CN.
- **October 20, 2009** -- Mr. Griffith of CN contacts Mr. Hamilton for more information.

- **November 5, 2009** -- The Will County Executive's Office requests that the FRA review drainage and track conditions. Subsequently, Mr. Mark Adamczak of the FRA meets with Mr. Hamilton on the tracks.
- **December 2, 2009** – Mr. Kenneth Rusk of the FRA submits a report to the Will County Executive's Office referencing Control # 012997, Mr. Hamilton's and Mr. Adamczak's meeting, and adds that *"the FRA inspector (Mr. Adamczak) did not note any exceptions to the TSS during the investigation. The inspector subsequently discussed the issue with the local railroad representative who committed to clean the south side ditch by December 31."* This work was completed to a point approximately 1,300 feet southeast of Essington Rd., but needs to continue several hundred feet more. A representative of CN discussed this with Mr. Hamilton and CN agreed to complete the work in the fall/winter of 2010.
- **March 9, 2010** – Pinecrest resident George Cutright found CN workers along the tracks behind his home. He took the opportunity to speak with the CN supervisor in charge (name withheld to protect the involved CN employee from potential retaliation.) The CN supervisor informed Mr. Cutright that he had performed the culvert work by the Essington Road crossing, but that he had further concerns about these tracks. Additionally, the CN supervisor discussed a series of "sink holes" that he described as voids that "will need to be watched." He also warned Mr. Cutright that culverts can cause the track's bed to droop and that issue will need to be watched as well.
- **April 7, 2009** -- The Will County Executive's Office requests that CN investigate sinkhole complaints. Mr. Hamilton repeats and expands the request on April 19.
- **Mid-April 2010** -- Gregory P. Ratajczak, CFM from the Will County Land Use Department, Subdivision Engineering Division, talked to Pinecrest resident Fran West when he visited her home in mid April. He said the soil was 'hydric soil' and that the homes in the subdivision would not now have been given building permits (the subdivision was originally developed in the 1950s/1960s timeframe.) Ratajczak handed West his card and a map that showed the land in the area to consist of silt loam and silty clay loam.
- **April 27, 2010** -- Will County engineer Howard Hamilton receives an e-mail from CN representative Jim Kvedaras stating that inspections on April 7 and April 22 by CN engineers indicate that there are no problems with the area, and that CN would be doing some additional scheduled maintenance later in the spring. CN warns homeowners to stay out of its ROW as a safety precaution. Will County shares this information with the homeowners.
- **April 28, 2010** – Resident Tammy Hollingsworth calls the local office of the Federal Railroad Administration (FRA) to seek the agency's assistance on a site inspection. She speaks with FRA Track Safety Specialist Ernest Monroe who commits to getting back to her about the issue within two weeks.
- **April 29, 2009** – By request of the Will County Executive's Office, FRA representative Ernest Monroe inspects the site and files an Inspection Report that states the following: *"PERFORMED WALKING INSPECTION TO DETERMINE CONDITION OF ROADBED AND SUBGRADE WHERE SINK HOLES AND SATURATED GROUND CONDITIONS WERE REPORTED. NO EXCEPTIONS NOTED."*

- **June 1, 2010** –Resident Tammy Hollingsworth again contacts Chicago FRA representative Ernest Monroe via e-mail when she has not received the expected contact: *“I am anxious to hear if you were able to complete an inspection of the tracks adjacent to our neighborhood. In case you have not been able to view the area, I've attached three of the photos that I took recently of the swamp/wetland and sink holes on the east side of the tracks. There is a yardstick included in the photo for perspective.”*
- **June 3, 2010** – The FRA’s Ernest Monroe responds to Hollingsworth in an e-mail: *“I did get an opportunity to inspect the railroad through the area of your concern. One of my inspectors also inspected the site last fall in response to a formal complaint. I looked at the sink holes and standing water through the swamp area. I agree the water table is high through the area, but I noted nothing alarming about the sink holes. The railroad is very stable for a wetland area and showed no track deformities or wet subgrade normally associated with high water tables. The ditch clearing work CN performed vastly improved their drainage. However, it probably won’t help with your standing water problem. The area appears to be a natural wetland which has changed in complexion due to the recent construction behind it. The FRA has standards in 49 CFR part 213 that all tracks must meet. The CN through this area meets or exceeds those standards. Soft roadbed sometimes results in geometry conditions, which were not present.”*
- **August 10, 2010** – Out of the blue, Chicago FRA Hazardous Materials Inspector Ann Monroe contacts Pinecrest resident, Mr. Cutright, to discuss the issue. She states that the FRA is “flabbergasted” about the potential danger and asks if she can come out that evening to inspect the culvert and sinkholes. Cutright agrees to get a group of neighbors together to facilitate Monroe’s inspection that night. Before leaving after her inspection, Monroe tells the residents that the FRA will arrange a meeting with CN for the following week and that the residents should insure that Will County representatives as well as Commonwealth Edison are in attendance. Monroe tells the group, “her FRA superiors have cleared their dockets to be there.” Ann Monroe provides no explanation as to why the FRA was suddenly so concerned about the issue just two months after her husband and fellow FRA staffer Ernest Monroe had assured the community it posed no problem.
- **August 11, 2010** – Mr. Cutright receives a phone call the morning after Anne Monroe’s inspection from a superior of Ms. Monroe’s who is in an agency meeting in Denver, CO. Jim Schwichtenberg informs Cutright that the FRA will not be meeting with community members as it will look the FRA is “taking sides” if it does. He tells Mr. Cutright he will review the CN engineering reports, but cautioned that he is not an engineer himself.

Given the situation as outlined in this attachment, TRAC requests that the Board provide answers to two reasonable questions that remain unresolved for Pinecrest residents:

1. Has any independent engineering firm inspected the area and provided authorities with a written report on the issue? Are there any engineering reports available for review by impartial third-party experts?
2. What occurred to prompt Ms. Monroe’s urgent concern about the situation on August 10, 2010 and why did the FRA then back away from that concern overnight?



Culvert running at the base of the EJ&E tracks (spanning a distance of at least 600 feet.)



One of approximately 26 sinkholes near the EJ& E tracks (note green standing marshy waters at the top of the photo.) The sinkholes span a distance of approximately 300 feet. CN has filled them in with gravel at least five times since the spring of 2010.

Hoffman Estates claims CN reneged on deal

BY ASHOK SELVAM
aselvam@dailyherald.com

Hoffman Estates officials are saying Canadian National Railway is reneging on part of a 2008 deal to offset effects from its merger with the Elgin, Joliet and Eastern Railroad.

Village Attorney Arthur Janura said the conflict stems from CN wanting Hoffman Estates to assume responsibility

Village says railway wants them to be responsible for maintaining easement; CN denies charge

for maintaining an easement, part of which falls outside the village.

"Worst than that, it's the liability," Janura said, noting that village taxpayers would be responsible if a train derailed and hit a pedestrian.

"That's absurd," Mayor William McLeod said after Monday night's village board meeting.

CN spokesman Patrick Waldron said the railroad is not reneging on the deal.

"We are ready to move forward with the implementation of that agreement," Waldron said.

Janura is drafting a letter to the Illinois Commerce Commission informing them of the village's concerns. He hopes

the ICC will consider the village's plight before ruling on CN's request to build a second rail for a stretch near Shoe Factory Road.

"Realistically, OK, they signed an agreement, they said they'd do it, now they're not going to do it," Janura said. "What are we supposed to do?"

The federal government

approved CN's \$300 million purchase of the EJ&E two years ago, despite concerns from some that the deal would increase train traffic through their towns. Led by Barrington, several affected towns formed a group, The Regional Answer to Canadian National, or TRAC, that opposed the merger.

Towns, including Hoffman

Estates, brokered agreements with CN to mitigate the impact of more train traffic. Hoffman Estates' agreement included electronic signs to warn motorists approaching hills where they could not see a railroad crossing. Several TRAC members remained in the group, reasoning that no concession would dampen negative effects the deal would have on their communities.