



March 25, 2010

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

VIA E-MAIL

Dear Mr. Wallen,

On behalf of the local governments that comprise the TRAC Coalition, please find the attached document that enumerates deficiencies in the March 15, 2010 Technical Memorandum on Task 6 Public Grade Crossing Signs that was prepared by HDR. We believe the HDR memorandum demonstrates that it cannot serve as an impartial consultant in verifying the activities undertaken by Canadian National Railway (CN) to implement Board-mandated mitigation measures. We request, therefore, that the Board recognize the conflict of interest that makes HDR an unsuitable oversight consultant by replacing HDR with an impartial consultant that is truly able to verify CN's actions as regards the EJ&E transaction, or augment the monitoring with an additional consultant to assure a truly independent monitor is overseeing the transaction's implementation.

Sincerely,

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Copies to:

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

Deficiencies Identified in the March 15, 2010 HDR Technical Memorandum on Task 6 Grade Crossing Signs

March 22, 2010

Section II. Background:

1. No one has ever questioned CN's compliance with VM 2 that required CN to install 6-month temporary warning signs notifying drivers there would be an increase in train traffic on the EJ&E. Inquiry into this matter was unnecessary.
2. HDR failed to state accurately and fully the Board's VM 9 mandate requiring CN to install signs at each grade crossing with the information necessary to report to CN any problems or dangerous conditions at the crossings. The Board required that these signs be "prominent" and absent that qualitative modifier, CN's signs could be construed to meet the VM9 guidelines despite failing to meet the "prominence" test.
3. HDR did not accurately state communities' concerns about the VM9 sign issue. HDR states: *"Complaints from the communities concerning compliance with these two conditions centered on whether the signs were truly visible and a concern that different signs had different telephone numbers for motorists to report problems."* In fact, communities' VM9 sign concerns were centered on:
 - A lack of visibility (or prominence);
 - the reality that some crossings had no signs whatsoever; and
 - that CN misled the Board into believing it had accomplished VM9 when it stated in its July 10, 2009 quarterly environmental report to the Board that "the signage is in place."
4. Communities are indifferent to CN's use of different telephone numbers on the signs along the EJ&E. What is important is that someone actually answers the phone line(s) when someone calls. TRAC had reported to the Board that there was documented evidence that there were instances when no one answered these telephone lines to respond to calls. Since there are 911 records in Rockford prior to that tragic June 19, 2009 CN derailment that demonstrates the necessity of having someone man these emergency contact numbers, it is vital that CN's compliance with this aspect of VM9 be taken seriously. HDR failed to look into this issue whatsoever.

Section III. Method and Analysis:

5. HDR spot-checked signage on the EJ&E and claims:
"Typically the crossings had a decal visible to motorists that contained the toll free number to report problems with the crossing (see Attachment 2) and the DOT crossing identification number posted on a nearby railroad bungalow (see Attachment 3)."
In the photo attachments HDR supplied, it provides evidence that (1) the sign or "decal" in place fails the "prominence" test as it was impossible to even read the decal in the photo; and, (2) that the crossing ID number was not on the sign and therefore failed to meet the Board's VM9 mandate.
6. HDR's analysis centers mostly on a discussion of sign standards from the Manual on Uniform Traffic Control Devices (MUTCD) and how the federal government's late 2009 changes to that manual and State adoption of the revised standards justified CN's inaction on meeting VM9. This entire argument is specious as the new standards have sufficient leeway to enable CN to erect compliant signage.
7. HDR attached a CN memorandum dated February 15, 2010 to its report. In that, CN discusses *ad infinitum* the MUTCD standards issue and states that it is *"currently soliciting bids for this project, and anticipates completing installation of the new signs by the end of June, 2010."* Since visibility and prominence of the signs is a major issue for communities, it is inconceivable that HDR and CN failed to

actually share with the Board and interested public the bid specifications for this project. TRAC has attached to this document a photo of a sign from when the EJ&E was owned by USX. Our expectations are that signs similar to this in terms of prominence and visibility will be installed by CN as they meet the Board's "prominence" test as well as current MUTCD standards and guidelines.

Section IV. Results:

8. HDR claims: *"CN's approach to compliance with VM2 and VM9 appear reasonable."* This statement demonstrates that HDR's conflict of interest vis-a-vis CN makes it impossible for HDR to point out that CN's erroneous claim to have fulfilled VM 9 in July 2009, and its subsequent reliance on revised MUTCD sign standards is an excuse for inaction and nothing more than a stalling tactic to deny concerned residents of the region the information they need to register dangerous crossing concerns directly with CN.

Section V. Conclusions and Recommendations:

9. HDR claims: *"CN is complying with VM 9"* and *"If problems with visibility of emergency notification signs are identified in the future, these can be addressed on a case by case basis."* TRAC would like to stress to the Board and HDR that the record clearly demonstrates that CN is doing everything in its power to stall on complying with VM 9. Additionally, a dismissive comment that the visibility/prominence issue can be addressed on a case by case basis completely ignores the fact that "prominence" was required by the Board in VM9. The Board needs to take ownership of insuring that its mandates are fully met and not require that communities continue to raise this issue individually at some point in the future. Aggressive Board intervention directing CN to live up to the spirit and letter of the VM9 mandate is prudent and necessary.