



March 24, 2014

Transport Canada
330 Sparks Street
Ottawa, ON K1A 0N8
Canada

Re: Phase II Study – Hazardous and Noxious Substances

Dear Tanker Safety Panel:

Please see attached my written submission to the Hazardous and Noxious Substances study.

Sincerely,

A handwritten signature in blue ink that reads "Donovan L. Case". The signature is fluid and cursive, with the first name being the most prominent.

Captain Donovan Case
General Manager
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Coverage

1. How should HNS be defined for the purposes of a Canadian ship-source incident preparedness and response regime?

There are good examples of this already existing in the world; Norway would be the best in my opinion. Some EU countries have a reasonable system as well. I don't think we should re-invent the wheel but we have to recognize that most Ports and Cities have well established plans for dealing with an HNS Event. Whatever Marine capability has developed should only serve to compliment the existing capabilities rather than creating a new "Ground Up" regime.

2. What types of substances should be included in a Canadian regime for HNS? What is the rationale for their inclusion? What criteria should be used to inform the future inclusion of additional substances?

Obviously only items that pose a real threat to the Marine should be included. I believe that exists in other countries and we should be using that information. Inclusion should always be driven by the risk the substance presents and to some degree by the available means to respond (some items may fall into a category to be self-diluting and while they pose an immediate threat when containing it, it is determined on how rapidly it is diluted into the water). Only substances that will remain persistent in the environment and pose a threat should be included. It should be a requirement for Shippers to provide this information.

3. Should a regime address HNS transported in bulk or in packaged form (e.g. containers), or one or the other? Why?

I think the regime should only address the risk regardless of the shipping quantity, the same as oil. If only dealing with bulk shipments then the assumption would be that the risk is mitigated by smaller packaging, which would be inaccurate. It would however be worth crediting the shipper for reducing the risk.

Prevention

4. What measures are already undertaken, either by government or industry, to prevent ship-source HNS incidents?

To the best of my knowledge most items covered by HNS would be dealt with under existing Industry Guidelines that would identify not only the risks but proper handling, containment, and transportation in some cases. In addition to this, any Companies transporting substances tend to follow all Industry Guidelines and from our experience have their own Best Practices. There are appropriate levels of credible Quality Management consistently available and should be required for all Shippers engaged in transporting HNS.

5. What additional measures should be taken to reduce the risk of a ship-source HNS incident?

Existing terminals and certainly those regularly handling HNS have good processes and procedures in place for the handling of HNS. Again, I would emphasize the need for tying together the existing capabilities of a Port by encouraging greater sharing of information and transparency for genuine stakeholders. Your question implies a need to reduce risk. I tend to think you rather mean to maintain the current high standard. I don't think we have a problem in this Country. I can't emphasize enough that any efforts to establish a regime should be locally driven, managed and monitored at the local level by the existing stakeholders.

Existing Response Capabilities

6. What private-sector capability currently exists to respond to HNS incidents in the marine environment, including at HNS handling facilities, on board vessels that carry HNS, and with emergency response contractors?

Overall there is little information available relating to HNS Response capability in Canada. The shore side capability appears to be more organized although if you are not specifically involved the exact capability can be unclear. There are several specialized contractors and they do not hesitate to utilize Marine resources when required. Again I would emphasize that local emergency response networks are far more organized and any new regime should only serve to compliment that existing capability.

7. What public-sector capability, at all levels of government, currently exists to respond to or oversee the response to HNS incidents in the marine environment?

I am not aware of any actual response capability either federally or provincially beyond Environment Canada and Department Of Environment Advice. The real strength at a public level appears to be within the local Government through Fire Departments and other Emergency Response and HAZMET Teams. Beyond this it is Industry based.

- 8. What response techniques exist for responding to various HNS incidents in the marine environment? Are all of them authorized under current legislation? If not, under what circumstances should they be authorized?**

Any existing techniques for a Marine HNS incident would be limited to containment and perhaps limited recovery for the most part dilution appears to be normal. Contractors for land base spills tend to use similar containment equipment and have on occasion reached out to Response Organizations for assistance. Marine Legislation is vague in my opinion. Authorization should be based on the risk at that terminal or port, it should be represented in an approved plan for that particular substance and the response capabilities identified to deal with a release.

Preparedness and Response

- 9. What preparedness and response requirements should be incorporated into a new HNS regime?**

We need to resist the temptation to treat HNS the same as the oil pollution response regime. Planning and preparedness need to be limited to the risks specific to a ship, terminal, or port rather than assigning a preparedness requirement that is universal. Response plans should refer to the Contractors capable of supporting specific strategies and other response agencies such as Fire Department and HAZMET Team. So it should be the plan that is approved rather than a specific responder.

- 10. To whom should these requirements apply?**

Preparedness and response should be the sole responsibility of the ship, terminal and perhaps ports and limited to the specific substances being transported. Very simply, if you can spill a HNS into the environment, you should be able to demonstrate an ability to clean it up through a plan that demonstrates the capabilities, techniques and the contractors that can support the response.

11. Is the current reporting/record keeping of HNS cargo vessels in Canada adequate to prepare for and respond to HNS incidents? What could be done to improve the quality and accessibility of the information?

The current level of reporting and record keeping of HNS cargos is likely not as transparent as it could be, whether or not it is to the stakeholders, I cannot say for sure. Which probably means it could improve. At any rate, any meaningful regime should ensure every substance has a response plan that is accessible to stakeholders and responders and shipments should be clearly identified.

12. Are there international best practices (ship-source or other) that should be considered when creating a national HNS incident preparedness and response regime?

Obviously the IMO standards would be followed and I mentioned earlier that Norway seems to have an effective regime but I should emphasize again that the existing HNS management for on land response should be respected and any marine response complimentary to that existing process.

13. How do health and safety considerations for both responders and adjacent populations impact preparedness and response for HNS incidents?

Humans become stakeholders in HNS regime when they can be affected by an incident. The Emergency Response plans developed by the responsible party for that particular substance must include public impact predictions and response, and cautions for responders. I emphasize that the responsible party lead this and not the individual contractors executing the response.

14. What scientific advice and expertise is required during an HNS incident? Does this expertise currently exist, either in government or private industry? What expertise needs to be developed in Canada?

Without question the expertise required to respond to an HNS incident exists within Industry, Government at all levels, and particularly at the local level. I think the response plans would clearly identify individuals that would provide the expertise and because of the vast array of cargos, would be variable. It is unreasonable to think that this would be available from one source and it is clearly the responsibility of the parties involved in the venture to develop these plans and identify the correct individuals. I would not see Federal Government taking a leading role in either plan, development or execution; rather their role should be to ensure the plan exists.

15. How should response capacity for an HNS regime be developed? What factors should be considered?

Response capacity is going to be very much driven by the substance in question. The problem this creates for any responder is trying to assemble a correct mix of response capability, for this reason, it is impractical for anyone responder to be expected to amass this capability and pretend to provide a singular source of response. The funding of such a regime would be ridiculous and would certainly not be cost effective. We believe strongly that the only way to develop a response capability is to place the responsibility clearly with the persons involved in the venture, specifically the companies shipping or receiving the substance, the terminal importing or exporting the substance and the shipping company transporting the substance. This way the process can be self-funded by the proponent and response contractors are support only rather for being responsible for developing a plan and purchasing equipment. It is impractical to expect an HNS regime could be developed and administered in the same fashion as the oil spill response regime. The only exception to this maybe with regard to ships themselves which may require a dedicated HNS ship source pollution fund. I do not think the existing ship source oil pollution fund should be ever used to support an HNS regime or response.

Roles, Responsibilities and Legal Framework

16. Should a separate preparedness and response regime for HNS be created, or should the existing Ship-source Oil Spill Preparedness and Response Regime be expanded to include HNS? Why or Why Not?

We believe a separate regime is required for HNS rather than trying to include it in the existing oil spill regime. The reason for this would be related to the variety of substances that could be found in HNS certainly exceeds the variations in oil types. The levels of expertise required to respond to many HNS substances probably exceeds that available within the oil spill response regime and existing response organization. I do see an opportunity for existing response organizations to play a supporting role in HNS response plans. I'll emphasis again that the responsibility for developing and maintaining response plans for HNS really needs to lie with the proponents themselves and that they should be able to utilize the existing response network available within Canada and if necessary be supported by the oil spill response organization. This would represent a fundamental shift in federal expectations allowing the use of CSA 2013 designated equipment to potentially be used to support an HNS response. However I do believe that we need to shift away from this policy anyway and recognize the advantages of a more *Team Based* approach to responding to any on water pollution. However, given the nature of HNS this is clearly beyond the scope of existence of response organizations. The variety of substances, the hazards associated with them, and the response techniques clearly need to be in the hands of Industry professionals that the proponent identifies within their plan. In this case one size does not fit all.

17. Could Canada's Response Organizations (ROs) fulfill the role of responder to certain ship-source HNS incidents, as they currently do for ship-source oil spills?

Canada's existing oil spill response organizations could provide support in certain types of HNS events. On this basis, the proponents plan would have to clearly identify the expectations of the RO and these would of course have to be consistent with their capabilities and approved by the regulator. The only question would then be regarding payment of fees to support the ongoing maintenance of that expectation. If the capability is clearly identified as containment boom or skimming capacity then it would be easy to derive a *Cargo Fee* and to have it applied on a per tonne basis, otherwise we would always have the option of having a fixed dollar amount to support that equipment paid annually, however this should not be necessarily dealt with under a regime. Rather the regime should only place the responsibility for capability on the proponents and allow them to enter into commercial agreements with contractors to support their plan.

18. What factors would need to be considered in broadening the Response Organizations mandate to include HNS?

My comments in Question 17 identify how RO could support a proponents plan. However I do not support the broadening of the response organizations mandate to include HNS. That would be unreasonable and perhaps unwise to assume that level of capability, rather I will restate my belief that the regime for HNS needs to be between the proponent and the federal regulator. The plan itself will only identify how an RO could support the proponent plan.

19. If adopted, should the requirements for an HNS regime be integrated into current legislation, such as the Canada Shipping Act, 2001 and the Arctic Waters Pollution Prevention Act, or should new legislation be created?

HNS itself is very specialized and requires its own dedicated legislation. I have no doubt that portions of the legislation should be carried in or referred to within CSA 2001, however that reference should be restricted to that related to the marine environment. So much knowledge exists regarding HNS outside of existing Marine regulation that it would be foolish to reproduce it within the CSA 2001 or to pretend that we will come up with something better. It might be simply to state the requirement as being that, those engaged in the transportation of HNS by water are required to have response plans in place for each substance and that the plans have to clearly identify how that proponent will respond using resources available, but the technical aspects might exist in other existing regulations or industry guidelines.

20. How should an HNS regime interact with the regulations for the transportation of dangerous goods in Canada?

The HNS regime would have to follow and be consistent with existing transportation of dangerous goods references and terminology and the existing IMO requirements. We should follow the IMO lead on this and if necessary look to a European model or Norway for example. Duplication must be avoided though.

21. What role should the Canadian Coast Guard play in an HNS incident?

Canadian Coast Guard has no more knowledge or capability regarding HNS than an oil spill response company, therefore, their involvement or role would be similar to an oil spill response organization. The real knowledge to deal with HNS exists within industry and smaller government agencies such as local Fire Departments and the responsibility of this regime needs to lie with them not Coast Guard.

22. What are the current roles and responsibilities of other levels of government (provincial and municipal) in this area? Are any of these governments considering new prevention, preparedness and response requirements that could be of benefit to a national regime?

In my opinion provincial and municipal governments have a greater understanding and role regarding HNS response. After all, they have been in a more organized state for a longer period of time, also the industry itself is in a greater state of advancement and ultimately I think these stakeholders should be the ones driving a HNS regime rather than pretending that it exists within either Transport Canada or Coast Guard. Transport Canada should clearly identify the need but leave it to the stakeholders to determine the appropriate response capability, after all, local government is going to be more interested and involved than federal resources now, then it should remain that way. I am not aware of any specific new prevention and preparedness for a response being considered, however local industry handling bulk HNS have developed plans to deal with environmental releases and these are acceptable to both municipal and provincial authorities. A national regime should only ensure that the proponents plan can be executed anywhere within Canadian territorial limits so this will require the ships and terminals handling HNS to have plans that cover it for the entire transit route within Canadian waters. This is why the proponents themselves need to have the flexibility to deal with potentially multiple contractors, municipal and provincial agencies to support their response plan rather than thinking a single responder will meaningful cover vast areas where the risk is presented by a large and diverse list of hazardous and noxious substances.

23. What other parties (i.e., first response agencies, health agencies, marine services, etc.) have a role in the preparedness for or response to ship-source HNS incidents? What role could they play?

The response plans developed by the shipping company terminal and perhaps port need to clearly identify the persons that will be developing and executing the response to an HNS incident. Within this, I would expect to see industry professionals, existing response agencies, nominated contractors, and supporting agencies such as provincial hospitals, local emergency response, police, HAZMET, etc., all clearly identified and considered as stakeholders supporting that plan. The proponent or holder of the plan would be responsible for maintaining the capability with that stakeholder and more importantly the relationship. For the regime to work effectively it needs to be largely regulated and monitored by that group of people as they ultimately are providing that assurance to the citizens. Transport Canada should be looking for the assurance of that diverse group of stakeholders and the proponent that the response plan adequately addresses the risk and is executable.

24. Should responders be provided immunity from liability in the context of their response, as they are in the Ship-source Oil Spill Preparedness and Response regime under the Canada Shipping Act, 2001?

Of course. Failure to provide immunity to a responder removes any incentives to participate in response activities. Immunity should be limited to the responders only with the proponents carrying the risk.

25. How could a future HNS incident preparedness and response regime be financed or funded?

The funding of an HNS regime should be entirely by the proponent moving the cargo within Canada. If the proponent is responsible for the plan and for engaging the appropriate contractors and agencies, then they will have to fund any specific requirements for equipment, training, and personal to support that plan. This is far better than thinking a single national regime that covers all the HNS risks could ever be administered through a single fund or be nearly as affective. The regime needs to ensure that industry has the plan and that the plan can be executed and then leave the industry to manage and maintain that. I do not think funds from the oil spill regime or the ship source oil pollution fund should be used to support an HNS regime or incident.

26. How should an HNS regime be overseen and enforced?

Given the current level of Federal involvement in HNS, it would be more practical to administer an HNS regime through the legislation only. The existing HNS response capability is administered affectively through Industry, Municipal and Provincial Agencies. I would propose that we recognize that the marine portion is merely a modification and that we should capitalize the existing expertise within this group of people and allow them to form the body of enforcement and monitor.

Research and Development

27. How should priorities for HNS-related research and development be established?

HNS related research and development is clearly a joint Industry/Government responsibility. At times it may be appropriate to include stakeholder groups based on the contribution they have to the research.

28. Who should be responsible for funding and conducting this research?

Where I am proposing a regime that is federally legislated and the response capability planned and executed by the proponent, it is clear to me that the funding of the response regime should and will easily be funded by the proponents. I see no advantage in creating complicated fee structures to try and broaden the use of funds. The plans for each type of movement should be specific enough that the proponents can fund the response planning. Even if a port is accepting a wide variety of HNS substances, they can still form the local response capability and fund at the local level without creating a complicated tariff that is costly to administer.