

Minister of Transport



Ministre des Transports

Ottawa, Canada K1A 0N5

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Ms. Judy A. Sgro
Chair
Standing Committee on Transport, Infrastructure and Communities
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ms. Sgro:

As you know, rail safety is my top priority and I take it very seriously. My goal is, and always will be, to ensure the highest safety standards across the entire Canadian rail transportation system. To achieve this, we need a modern, comprehensive regulatory scheme, careful data and trend analysis, a program of risk-based and planned inspections, and a clear and rigorous compliance and enforcement scheme.

A lot of progress has been made, including notable achievements in the last 10 months, but there is still more to be done. That is why, on behalf of the Government of Canada, I continue to look at ways we can be proactive in ensuring rail safety. This involves identifying risks in the network by our frontline inspectors and auditors as well as taking into consideration the views of partners and stakeholders, including the Transportation Safety Board (TSB), unions, industry, affected communities, and the public at large.

As such, I would like to thank the members of the Standing Committee on Transport, Infrastructure and Communities (the Committee) for taking the time to study this important topic and for their report entitled *An Update on Rail Safety*, tabled before the House of Commons on June 16, 2016. I would also like to express my thanks to all those who took the time to appear before the Committee to share their views. I welcome the important issues and observations that the many witnesses raised with the objective of strengthening railway safety in Canada and the safe transport of dangerous goods.

I have carefully considered the Committee's input and comments in relation to this issue. What follows is a response to the nineteen recommendations put forward in the Committee's report.

- 1. That Transport Canada accelerate the current study examining the feasibility of establishing a rail bypass around the town of Lac-Mégantic and that, should the said study confirm the recommendation of the creation of a by-pass, the Government of Canada partner with the municipality to facilitate the request as a way of mitigating instances of post-traumatic stress syndrome within the local population following the accident at Lac-Mégantic:**

The July 2013 accident in Lac-Mégantic will forever remain etched in our memories and in our hearts. I have visited Lac-Mégantic twice since becoming Minister of Transport and I have heard first-hand accounts from the citizens. Rebuilding the community, physically and psychologically, is very important. That is why the Government of Canada announced \$1,965,000 in the form of a non-refundable contribution under the component *City Reconstruction Projects* of the *Economic Recovery Initiative for Lac-Mégantic (ERILM)*, administered by the Canada Economic Development for Quebec Regions. I have also been following the rail bypass study with great interest and have stated publicly on numerous occasions that I support the study and will examine its recommendations.

While the Government supports this initiative, I would note that the feasibility study of a bypass around the town of Lac-Mégantic, though funded by the Government of Canada and the province of Québec, is managed by the town of Lac-Mégantic itself.

The feasibility study constitutes three phases: the possibility study (Phase 1A), the preliminary draft (Phase 1B) and the final draft (Phase 2). The study has progressed to Phase 1B and decisions on funding of a bypass are anticipated at the conclusion of this phase. The Government of Canada will continue to actively support the town of Lac-Mégantic in this study and looks forward to receiving the study's final results.

- 2. That Transport Canada re-examine the rules and technology on maximum wear of rails to ensure that visual assessments of the rails' conditions and improved technologies are included in the inspection criteria:**

The use of visual assessments and technology in inspections is already an industry standard. However, there is still more that can be done. Therefore, the Government agrees with this recommendation. Track integrity (rail wear) has been identified as a critical safety issue. Transport Canada is actively working with partners in the United States to define relevant standards for safety based on scientific research. The Department is also analysing the current regulatory regime and exploring new technologies that may aid inspectors in the field. In the meantime, the Department has also adjusted its oversight activities to leverage resources to focus on track oversight activities.

3. That Transport Canada put in place an enhanced qualification and training program for the rail industry for engineers and other workers directly involved in rail safety:

The Government agrees with this recommendation, and is already working on this. In response to the TSB's post Lac-Mégantic investigation report, Transport Canada is actively reviewing the existing training and qualification requirements for railway employees, with an initial focus on smaller or "shortline" railways.

4. That Transport Canada collaborate with the municipality of Lac-Mégantic in the establishment of the Lac-Mégantic Canadian Centre for Training and Certification for first responders and teams of interest:

I have heard from numerous first responders about the issues they face with regards to training, and being a naval officer and astronaut myself, I understand the importance of training. The Government supports this initiative and is following its development. It is noted that the Lac-Mégantic business community has created the nascent *Institut en culture de sécurité industrielle Mégantic* (ICSIM), a non-profit organization that aims to become a centre of expertise for emergency first responders. In fact, I met with this group and am eager to see what they propose.

Additionally, Transport Canada plans to enhance outreach and further support first responder training in the transport of dangerous goods through follow-up on the recommendations of the Emergency Response Taskforce. Current efforts on flammable liquids include Competency Guidelines for first responders and live exercises.

5. That Transport Canada undertake frequent, interactive and publicly visible inspections of railway operations in communities where there have been major incidents to mitigate ongoing fears:

Making sure that Canadians feel safe in their homes and in their communities is something I take seriously. That is why the Government agrees with this recommendation, as it is in-keeping with Transport Canada's existing Rail Safety Program oversight approach which sees the leveraging of resources to higher risk areas, as well as areas where there are public concerns. The Government agrees that it is important for inspections to be more visible to communities that have been affected by significant rail incidents, as well as to have mechanisms in place to help ensure communities' concerns are being heard. Enhanced inspection resources from Budget 2016 will support these efforts. As well, Transport Canada will continue its outreach efforts and work with advocacy groups on rail safety issues.

6. ***That Transport Canada immediately increase the number of on-site and visual inspections for compliance with rail safety regulations and rules it conducts in a given year, prioritizing rail operations with a record of poor performance in terms of developing and implementing effective safety management systems or have demonstrated repeated marginal or non-compliance with federal rail safety regulations:***

As with the above recommendation, the Government agrees with this recommendation as it is in line with the Government's commitment to ensure more robust oversight of the rail transportation system, as announced in Budget 2016. This includes continuing to focus on priority inspections through risk-based planning, conducting more standard and targeted audits of companies' Safety Management Systems, as well as continuing to conduct follow-up inspections of railway companies with poor compliance or safety records.

7. ***That Transport Canada assign increased resources and training for field inspections on rail safety:***

I understand well that simply making rules is not enough, we need to also make sure that the rules are being adhered to. That is why the Government agrees with this recommendation and has provided funding to achieve this goal. With additional funds to update and expand training of Railway Safety Inspectors in Budget 2016, Transport Canada is already in the process of increasing resources for inspections and training of inspectors.

8. ***That the Government of Canada accelerate the 5-year statutory review of the Railway Safety Act and complete a comprehensive, independent review of the Railway Safety Act prior to 2018:***

Given the importance of rail safety, I agree that a review of the *Railway Safety Act* is necessary and is required soon. Thus, the Government agrees with this recommendation, and will be initiating a legislative review beginning in 2017.

9. ***That Transport Canada require effective signage and/or other safety measures at unmarked passive railway crossings that have been identified as most dangerous, or where accidents have repeatedly occurred, and that the cost of these safety modifications not be placed upon local government or ratepayers:***

I am aware that improving the safety at railway crossings is crucial to reducing the loss of life and injury that occurs at these locations. I want to be transparent and open about this issue, which is why I made public information on the risk associated with all grade crossings in the country.

The Government agrees in principle with this recommendation. Transport Canada continues to implement the new *Grade Crossings Regulations* which brings in a new safety regime for all federally-regulated grade crossings, both active and passive. The new Regulations also recognize that a shared responsibility exists between railway companies and road authorities for the safety of their grade crossings. Importantly, both railway companies and road authorities have the opportunity to seek funding for grade crossing improvements, such as signage, gates, and lights for which Transport Canada pays up to 50 per cent of improvement costs. Transport Canada prioritizes funding requests for those crossings that warrant improvement the most. I recognize the cost impacts on smaller municipalities. To assist with this, the *Railway Safety Act* was amended in 2013 to allow the Canadian Transportation Agency to allocate construction costs to road authorities at a maximum of 12.5 per cent and for railways to pay the larger share of costs. Further to these changes, the Government has recognized the need for greater investments in this area to support municipalities as part of Budget 2016 funding, with further details to come.

10. That Transport Canada publicly release the report of the Enhanced Train Control Working Group immediately after receiving it:

As I have shown with concrete action in the past, I am committed to openness and transparency. As such, the Government agrees with this recommendation, and a copy of the report will be provided to the Committee as soon as it is completed, which is expected in fall 2016.

11. That Transport Canada publicly release the final report on the first phase of a two-phase study to evaluate the safety benefits of locomotive voice and video recorders:

The final report on the evaluation of safety benefits of locomotive voice and video recorders has been released by the Transportation Safety Board (TSB) pursuant to the *Canadian Transportation Accident Investigation and Safety Board Act*. As Kathy Fox, Chair of the TSB, noted in her letter to you on June 22, 2016, the study was a one-phase study and will not span two phases.

12. That Transport Canada immediately develop legislative and regulatory structures to mandate the use of locomotive voice and video recorders by railway companies, and that effective rules be put in place to ensure recordings are used exclusively by the appropriate government authorities during Transportation Safety Board accident investigations or in subsequent criminal investigations to which they directly relate:

The Government agrees in principle with this recommendation, and recognizes the fundamental safety value of the information that an in-cab video and voice recording system could provide, as well as its further potential to support a well-managed Safety Management System. Based on analysis and building on input from stakeholders, Transport Canada is currently developing implementation options that would mandate the use of this type of data in the rail industry.

Over the coming months, Transport Canada will engage in broad consultations with

stakeholders and others, including the Office of the Privacy Commissioner of Canada, on how such a system can be implemented in the most effective manner. Any approach going forward will take care to consider fully the concerns of those who could be affected by this type of data collection, in order to enhance safety for both railway employees and the public.

13. That Transport Canada establish and adopt an expedited process for responding to Transportation Safety Board safety-related recommendations and that an enhanced reporting system be adopted to prevent recommendations from languishing, without action, on the Transportation Safety Board Active Rail Recommendations list:

It is important to acknowledge that the TSB plays an important role in maintaining the safety of the transportation system. I value their work and their insights.

The Government agrees in principle with this recommendation, recognizing that Transport Canada is required by law to respond to TSB recommendations within 90 days. The *Railway Safety Act* provides for various tools, such as Emergency Directives or Ministerial orders, to enable Transport Canada to take quick action in response to TSB recommendations on rail safety issues.

In all cases, the Government actively reviews and considers recommendations from the TSB, and factors recommendations into decisions about priorities. It is important to note that in some cases, identifying longer-term solutions to recommendations requires research to identify available technological solutions and consultations with stakeholders to avoid unintended consequences. Transport Canada will make further efforts to publish more information on the progress of its responses to the TSB's recommendations.

14. That Transport Canada, in cooperation with the federal departments responsible for health and labour, take immediate action through a working group to develop options to improve the management of railway crew fatigue, including (but not limited to) (1) enhancing work/rest rules in safety management systems (SMS); (2) removing work/rest provisions from collective bargaining processes; (3) introducing guidelines or a regulatory framework in place of SMS-based fatigue management; and (4) ensuring that fatigue rules are science-based. The working group's report must be tabled in Parliament by 1 January 2018:

The Government agrees in principle with this recommendation, and the importance of an improved regime to manage fatigue in the rail industry.

Transport Canada is examining existing fatigue management requirements and will work in partnership with key federal partners and stakeholders to develop a stronger regime. The Government agrees that eliminating barriers to the development of an effective fatigue management regime is key and will take the Committee's detailed recommendations into account throughout the policy process. I will update the Committee as work in this important area progresses.

- 15. That Transport Canada (1) conduct a comparative study on the rules for remote control locomotive operations in Canada and the United States; and (2) take measures that lead to the harmonization and adoption of rules governing more aspects of remote control locomotive operations, including rules concerning the tonnage of a train, the length of remote control movements and the training requirements for operators of the technology:**

The Government agrees with this recommendation. Transport Canada is committed to aligning with the United States on safety regulations for rail where possible, in order to support seamless transborder operations while maintaining safety as the highest priority. To that end, the Government has already had discussions with the United States to understand their rules and approach to remote control operations. Transport Canada will work to identify enhanced standards with respect to remote control locomotive operations. Additionally, the Advisory Council on Rail Safety is also seized with the issue of remote control locomotive operations as part of their work program.

- 16. That Transport Canada immediately pursue in consultation with provincial and local governments legislative and/or regulatory structures to require rail companies operating in Canada to (1) develop and implement long-term plans to mitigate environmental impacts on railways, including but not limited to ongoing destabilization of slopes, mudslides, flooding, extreme weather conditions, and floodplain issues; and (2) when these issues affect a company's railway in a community, that these communities be consulted in the development and implementation of the plan:**

The Government agrees in principle with this recommendation. Transport Canada will engage provincial and local governments as well as other stakeholders, including railway companies, to further address this recommendation. Since mitigating environmental impacts is something important to me and to this Government, I will update the Committee as work in this area progresses.

- 17. That Transport Canada immediately develop legislative and/or regulatory structures to require rail companies operating in Canada to (1) provide real time knowledge of dangerous goods to first responders in communities via cellular or Internet services where possible (such as the AskRail app); (2) study other means of delivering this information ahead of time or in real time via other mediums to communities outside of cellular range; and (3) that these communities be consulted in the development and implementation of the plan:**

I believe that sharing data is extremely important so communities and first responders are prepared in the case of an accident. That is why I issued Protective Direction 36, which improves the information communities receive about the dangerous goods crossing through their jurisdictions.

The Government agrees in principle with this recommendation. Transport Canada will continue to work with municipalities, first responders, and other stakeholders on how to improve information-sharing, recognizing that technology is constantly evolving, and paying particular attention to the communications issues faced by communities outside of cellular range. Currently, dangerous goods regulations require that railway operators provide CANUTEC, Transport Canada's 24-hour emergency centre for incidents involving dangerous goods, with data, so that first responders have the necessary information to respond effectively to an incident.

18. That advance notice and opportunity for consultation with municipalities be provided on rules and any exceptions to rules:

The insights that municipalities provide can be incredibly valuable. That is why the Government of Canada agrees with this recommendation. Transport Canada plans to introduce a mechanism to provide notice of proposed rules and rule exemption requests, to allow for comments from potentially affected communities.

19. That Transport Canada review whistle-blower protection provisions to determine if their inclusion in safety management systems provides the appropriate framework for responsible and effective raising of operating safety issues:

The Government of Canada agrees with this recommendation. There are mechanisms that exist now to protect whistle-blowers; however, these mechanisms will be reviewed as part of the previously mentioned mandatory legislative review of the *Railway Safety Act*.

Thank you again to the Committee for their time and energy on this issue. We all agree that a safe rail network in Canada not only ensures safer communities, but allows rail transport to continue its historic role as a critical enabler of the Canadian economy. I am committed to continuing to strengthen the rail safety and the transportation of dangerous goods regimes, working in consultation with our partners, stakeholders, and the Canadian public.

Yours sincerely,



The Honourable Marc Garneau, P.C., M.P.
Minister of Transport