



Corporate Report

NO: R083

COUNCIL DATE: APRIL 30, 2007

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **April 30, 2007**

FROM: **Fire Chief**

FILE:

SUBJECT: **Input to Review of Railway Safety Act**

RECOMMENDATION

It is recommended that Council:

1. receive this report for information; and
2. authorize the City Clerk to forward a copy of this report and the related Council resolution to the Railway Safety Act Secretariat as input from the City of Surrey to the Railway Safety Act review process that is currently underway.

INTENT

The purpose of this report is to provide information to Council about a Railway Safety Act review that is currently underway and seek Council authority to forward this report as input into that review, particularly with reference to concerns that have been raised by the community regarding the safety of the Burlington Northern Santa Fe (BNSF) Railway along Crescent Beach and Ocean Park in Surrey.

BACKGROUND

On February 20, 2007, the Minister of Transport, Infrastructure and Communities announced the appointment of the four-member Advisory Panel to assist him in conducting a review of the *Railway Safety Act* (RSA). The Panel will submit a report of its findings and recommendations to the Minister in the fall of 2007.

The *Railway Safety Act* (RSA) came into force in 1989, replacing the *Railway Act*. It was part of a suite of legislative changes that generally deregulated Canada's transportation networks and services, and separated regulation of safety from economic regulation (and from accident investigation). The RSA called for a review of the Act after five years, which was undertaken in 1994. Following a further internal review, the Act was amended in 1999.

The RSA gives Transport Canada responsibility to oversee railway safety. It establishes a regime for the regulation of railway safety in Canada founded on the principles that railway companies must be responsible and accountable for the safety of operations, and that the regulator must have the power to protect public and employee safety, and the environment. The Act provides the regulatory framework for railway safety, security, and some of the environmental impacts of railway operations in Canada.

Railway in Canada

Rail transportation is vital to all of Canada's economic activity – including its trading relationship with the United States and the rest of the world. In 2005, the rail industry generated \$9.9 billion in revenues. Canada has one of the largest rail networks in the world with 48,000 kilometers of track and almost 50,000 railway crossings (public and private). Over 300 million tones of cargo are moved annually. Railways directly employ more than 35,000 people in Canada (about half the number they employed in 1990), and their suppliers and shippers many more. The structure of Canada's railway industry has changed significantly since the early 1990s. Canadian National Railway (CN) and Canadian Pacific Railway (CPR) are still the dominant carriers; however, they operate about 75 per cent of the total domestic rail network instead of the 90 per cent they operated in the 1990s. Many low-density lines have been transferred to short line operators, which provide feeder service to the CN and CPR networks. Both CN and CPR have significant infrastructure and operations in the United States, and north-south traffic has grown considerably over the last twenty years. More recently, rapid economic expansion in China and other Asian countries has resulted in significant growth in traffic through west coast ports, especially containers.

VIA Rail continues to dominate the intercity rail passenger sector; it accounted for 95 per cent of intercity passengers carried in 2005. Commuter rail services in urban areas have increased substantially in recent years – the total number of passengers carried by commuter systems in Ontario, Quebec and British Columbia grew from 41 million to 58.2 million from 1997 to 2005. Tourist and recreational railways offer popular services in many parts of Canada, including targeted tourist excursions provided by VIA Rail.

Overview of the Railway Safety Act

The Railway Safety Act (RSA) requires Transport Canada to promote and regulate the safety of railway operations by federally regulated railway companies. Transport Canada also oversees provincially regulated railway companies applying federal regulatory requirements (for example, when operating on a federally chartered host railway or subject to a federal-provincial agreement). Transport Canada also regulates certain activities of other relevant bodies, such as road authorities (which may include a municipality) and utility companies, to promote safe railway operations.

The objectives of the RSA are to:

- promote and provide for the safety of the public and personnel, and the protection of property and the environment, in the operation of railways;
- encourage the collaboration and participation of interested parties in improving railway safety;

- recognize the responsibility of railway companies in ensuring the safety of their operations; and
- facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety.

The most recent (1999) amendments provided authority to require railways to implement Safety Management Systems, allowed for greater involvement on the part of a “relevant association or organization” (as defined in the RSA) in the rule-making process, set out a safety framework for minimizing disruption caused by train whistles in communities, strengthened and clarified federal powers at road-rail (grade) crossings, strengthened and clarified the powers of Railway Safety Inspectors, and established environmental protection authority to regulate railway emissions.

The RSA, as amended, has six parts:

Part I: *Construction or Alteration of Railway Works*

The Minister of Transport has the authority to regulate and approve the safety of railway structures, with sufficient flexibility for railway companies to carry out routine construction with a minimum of delay. The Minister is also given the authority to make grants for crossings, grade separations and special safety projects. The Canadian Transportation Agency (CTA) has the role of resolving disputes over the apportionment of costs, for example, between the proponent of the work and other benefactors, where more than one party, such as an adjacent landowner, may benefit directly from a railway work.

Part II: *Operation and Maintenance of Railway Works and Equipment*

Regulations and rules for railway operation and maintenance may be established. There are also provisions regarding cessation of whistling at crossings. Safety regulations may be made by the government covering the operation or maintenance of railways in general, such as tracks, bridges, culverts, signal systems and crossing works, as well as the design, operation, and maintenance of railway equipment. The government may also establish regulations related to employment of persons in designated positions critical to safe railway operations and to the security of railway transportation. A railway company may be required by the Minister to formulate safety rules also covering the operation and maintenance of railways and rail equipment, or a company may formulate rules of its own initiative. All rules are subject to review and approval by the Minister.

Part III: *Non-railway Operations affecting Railway Safety*

This part provides the powers to ensure that railway operations are not endangered by operations on land adjacent to a right-of-way. It also includes provisions regarding trespassing and the right-of-way of trains at crossings. Again, any affected party can refer disagreements to the CTA. Regulations may deal, for example, with: construction of structures, mining operations, and drainage systems, storage of flammable materials, removal of trees and bush obstructing the field of view, removal of weeds and the use of alternatives to chemical pesticides, restricting or preventing access to the land on which a railway line is situated by people, vehicles, or animals, construction, alteration and maintenance of roads, control of vehicular and pedestrian traffic on road approaches to road crossings, and other activity that could constitute a threat to safe railway operations.

Part IV: Administration *and Enforcement*

This part contains the provisions necessary to enforce the requirements of the RSA. It covers the designation and authority of Railway Safety Inspectors and security Screening Officers, Ministerial Orders, including orders for the removal of works, Ministerial emergency directives, rules of court, medical reporting, inquiries, and security measures ³, and sets out offences and penalties.

Part V: *Miscellaneous Provisions*

This part provides for delegation of powers, the authority to regulate the development and implementation of Safety Management Systems, the authority to regulate the release of pollutants, and a number of miscellaneous provisions.

Part VI: Consequential Amendments to other Acts

Mandate of the *Railway Safety Act Review Advisory Panel*

The Advisory Panel will be the Minister's principal source of advice on the review of the working and overall efficiency of the *Railway Safety Act* to further improve railway safety, including possible amendments to the Act.

The role of the Advisory Panel is to conduct independent study and analysis, to undertake consultations, and to prepare a report for the Minister with findings and recommendations. The Panel will consult a wide range of stakeholders, including the public, railway companies and their industry associations, railway company employees and their unions, railway customers, including shippers and travellers, provincial and territorial authorities, municipalities, aboriginal and environmental groups, as well as Transport Canada and other federal government departments and agencies. The Panel will hold meetings across Canada where individuals and groups can present their views. It will be supported by a Secretariat established within Transport Canada.

Key Issues to be Explored

The four-member Advisory Panel will review and examine:

1. the efficiency and effectiveness of the legislative/regulatory framework established under the *Railway Safety Act*;
2. the provisions and operation of the Act;
3. the environmental concerns with respect to railway transportation and accidents;
4. the interface with non-railway users; and
5. related railway safety issues.

The Advisory Panel will prepare a report for the Minister of Transport, Infrastructure and Communities that includes its findings and recommendations to further improve railway safety, including possible amendments to the *Railway Safety Act*, and on related railway safety issues falling within the scope of the Terms of Reference.

DISCUSSION

The Burlington Northern Santa Fe (BNSF) railway tracks that pass through the City of Surrey have been the subject of public attention for many years. The areas of attention include the tracks along the ocean frontage in Crescent Beach and Ocean Park immediately to the west of White Rock. Two citizen groups, in particular, Smart Rail (formerly known as Semiahmoo Peninsula's Citizens for Public Safety) (SPCPS) and the Surrey United Naturist Association (SUN) have recently expressed concern regarding increasing hazard to the public and the environment due to increases in hazardous commodities (e.g., chlorine) being shipped via this railway.

These public concerns relate in part to heavy rains that from time to time cause landslides along the section of the track that runs along the base of the ocean bluff which in turn have the potential to cause train derailments which in turn have the potential to cause spills of hazardous materials being carried in the rail cars. The potential hazard relates to both the residents of the South Surrey and White Rock area that may be affected by the spills as well as the ocean shoreline and marine environment. It is noted that there have been times when Amtrak has suspended rail service during heavy rains but where freight rail traffic has continued to operate on the tracks in the vicinity of the ocean bluff in South Surrey.

The Surrey Emergency Program Coordinator within the Surrey Fire Service has met in the past with representatives from the BNSF Railway to discuss these concerns and also has corresponded with Transport Canada. He was informed of safety measures and standards that have been implemented by the Railway to minimize the hazard associated with landslides as well as their safety history and achievement in receiving the TRANSCAER award for rail safety.

The Surrey Fire Service has an Emergency Response and Recovery Plan that outlines the City's response to rail accidents and dangerous goods incidents including a fully equipped Hazmat response team. This team undertakes frequent training sessions and workshops to be prepared to respond to incidents involving hazardous materials in the City.

However, despite our preparedness, the City of Surrey relies on Transport Canada to ensure that the BNSF Railway and all other railways through the City of Surrey are being operated and maintained so as to not pose undue risk to the citizens of Surrey or the environment.

Smart Rail, a Surrey citizens group, has suggested that under the current Railway Safety Act review process "municipalities should be given statutory instruments that will allow them to limit the transportation of dangerous goods by rail through areas which it feels are at high risk."

The City of Surrey recognizes that the transportation of dangerous goods under any circumstance poses some degree of risk whether by rail or truck. The City also recognizes that railways by their nature require continuity in order to be effective.

Surrey Fire Services, being the First Responder to emergencies in Surrey including rail traffic and hazardous goods incidents, is not in a position to assess the seriousness of the risk associated with the use of the BNSF tracks under variable weather conditions. Staff of the City hold the view that the Federal government is mandated with the responsibility to ensure that railways including the BNSF Railway within Surrey are operated in a safe manner and that to request

deferral of this authority to the local level of government would not be effective given the relative availability of resources and expertise between the local and federal levels of government with respect to the regulation of railway traffic.

The City, however, is concerned that the freight service on the BNSF Railway through Surrey operates during weather conditions when Amtrak, the passenger rail service stops operating. In this regard, we request that the Secretariat review whether regulations in the Railway Safety Act need to be amended to require the same of level risk aversion be exercised in relation to freight traffic (or at least certain types of freight traffic) as is exercised for passenger rail service.

CONCLUSION

It is recommended that this report be forwarded to the Railway Safety Act Secretariat as information in relation to the current review of the Railway Safety Act that the Secretariat is overseeing.



Len Garis
Fire Chief
Surrey Emergency Program Co-Coordinator