

To:	Matt Wallen, Director, STB Office of Public Assistance, Governmental Affairs and Compliance	Date:	March 15, 2010
From:	John Morton, HDR		
CC:			
Subject:	Task 6 Public Grade Crossing Signs		
Project:	STB/CN Compliance Verification	Job No:	000000000133616

I. Introduction

The objective of this task was to audit CN's compliance with the conditions imposed by the Board for temporary and permanent signs at each highway-rail at grade crossing, review complaints that were registered over CN's compliance with these conditions and CN's response to those complaints.

II. Background

In Decision No. 16, the Board imposed two mitigation conditions related to signage at the at-grade crossings on the EJ&E rail line. The first condition (VM 2) required CN to install warning signs at each crossing where motorists will experience an increase in railroad traffic and then remove the signs six months later. The second condition (VM 9) required CN to install signs at each crossing with the necessary information for motorists to report problems or dangerous conditions. In both instances, the Board required that the signs comply with the standards in the Manual on Uniform Traffic Control Devices (the Manual). 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. VM 9 also requires CN to coordinate with other railroads when a CN crossing is close to another railroad's crossing so that information on problems or dangerous conditions can be shared among the affected railroads.

III. Method and Analysis

HDR reviewed the Board's Conditions VM 2 and VM 9, complaints on this issue, the standards in the Manual that were in place when the Board approved the acquisition, the new standards that were adopted in December, 2009 and CN's response to the complaints. On February 5, 2010, HDR staff interviewed CN personnel regarding compliance with VM2 and VM9. After the meeting, CN provided a Memorandum dated February 15, 2010, which detailed CN's approach to compliance with VM 2 and VM 9 (Attachment 1). In addition, HDR spot checked the existing signage at various locations on the EJ&E rail line. None of the crossings that were visited had one sign that contained both the toll

free number and the DOT crossing identification number. 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).

The Manual that was in effect when the Board approved the acquisition did not have standards for temporary signs warning motorists of an increase in railroad traffic but had recommendations for placement of signs with information to report problems or dangerous conditions. The recommendations included two examples of signs that could be used. Both examples included a toll free number for motorists to call and the crossing inventory number. The Manual that was adopted in December, 2009 still contains recommendations on signs that provide information for motorists to report problems but does not require that the signs be installed. The new Manual has only one example of a sign that could be used. If a sign is installed, it now must include an emergency contact telephone number and the crossing inventory number.

Illinois DOT and Indiana DOT are both allowed to deviate from the Manual with their own standards if they desire. Representatives from Illinois told HDR that they would formally adopt the new Manual in approximately six months but that no deviation from the standards for emergency notification signs was expected. A representative from Indiana DOT has indicated that Indiana generally adopts the Manual in whole so no changes are expected in the standards for emergency notification signs.

CN acknowledged that different telephone numbers appeared on different emergency notification signs, but that all of the telephone numbers rang into the CN Police Communications Center. CN has indicated that when these signs are replaced, there will be a uniform contact number. CN waited for the new Manual to be published before installing new signs, but now CN has already published bid specifications for signs at all EJ&E crossings and will award a contract and install new signs by June 30, 2010. CN has also identified 10 crossings where an EJ&E crossing is located within 250 feet of another railroad's crossing. CN is developing a communication protocol with the other railroads for the reporting of accidents and grade crossing malfunctions. This process of coordinating with the railroads and implementing the protocol should be completed by April 1, 2010.

IV. Results

CN's approach to compliance with VM 2 and VM 9 appears reasonable.

V. Conclusions and Recommendations

CN is complying with VM 9 and has already complied with VM 2. CN should report on the status of the new signs in their 2nd Quarter 2010 Status Report on Environmental and Safety Mitigation Measures. If problems with visibility of emergency notification signs are identified in the future, these can be addressed on a case by case basis.

February 15, 2010

M E M O R A N D U M

To: HDR
From: Canadian National Railway Company
Date: February 15, 2010
Re: CN Compliance with Voluntary Mitigation Conditions #2 and # 9

Section 6 of the final Scope of Services for HDR's Compliance Report Verification (dated January 7, 2010) requires HDR to "review" and "verify" Canadian National Railway Company's and Grand Trunk Corporation's (collectively, "CN") "explanation concerning its compliance with the type and location of public at-grade crossing signs specified in VM-2 and the permanent signs required by VM-9 for each of the public grade crossings." This memo describes CN's compliance with those voluntary mitigation measures.

Compliance with VM-2

VM-2 required CN to install temporary notification signs, conforming to the Federal Highway Administration's *Manual on Uniform Traffic Control Devices* ("MUTCD"), at grade crossings along EJ&E. These signs were required to provide motorists with 30 days' advance notice of increased train traffic and to remain in place for at least 6 months after the acquisition by CN of control of EJ&E. Additionally, CN was required to conduct a media campaign throughout the affected communities, advising the public of increased train traffic.

As of February 2, 2009, as noted in CN's first quarterly environmental report (filed on April 10, 2009), CN had installed temporary signs at all public crossings and all accessible private crossings and began a 30-day print and online media campaign throughout the affected

February 15, 2010

communities, running notices in newspapers and online news web sites (in English and Spanish) advising residents of future increased operations along the EJ&E line. *See* Attachment VM2 to CN's April 10, 2009 Quarterly Environmental Report (listing print publications and dates). Although MUTCD contains no specifications for this precise kind of notification sign, CN determined to follow the color scheme prescribed for emergency notification signs at railroad grade crossings (white letters on blue background) in the MUTCD guidance that was applicable at that time. The signs posted by CN using that color scheme were 18 inches wide by 18 inches tall, with 2.5 inch tall letters, stating "Notice: Increased Train Traffic." Attachment VM 2 to CN's April 10, 2009 quarterly environmental report contained a diagram of the signs. CN began to systematically remove these signs beginning on September 8, 2009, after they had remained in place for the required 30 days plus 6 months. CN considers its compliance with VM-2 to be complete.

Compliance with VM-9

VM-9 requires CN to install permanent signs at each public grade crossing on EJ&E, in compliance with Federal Highway Regulations,¹ that display both a toll-free telephone number and a unique grade-crossing identification number. The telephone number is to allow motorists to report dangerous conditions at the grade crossing, and is required to be answered 24 hours per day. Additionally, where EJ&E's right-of-way is close to another rail carrier's grade crossing, VM-9 requires CN to coordinate with that railroad to establish a procedure for sharing information and reporting accidents or other dangerous conditions.

¹ The Federal Highway Regulations referred to in VM-9, 23 C.F.R. Part 655, adopt the 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.

February 15, 2010

At the time of CN's acquisition of EJ&E, EJ&E had signs at all public crossings listing the carrier (EJ&E), crossing street name, DOT number, and emergency contact phone number for the railroad. At crossings with active warning devices those signs were in the form of decal stickers affixed to the crossing's signal control case, whereas at crossings not equipped with active warning devices EJ&E had metal signs affixed to the posts of the crossbucks. After CN's acquisition of EJ&E, CN rerouted the posted emergency contact phone number to CN's Police Communications Center, which is manned 24 hours a day, 7 days a week.

As CN informed SEA in the December 10, 2009, cover letter for its monthly operating report for November 2009, it planned to await the anticipated new National MUTCD standards (due to be published before the end of 2009) before changing the EJ&E signs, so it could ensure compliance with the new standards. The revised National MUTCD standards were, in fact, issued on December 16, 2009. *See* 74 Fed. Reg. 66,730 (Dec. 16, 2009). As CN expected, they added new requirements for emergency notification signs. Most important, some provisions that were "guidance" in the previous version are now mandatory "standards," and some previous "guidance" has been revised.

Under the revised National MUTCD standards, emergency notification signs **must**:

- have a white legend and border on a blue background;
- include, at a minimum, the USDOT grade crossing inventory number and the emergency contact telephone number; and
- be positioned so as to not obstruct any traffic control devices or limit the view of rail traffic approaching the grade crossing

The revised National MUTCD also includes "guidance" indicating that signs **should**:

- be retroreflective;
- be oriented so as to face highway vehicles stopped on or at the grade crossing or on the traveled way near the grade crossing; and
- only be large enough to provide the necessary contact information. Use of larger signs that might obstruct the view of rail traffic or other highway vehicles should be avoided.

February 15, 2010

Illinois and Indiana must now issue the final MUTCD standards with which CN will have to comply for purposes of VM-9. Following issuance of a new edition or revision of the National MUTCD, States are given 2 years to adopt it with or without a state supplement or to adopt a State MUTCD that is in “substantial conformance” with the National one. *See* 23 C.F.R. § 655.603(b)(3). The States are therefore ultimately responsible for dictating signage requirements applicable within their borders. Neither Illinois nor Indiana has yet determined the final MUTCD standards it will adopt.

Nonetheless, CN intends to install signs on the EJ&E that, at a minimum, comply with the required standards of the National MUTCD, even though it may be necessary to replace those signs if Illinois or Indiana adopts inconsistent standards. CN is currently soliciting bids for this project, and anticipates completing installation of the new signs by the end of June, 2010.

As to the requirement in VM-9 that CN identify crossings close to another railroad’s grade crossing and coordinate with those other carriers to establish a procedure and share information regarding reported accidents and grade-crossing device malfunctions, CN has identified all crossings within 250 feet of another railroad’s grade crossing (see Attachment VM-9 to CN’s quarterly environmental report submitted July 10, 2009). CN is developing a communication protocol concerning the reporting of accidents and grade crossing malfunctions that it intends to propose to each of the railroads with nearby crossings. It expects to complete this process, including communicating with each of these carriers, within 30 days.

Should you have any questions related to CN’s compliance with VM-2 or VM-9, please feel free to contact Jim Kvedaras at 708-332-3508.

Attachment #2



Attachment #3

