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Chair

The Honourable Judy A. Sgro

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• (1535)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I'll call the sixth meeting of the Standing Committee on Transport, Infrastructure and Communities together. Welcome, everybody.

Mr. Godin, welcome on your side.

Ms. Dabrusin, thank you for filling in today.

We have our parliamentary secretary, Ms. Kate Young, who is attending the meeting as well today.

I'm going to turn it over to our representatives from the Department of Transport. We're doing a very important study, and I'll look at exactly what's been done since the last time you were before the committee.

We have Laureen Kinney, the assistant deputy minister, safety and security; Brigitte Diogo, director general, rail safety; and Nicole Girard, director general, transportation of dangerous goods.

Welcome. We're glad to have you here.

Ms. Kinney, or whoever would like to go forward, go ahead, please.

Ms. Laureen Kinney (Assistant Deputy Minister, Safety and Security, Department of Transport): Good afternoon, and thank you, Madam Chair. I would like to begin by thanking the committee for the opportunity to speak today about the work we are doing to continuously improve railroad safety for all Canadians.

Rail safety and the safe transportation of dangerous goods by rail is a priority for Transport Canada. The department has a rigorous and robust oversight regime in place to monitor compliance with rules, regulations, and standards through audits and inspections, and to manage safety issues on an ongoing basis. The department does not hesitate to take enforcement measures when required.

The Transport Canada rail safety oversight program includes conducting audits and inspections. These oversight activities are planned annually, reviewed regularly, and revised as required using evidence-based risk indicators. Common risk indicators include accident investigations, safety records, results of previous inspections, and safety studies. The department is on track to complete approximately 33,400 rail oversight activities in 2015-16, which represent a 4% increase compared with 2014-15. The year is not yet complete.

Overall, Madam Chair, in addition to the oversight activities conducted by Transport Canada every year, the rail safety regime has at its core a requirement that railway companies have a safety management system in place for integrating safety into day-to-day railway operations.

An SMS requires railways to take responsibility for managing the safety of their operations by identifying safety concerns, assessing the level of risk they represent, and taking measures to mitigate those risks, where required, while building a safety consciousness into their day-to-day operations at all levels of the company. This is also achieved by involving company employees in all the processes of the system, either by consulting with them, communicating to them, or keeping them informed on risks found and how they have been dealt with, and by allowing employees to report safety issues to the company.

A safety management system does not replace the rail safety regulatory regime. It is supplementary and complementary to it. Companies must continue to meet the requirements set out in the Railway Safety Act, as well as all the other associated regulations, rules, and engineering standards. The regulations do not replace, suppress, or precede the act or its other instruments. Safety management systems are intended to enhance safety by having companies put formal systems in place to proactively identify and address safety concerns, measure the risks they represent, and implement remedial action to mitigate those risks. Companies are expected to identify and manage their safety risks before Transport Canada's intervention and before major railway safety issues arise. Transport Canada remains committed to continually improving the rail safety regime in Canada and the safe and secure transportation of dangerous goods. In this context we welcome the committee's motion to begin a study on rail safety.

At this time I'd like to give you an update on our responses to the recommendations made in the report titled "Review of the Canadian Transportation Safety Regime: Transportation of Dangerous Goods, and Safety Management Systems", which was tabled in March 2015. In the report, in addition to recommendations where action was already under way, there were three specific recommendations related to rail safety ongoing.

The first was for Transport Canada to ensure it has an adequate number of transportation of dangerous goods and rail safety inspectors to fulfill its oversight requirements. Transport Canada continuously analyzes its workforce and focuses on recruitment and retention of staff to ensure it has the necessary number of oversight personnel with the required skills and competencies to plan and conduct oversight activities. As of December 2015 we had 137 oversight personnel in rail safety and 122 in the transportation of dangerous goods directorate. As in any workplace, the total workforce can fluctuate at any given time due to changing demographics, promotions, retirements, and other factors.

The second recommendation was for Transport Canada to implement all of the recommendations in chapter 7 of the Auditor General's 2013 fall report regarding oversight in rail safety.

• (1540)

As you are aware, Transport Canada developed an ambitious and comprehensive action plan to address the recommendations in the Auditor General's fall 2013 report. Implementing the plan has been a departmental priority.

In particular, over the last two years, the department has accelerated and implemented a suite of regulations to respond to the Auditor General's fall 2013 recommendations for Transport Canada to address outstanding items of the Railway Safety Act review and the rail safety study conducted by this very committee in 2008. I am pleased to say that as of April 1, 2015, the grade crossing regulations, the railway operating certificate regulations, the railway safety administrative monetary penalties regulations, the railway safety management systems regulations of 2015, and the transportation information regulations have all come into effect.

Lastly, the report cited a recommendation that Transport Canada require the use by railways of on-board voice and video recordings as part of a company's safety management system, consistent with the Transportation Safety Board's recommendation. A Transport Canada-Transportation Safety Board co-led project was launched in May 2015, which established a working group to examine technical requirements and the potential safety benefits of in-cab locomotive voice and video recorders. The intention is to compile a final report on the safety benefits of this technology by the end of April 2016. At the conclusion of the safety studies, we will be in a position to make a recommendation about whether and how to mandate the use of this technology in Canada.

Madam Chair, we take note of the other issues identified in the March 9 motion to begin a study on railway safety and are happy to answer those questions now or at a later date. I would like to reiterate that the safety and security of Canadians is paramount, and we are continuously looking at ways to improve railway operations and the transportation of dangerous goods by strengthening regulations and rules, based on emerging events and trends.

I thank you for your attention. We are now prepared to answer any questions you may have.

The Chair: Thank you very much.

We appreciate your addressing specifically some of the concerns in the motion from Ms. Block and your comments directly in answer to some of those. We appreciate that very much.

Starting the discussion, we have Ms. Block for six minutes.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Thank you very much, Madam Chair.

Welcome, Ms. Kinney, Ms. Diogo, and Ms. Girard, and thank you for joining us today. I do look forward to the study. I know that this is not your first time here. Obviously, with all things transport, you may find yourselves in front of this committee on numerous occasions.

I do appreciate the fact that you've referenced the report, which actually is a large part of our committee meetings going forward. I will just note that on page 2, the report states, "Over the last year, the federal government has been very active and has implemented a series of new rules". This is a report that was tabled in March of last year, so over that previous year the federal government was very active and "implemented a series of new rules, regulations and standards to strengthen the transportation of dangerous goods regime."

On page 4, it speaks to the point that, "Transport Canada signalled its intention to foster more collaborative rule-making in its response to the interim report on rail safety." My first question would be this. What examples can you give us of "more collaborative rule-making" implemented by Transport Canada since the parliamentary report was published in March of 2015?

Ms. Brigitte Diogo (Director General, Rail Safety, Department of Transport): Since the report came out there were three main rules that took effect. The latest one was the rule on the key routes of key trains, which was a follow-up to an emergency directive that was issued following the Lac-Mégantic accident. The rule became effective on February 19, 2016, and made permanent some of the provisions of the emergency directive in terms of the requirement for railways to do risk assessment, so it provided the frequency of risk assessments. It also imposed some speed restrictions.

The rules, as well, included additional inspections that railways or companies are required to do on their infrastructure, in particular on track inspections.

Finally, the rule included a provision on how the railway companies are to work with municipalities and other levels of government on their risk assessment. In that particular example there were several exchanges and discussions between Transport Canada, the Railway Association of Canada, as well as the Federation of Canadian Municipalities, in terms of what the mechanisms for consulting municipalities would be and how that relationship would work. That's one area.

Another area would be the train securement rule. That came into effect in October 2015, and again it was a rule to make permanent the provisions of the emergency directive on train securement. That rule included a number of things; namely, the fact that the railway companies must use a standard chart in applying the number of handbrakes on a train left unattended.

There was also a rule on what additional physical securement requirements must be applied to unattended equipment, such as a temporary derailment. That was in direct response to the TSB. As well, the rule made permanent the requirement that once an employee has applied the handbrakes, they must confirm this with another employee, who must be qualified in that area to be able to receive the information and make a decision or follow it up, if required.

• (1545)

Mrs. Kelly Block: Okay, I just have one quick follow-up question to that.

How does the emergency directive differ from the protective direction 32 that's also referenced in this report?

Ms. Laureen Kinney: Under the two different pieces of legislation that we're talking about, under the transportation of dangerous goods legislation and the railway safety legislation, there are two slightly different mechanisms to achieve much of the same outcomes. The protective direction is also meant to be a temporary requirement that is put into place that has an equivalency to the requirement of regulation and can be enforced by Transport Canada, and that is used when we see something that needs a quick action to respond to a safety issue.

The same thing applies to an emergency directive under the Railway Safety Act. They have slightly different mechanics, slightly different specifics around them, but they're very similar.

The Chair: Thank you very much.

Mr. Badawey, you have six minutes.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Madam Chair.

With respect to page 11 of the summary that I received here, there is some discussion with respect to the responders at the local level, and with that, the need to enable local responders the opportunity or a mechanism that guarantees that a public authority—as an example, municipalities, and of course the emergency services that belong to municipalities—have immediate access to both resources and funds required to provide emergency providers a response in the event of a situation.

How would you address that?

Ms. Laureen Kinney: I can give you a high-level answer to that, and then if you would like more details we could probably turn to Nicole Girard.

The main thing Transport Canada has done over the last year and a half is that it has brought together the emergency response task force, bringing together all the parties that have a role to play in first response.

Transport Canada obviously has a role to play, but it is not the only player. There are many levels of jurisdiction and many agencies, companies, and other parties that play a role, as well as the first responders themselves.

We brought that group together to identify some of the common issues facing first response, including things like communications, incident command protocols, training standards, training opportunities, and certainly the issue of funding for both training and equipment.

An issue that is of key concern, as we have been hearing from first responders, is the level of training the first responders have in response to a particular type of flammable liquids incidents, in this particular instance. In that case, there is some training provided by industry associations, but Transport Canada, with the emergency response task force, has focused on what the training standards are, what they should be on a common level, and how to do training. For example, there was an exercise a couple of weeks ago to provide hands-on training, and there was a protocol developed on education that was just released.

In terms of additionally working on... How would the emergency response assistance plans, which require the shipping companies to provide technical assistance on site in the case of an accident, work with the first responders?

Those have been the main areas we have been working on very hard with this broader group, the general areas we have now focused on.

• (1550)

Mr. Vance Badawey: Thank you.

May I follow up? With respect to the resources, the funding, I am hearing that you are working to that end. Of course, within the preparedness of each different region, you are working with them to ensure their plans are in place and can react to those situations.

I have a question about that. Is there an opportunity for me to get a summary of those you have met with and the protocols you are putting in place in the different regions with respect to whom you are meeting with?

Ms. Laureen Kinney: If there is an interest, Madam Chair, depending on the level of detail you would like to get, there certainly is an outline on our website of the emergency response task force and the members of that group. I think there are approximately 70 of those, representing a wide variety of... There's the Canadian Association of Fire Chiefs, some aboriginal...

Mr. Vance Badawey: If I may, I would like to be more specific than that. May I get a summary of who you have met with and, with that, what the protocols are in terms of the establishment of same, and what situations it would actually attach itself to?

Ms. Laureen Kinney: Madam Chair, if I may, in terms of the general national consultations, much of that has gone on through the emergency task force and is covered in those meeting records, but there have been many other meetings going on at the local level where we work with our remedial measures specialists and our local inspectors on training plans, exercises, and all kinds of questions and answers, so I wouldn't easily be able to develop a list of those.

Mr. Vance Badawey: Once again, Madam Chair, for the third time, if I can have simply a list of those you have met with, as well as the specific protocols that are being put in place with those you are meeting with, with respect to their emergency preparedness, that would be much appreciated.

Madam Chair, my last question.... You mentioned that number three on the priority list you have attached yourself to in the last few months from the review in March 2015 is the required use of on-board voice and video recording. Do our U.S. partners currently have that in place?

Ms. Laureen Kinney: At this point in time, no, there isn't a requirement in the U.S. They are looking at the value of whether voice and video recorders should be used, and we are working closely with them as well, because obviously there are many cross-border issues.

Mr. Vance Badawey: Madam Chair, may I ask for a summary of that as well, to see in fact how far along we are? My concern, quite frankly, is that we want to level the playing field. We don't want to find ourselves, or them, in a situation where we often find ourselves with respect to abiding by certain regulations across the border, especially when you are trading across the border. We do want to have a level playing field for both sides. That way it is a seamless method of transportation.

Once again, I would like to ask for some summary in terms of how far along you are with respect to those discussions.

Thank you, Madam Chair.

The Chair: Ms. Kinney, if you can do your best to send to the clerk a response to the requests of the member, we would appreciate it very much.

Ms. Duncan, you have six minutes.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Thank you. It's nice to see you here again. It's nice to see strong women in the civil service.

I have three information requests that I will put right off the top, and then I have some questions about a number of issues that have been raised.

First, will you provide to the committee all the risk assessment reports that were required under the Transport Canada directive issued in October 2014?

Second, as the Transportation Safety Board has reported that there's insufficient action through the safety management systems to ensure reduced risks, will you provide to the committee the safety management systems for CN and CP for Alberta?

My third request is related to enforcement and compliance policies in staffing. This follows from two issues that have been raised, one by the Canadian Association of Fire Chiefs just this week. They have recommended greater emphasis on proactive safety and enforcement so that we aren't just responding after the fact and leaving it to the first responders. The Auditor General in 2013 raised a number of concerns about the enforcement and compliance approach by Transport Canada, the fact that the audit approach offers minimal assurance of compliance; many inspectors are untrained and given minimal guidance; only a small percentage of audits are completed;

there is narrow focus; the level of oversight is insufficient; and Transport Canada fails to systematically collect and use relevant safety performance risk data.

I would appreciate if you could submit to the committee, so that we can assess changes you've made since then, the enforcement compliance policy for rail safety, with a list of enforcement personnel. Could you indicate who is full-time or part-time, their qualifications, job descriptions, and training requirements? Please provide a breakdown of the time dedicated to paper audits versus field inspections.

I now have some questions for you on regulations.

The Canada Safety Council testified at this committee in 2014 that they recommended whistle-blower protections for rail workers to encourage reporting to prevent incidents. Are these in the process of being promulgated?

• (1555)

Ms. Laureen Kinney: Madam Chair, under the new safety management system regulations that came into effect on April 1, 2015, there is a clause that was part of what was discussed in the previous Railway Safety Act review back in 2007-08, and the legislation was amended in 2013, if I recall correctly, to address some of the provisions of those recommendations. Following from that, the safety management system regulations do include a clause that requires companies to establish a policy whereby employees can report safety concerns without fear of reprisals. That is part of the new safety management system regulations that came into force. They're in a transition phase at this point in time, and we are doing initial inspections and will be getting full-scale audits as of this upcoming fiscal year, so that certainly will be one of the elements that will be looked at.

I should additionally mention that of course all employees at railways are free to report to us, and there is a Transportation Safety Board confidential reporting line, if you will, that is also available. Certainly information comes to us that alerts us as to where we should look for problems.

Ms. Linda Duncan: Okay. Liability insurance was an issue raised in the Emerson report. Can you tell us how frequently the Canadian Transportation Agency reviews and reassesses third-party liability? Have they revised the criteria for coverage so they mirror the new risk factors set out in your railway management system regulations?

Ms. Laureen Kinney: Madam Chair, I'm sorry, but I'm not an expert in this area, and I couldn't speak to CTA's progress in its process of implementing the new requirements under the Railway Safety Act amendments of last year. I could perhaps defer—

Ms. Linda Duncan: Could you get back to us? That would be great.

At committee two years back as well, Unifor recommended that rail mechanics be granted powers parallel to those of airline mechanics to cancel trips when significantly unsafe rail car or locomotives are identified. Are you moving on regulations to extend those powers?

Ms. Laureen Kinney: At this point in time we don't have any published consultation proposals on that element, and I'm not aware of any at this point.

Ms. Linda Duncan: Okay.

I have a quick question, which I don't think we can totally deal with here. It's on the puzzlement in this industrial sector, in which you have regulations and rules. There seem to be different requirements for consultation on the regulations and on the rules. The rules by and large require consultation with only the workers and users. Are you considering amending the legislation to require consultation with cities or the public or first nations whose populations or property might be impacted?

•(1600)

Ms. Laureen Kinney: Madam Chair, if I may, I think the design of the regime for railway safety has been reviewed, as have the two particular examples of 2013 and 2015 when Railway Safety Act amendments were proposed and made.

The regime was not addressed in terms of the breakdown of how rules operate in conjunction with regulations and standards, except in a few areas of how enforcement and compliance could be improved. At this point we are operating under the legislation that exists now, and I wouldn't be able to speculate any further than that.

The Chair: Thank you very much, Ms. Kinney.

Mr. Hardie, you have 10 minutes.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you, Madam Chair. Greetings to all.

We've had a situation over the last 10 years where there has been at least growing public discomfort, and maybe a lack of confidence, in the regulatory regimes with a feeling they've perhaps been diluted, weakened, or put aside in order to remove red tape and allow private operators to do what they do best, which involves making a profit for their shareholders, among other things.

Excuse me if my questions are a bit loaded, but I would like your thoughts or opinions. Are there regulatory gaps? Are there things that you see while sitting there overlooking that balance between allowing the operators to run successful operations and the interests of Canadians for safety? Are there regulatory gaps you can see that you would want a government to look into?

Ms. Laureen Kinney: Madam Chair, I'm not sure how far I can speculate on those kinds of broad questions. I can tell the committee the process of engaging Canadian government agencies, including Transport Canada, on the regulatory side in various initiatives—where we look at reducing red tape and regulatory coordination, and co-operation with the United States for example—is a process that bring us closely into the discussion of safety priorities, and what are the safety priorities. In all cases the safety priorities are our primary consideration. When you look at the mechanism of how things can be done, and when you look with a fresh eye, you do find areas where things can be streamlined or modified. Whether something in

a regulation is a core element that speaks to safety, or it's an administrative process that may or may not be burdensome, those are analyses that are useful to do. We take part in that work on a regular basis.

In terms of where any kind of a regulatory safety issue is raised, or an issue that may be best dealt with by a regulation, it may come up through a variety of areas of findings, such as Transportation Safety Board reports, our own analysis, international incidents, work with the U.S., and others.

When such things happen, we look at the safety implications and look at what new regulations should come forward. I would refer to the point that I made a couple of times in my opening comments. These regimes need to be continuously improved, to be continuously monitored for their effectiveness, and to be updated as required.

Mr. Ken Hardie: Do you have anything on your list right now you think should be a focus of this committee in terms of regulations that may be missing, or are perhaps weaker than they should be?

Ms. Laureen Kinney: I think the issues that have been raised are the issues that have been talked about fairly commonly across the previous committee meetings. I leave that to the committee to further pursue, but as we noted one good example is the Transportation Safety Board's recommendation on voice and video recorders. That's an issue of some complexity, and we're working closely with the Transportation Safety Board on analyzing the problem and considering the options. When the study we're currently involved in is finished, then we can look at what might be appropriate for regulation.

Mr. Ken Hardie: This may be more perception than fact, so feel free to straighten me out if I'm leading you down the wrong path.

It seems that short-line operations in Canada arise in part out of the fact that some of these operations were not economically profitable, or at least sustainable for the main-line railroads. We've created a class of railway operation in Canada that may be susceptible to weak economic performance and the risk, or at least the perception of a risk, that things like safety will be ignored because there's simply not the money to turn a profit and make it all work.

There was to have been an audit of the short-line railways completed in early 2015. Has that been completed, and if it has, what were the findings?

•(1605)

Ms. Laureen Kinney: Madam Chair, I'll give a general comment, if I may. I would suggest that different types of operating companies or various types of organizations have different challenges. A very large organization may be large, complex, and difficult to necessarily move quickly, and smaller operations have their own complexities, it's true. Some of them certainly have financial challenges, but of course, that applies to larger corporations in some cases as well.

In terms of the letter of safety advisory that was written by the Transportation Safety Board in regard to training of short-line railways, I'll ask Madam Brigitte Diogo to respond.

Ms. Brigitte Diogo: In response to the letter that we received from the Transportation Safety Board, all the short lines did submit to Transport Canada their training packages. The review of this information has been completed and in the new fiscal year, starting in April, where we conducted the audit of the safety management system, training will be one of the areas that we would continue to look at. But I would like to add that the qualification of railway employees is something that we monitor on an ongoing basis as part of our risk-based inspection to ensure that the companies remain in compliance with the regulations in the act. Part of that is really dependent on assessing whether the employees all qualify to the highest level to do the work that they are doing.

While we have initiated a specific initiative as a result of the TSB letter, it is really an area that we see as a key for us to follow up on an ongoing basis.

The Chair: Thank you very much, Ms. Diogo.

Mr. Sikand.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): I'm using Lac-Mégantic as an end point when I'm asking this question, so 2013.

In 2003, the work-rest rules for railways' operating employees were established with a requirement of fatigue management plans, and then that was updated and replaced in 2005. Then in 2008, Transport Canada established a working group to address fatigue, as well, and even brought in a university professor from Denver. That was again updated in 2011. Then Transport Canada's rail safety branch assessed the railway companies' implementation of these fatigue management plans and found that a lot of them did not meet the established criteria.

Why can't we put this to rest, the fatigue that's going on with the rail companies?

Ms. Laureen Kinney: Maybe I'll just start, Madam Chair, then ask Ms. Diogo if she has anything to add in more detail. Fundamentally this is an issue that is always of concern. It's again one of the key elements that you need to think about in the safety of any transportation system. Typically you will have evolutions of the thinking. You'll have evolutions of the requirements and you'll have evolutions of the regulations, and that is triggered by a whole variety of new research that comes along, events that occur in the world, etc. That's the case certainly in rail safety and that has been the case over the last years. It's the case in other modes as well.

I think that the work has continued to go on, and I believe that, in the new safety management system regulations, there is a requirement for fatigue management plans that's been updated from the lessons and the learnings that we've had over the years.

Have you got anything specific that would be helpful?

Ms. Brigitte Diogo: I would say that the issue of fatigue has been an area of continuing discussions. I'm not able to comment on the various reviews or updates you referred to, but in the new SMS regulations that came into effect on April 2015 have strengthened the requirement for railway companies to take into account signs of

fatigue in scheduling their employees. We continue to look at that aspect as we start audits in April.

I should add that under the advisory council on railway safety, which includes railway companies, Transport Canada, and bargaining agents, there was a working group set up to look at the issue of fatigue and to bring forward recommendations to the minister. That working group has since been disbanded because the members of the working group could not agree on specific recommendations to be presented to the minister. The department is now taking a look at what is coming out of the audits, but we intend to engage with all the players in terms of how we'll move forward on this file.

● (1610)

Mr. Gagan Sikand: Would it be possible to apply the Canadian air and marine fatigue guidelines to rail?

Ms. Brigitte Diogo: That's one of the options. All the options will be on the table as we discuss how to improve the management of fatigue in the railway industry. We will certainly be looking at how the issue has been addressed in other modes to inform our options.

Mr. Gagan Sikand: Thank you.

The Chair: Thank you.

Ms. Watts.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): Thank you, and my thanks to all of you for being here. I appreciate your reviewing the report on the transportation of dangerous goods.

The emergency response task force of July 2014 has 33 recommendations. I understand that you're going through this document and implementing those recommendations. Is this a living document as you go forward? I'm looking here at the training for first responders and what it entails. I expect that this would continue to move forward.

Ms. Laureen Kinney: The task force had a certain mandate and a certain period of operation. It has now had its last meeting. We expect to have something in the order of 40 recommendations provided by the task force. About a third of those recommendations have been implemented, and others are now being analyzed.

I should just flag, though, that many of these recommendations are intended for other jurisdictions, other areas of responsibility. Incident command systems of first responders, for example, is a responsibility of others, but Transport will work very proactively with others to help promote them. The task force and the recommendations are now at an end, and those recommendations will stand. We will pursue, to the degree that we can, the implementation of those recommendations and certainly be available to report on them.

Ms. Dianne L. Watts: Perfect. Thank you.

In looking at the documentation, the legislative framework and the enforcement and monitoring, in term of risk assessment.... I understand defining what that risk is. I mean, there are several risks on several fronts.

I'm sure that in any coastal community this occurs, where rail lines are built through flood plains where there's been an erosion of the foreshore along the ocean. In terms of all of those things—and looking at rising water levels, two metres—we know down the road there are going to be some significant issues. How are these issues assessed and identified? How will they be mitigated?

• (1615)

Ms. Laureen Kinney: In an overview, the specific requirements for risk assessments for key routes and trains, which carry certain numbers of dangerous goods, etc., are very detailed and specific in terms of the factors that need to be considered. Those include things like the route, the grade of the slope, and the types of ground area, whether or not, for example, the rail route passes over a body of water, a fragile environmental area, and/or perhaps the source of water for a community.

There are requirements for how municipalities, who may have their own concerns and issues, can feed those into the railway as part of their risk assessment. That's now laid out in the actual requirements for key trains and routes in the rules. That is an important feature of how that part works. Generally, in the same kind of approach, looking under the safety management systems in other areas that are not covered by the key trains and routes, there is a requirement to do risk assessments and the same kinds of factors should be taken into account.

Then it's up to the railway to look at how those work. What are the risks? How would they mitigate those? When we look at them as part of our safety management system audits and our other inspections for the rules, we'd be looking at the sufficiency of those and whether they've been adequately dealt with. If not, there are other tools to be looked at.

Ms. Dianne L. Watts: Is this under the total responsibility of the rail line, the rail provider?

Ms. Laureen Kinney: I would frame it as the initial responsibility of the operators who know their own particular operation, who know the loads that they carry, where their routing may be, the type of terrain, and what kinds of local risks there are along that terrain.

Then they get the feedback from municipalities along that route, for example, and the first responsibility is for the company to look at those questions and to look at the appropriate risk management approach. Then it is Transport Canada's responsibility to look at the sufficiency of that and Transport Canada can take action if more is required, but clearly, the initial responsibility is with the railway company.

Ms. Dianne L. Watts: In terms of the rail lines coming up from the United States, how is that information gathered?

If it's a reporting out system, and I would assume that it is, you would get reports on the rail routes from the rail companies looking at whatever issues they are looking at, and you would have a look at that.

How does that function if it's from the United States?

Ms. Laureen Kinney: If a railway is operating in Canada, then it is under Transport Canada's jurisdiction and it is required to follow all of the rules, requirements, and regulations. They would be required to do all of these risk assessments. They would be applying

those to their Canadian operations. We would carry out the regulation, inspection, oversight, and audit evaluation.

The Chair: Mr. Iacono, you have six minutes.

[Translation]

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Thank you, Madam Chair.

Thank you for joining us today, Ms. Diogo.

I would like to talk about railway companies' use of remote control technology.

Canadian railways have been using remote control technology in some switching yards since the 1990s to reduce operating costs and increase efficiency. The concerns raised by the use of such technology include inadequate training for users and support employees, as well as the reliability of the equipment.

Given that the three largest importers and exporters in the railway sector are China, the United States and Germany, what steps, if any, have been taken to look into the best practices those countries have adopted in regulating the use of remote control technology and the related training? What steps have been taken to improve the reliability of the equipment?

Ms. Brigitte Diogo: We are well aware that the equipment exists, but it is not certified by Transport Canada.

That technology has indeed been used since the 1990s. Transport Canada is mainly focused on providing training for users and ensuring that the operating conditions for the equipment are properly laid out in the regulations. Transport Canada is also responsible for management and risk analysis. That is one of the tools the department has to ensure that the equipment is used safely.

As for inspections, the Transport Canada inspectors look at the use of that equipment and other equipment in switching yards and take action when necessary in compliance with the law.

• (1620)

Mr. Angelo Iacono: Thank you.

A bit earlier, you said there was some disagreement over fatigue management. What exactly is the disagreement that has prevented the implementation of appropriate measures?

Ms. Brigitte Diogo: The task force did an analysis to determine how to improve fatigue management within industry. The task force has conducted comparative studies.

The task force could not agree on the recommendations to the then minister on what to consider in terms of regulatory amendments or industry requests to submit new regulatory proposals.

After speaking to a union and to industry, we concluded that the task force would not be able to make any further headway and that, given the context, it was not worth their while to continue working on the issue.

[English]

Mr. Angelo Iacono: You mentioned that there are complexities associated with voice and video recording regulations. Can you please describe those complexities?

Ms. Laureen Kinney: There are a significant number of issues that are being looked at in terms of the study that's going on right now. Some of those issues address the technical issues; what are the standards? If you're going to mandate a particular type of equipment, what kind of equipment? What kind of reliability? What kind of durability of recordings, etc.? What's the positioning? What's the placement? What is the data that you want to gather? There are a number of areas to be looked at there.

There are also areas to be looked at in terms of the objectives of the safety and fatigue information, and what other kinds of information might come out of this. In general, what is attempted to be achieved with the use of the recorders?

Then there is the issue of how that correlates with the employees who would be subject to the surveillance of those video recorders. There's a good body of work out in the public and from the various privacy commissioners and others as to some of those issues, and they do come under a variety of umbrella legislation in other areas as well that should be looked at.

Finally, there are the regulatory issues and the legislative issues that would be required to put in place an appropriate regulatory regime. There are many questions to be addressed at this stage.

The Chair: Mr. Godin, you have five minutes.

[Translation]

Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC): Thank you, Madam Chair.

Ms. Kinney, Ms. Diogo and Ms. Girard, thank you for participating in this exercise with the committee members.

As parliamentarians, we have a duty to help our society advance. I will focus on more specific issues. There are regulations, studies and motions. But ordinary people, average Canadians, are a bit lost in all that.

I would like you to give me an idea of the situation as it was prior to July 2013 and the situation as it is today. You probably know that I am referring to the disaster in Lac-Mégantic. I think we can use that incident to move things forward.

What did the situation look like before July 2013 and what does it look like on March 21, 2016?

• (1625)

Ms. Laureen Kinney: Do we have one or two hours to properly explain all the changes?

Mr. Joël Godin: You could come meet with us again.

Ms. Laureen Kinney: Transport Canada has done a lot of work related to the tragic events that were just mentioned. It is almost impossible to describe all the changes we have made. Some of the changes have to do with the rules, processes, inspection methods, as well as rail safety, dangerous goods

[English]

and new requirements or standards for cars.

[Translation]

There are many differences between DOT-111 and higher quality tank cars. We are currently waiting for a TC-117. A list of all the changes is posted on the Transport Canada website. If the committee so wishes, I can send the list to the chair.

Mr. Joël Godin: Could you use percentages to give us a concrete idea of the rail safety situation in Canada before July 2013 and the current situation? We know that improvements have been made, but other things could surely be done in the area.

Could you quantify the change in terms of percentage?

Ms. Laureen Kinney: That's nearly impossible to do. After experiencing such an event, we wanted to focus on the most important issues, as well as the recommendations made by the Transportation Safety Board of Canada. As I was saying earlier, the work will continue.

Mr. Joël Godin: In practical terms, all freight trains in Canada must be operated by two crew members. Could you confirm that this is currently the case?

Ms. Laureen Kinney: Yes.

Mr. Joël Godin: The rule is being applied and you are sure of it.

How many DOT-111 tank cars are still currently being used in Canada? If you have a breakdown of the figures, where did we start and where are we now in terms of that? Will we manage to eliminate those cars and, if so, when?

Ms. Nicole Girard (Director General, Transport Dangerous Goods, Department of Transport): The first stage was completed last year, when we stopped using the most dangerous tank cars for transporting hazardous goods. We eliminated at least 5,000 of them. We did that thanks to one of our protection guidelines.

As for the DOT-111 tank cars, when we published our regulations in May 2015, we estimated the number of those cars to be about 150,000 across North America. We estimated the Canadian fleet to have contained about 7,500 of them when the regulations on the new requirements came into force.

We are currently looking at the transition of companies when it comes to the configuration of the TC-117 tank cars and the new configurations that will go into effect as of May 2017. We have made sure to be on the same page on both sides of the border with our U.S. counterparts.

• (1630)

Mr. Joël Godin: You were saying—

[English]

The Chair: Sorry, Mr. Godin, you were well over your time. I wanted to ensure the witness had sufficient time to answer your question.

Ms. Duncan, you have three minutes.

Ms. Linda Duncan: Thank you.

I have so much to ask. I have two more questions on regulations, following on what my colleague just asked.

Are there amendments in process to expand the category of dangerous goods, including ammonia and chlorine? How about bunker C oil, and how about bitumen, which is now being called “crude”?

Ms. Lauren Kinney: Madam Chair, could I just ask for a clarification? Amendments to increase the definition of “dangerous goods” —

Ms. Linda Duncan: That's correct.

Ms. Lauren Kinney: —as opposed to the requirements in the ERAPs or...?

Ms. Linda Duncan: It's my understanding that the Emerson report made that recommendation.

Ms. Nicole Girard: Just to make sure I understand, chlorine is already identified and classified as a dangerous good. But we are continuing to study the behaviours of chlorine, for example, just to make sure our regulatory regime is appropriate.

Ms. Linda Duncan: And ammonia...?

Ms. Nicole Girard: Same thing.

Ms. Linda Duncan: How about bunker C and bitumen, or crude?

Ms. Nicole Girard: We are continuing our studies on crude oil. Part of our crude oil research, which we published earlier this summer, looked at the different types of crude oil. We're continuing to do our exercise in terms of understanding other characteristics and behaviours.

Ms. Linda Duncan: Related to that, there were recommendations in 2015 by the committee for regulations for the transload facilities. Of course, there are already 24-hour crude loading facilities in Alberta and another one being proposed.

Are those regulations forthcoming? What was your position on the proposed environmental assessment of the Hardisty terminal?

Ms. Lauren Kinney: Ms. Girard may have something to add, Madam Chair.

We have regulations in place that cover transloading facilities, and they are one of the primary targets of inspections. Those happen on a regular basis.

I don't have any comment on the environmental assessment process. It's not something I'm a specialist on.

Ms. Linda Duncan: Those have been in place since 2015.

Ms. Lauren Kinney: The inspections of transloading facilities...?

Ms. Linda Duncan: No, the actual regulations for the transload facilities.

Ms. Nicole Girard: Our national oversight program has prioritized our inspection of transloading facilities, so we already have it in place.

Ms. Linda Duncan: Perhaps you could send those to me, because I haven't been able to find them.

The Chair: You have 40 seconds left, Ms. Duncan.

Ms. Linda Duncan: My concern in my riding... I have a highly populated riding. Essentially, my riding is being used as a parking lot for dangerous rail cargo, including blocking major intersections, all with no security.

How is this activity being addressed in the risk management reports?

Ms. Lauren Kinney: There are already requirements for train securement. In the emergency directive and the then-following rule that came into place in terms of train securement, there were requirements for how trains needed to be left secure so that they were protected from trespassing and other risks as well as runaway trains and other types of dangers. Those are addressed in the regulations, or the rules in this particular case. There is also a focus put on by our inspectors in those areas, as well.

In terms of blocking areas, there are also requirements in our regular operating rules as to what can be done in that regard. Again, if there is a complaint about a particular area, then our inspectors typically get involved with the community.

Ms. Linda Duncan: Nothing has been resolved.

The Chair: Thank you very much.

Ms. Block, you have six minutes.

Mrs. Kelly Block: Thank you very much, Madam Chair.

If you'll excuse me, I'm dealing with a really bad cold.

I think there are a lot of questions we have that tend to overlap one another. But I want to go back to the railway operating certificate regulations that were finalized in November 2014 and ask if all railways operating in Canada have met the new regulations that were described in that document.

Ms. Brigitte Diogo: In terms of the regulations, any new railway companies must comply with the requirement to have a railway operating certificate from day one. The existing railways have until January 2017 to comply, and the applications are coming in.

Mrs. Kelly Block: How many different rail routes in Canada require risk assessment? This goes back to a question my colleague asked. How many require risk assessments, and how long is the average rail route or segment?

• (1635)

Ms. Brigitte Diogo: I can answer that question. We look at the requirement for risk assessment in terms of company rather than type. There are definitions under “key route” and “key train”, in terms of where the corridor or the route risk assessment must be conducted.

When the emergency directive was first issued, there were nine companies that fell under it. Among those, five had to submit risk assessments because of the volumes of dangerous goods they were carrying. Since then, the number of companies has fallen to four. The four companies that currently carry 10,000 or more loaded cars of dangerous goods are required to provide us with risk assessments.

The new rules require that the risk assessment be done, at a minimum, every three years. That is complemented by the requirement of the safety management system. If they are making significant changes to the operations, they are also required to conduct risk assessments, and to make those available upon request.

Mrs. Kelly Block: Just to make sure I understand you correctly, you said that the risk assessments are dependent upon the company that is involved. There were nine companies and now there are four.

Ms. Brigitte Diogo: Yes.

Mrs. Kelly Block: Do they also include, as you've said, dangerous goods and the route that is being travelled?

Ms. Brigitte Diogo: The requirement of the rule applies to companies that carry a certain volume of dangerous goods. There were nine companies that indicated that they were carrying a certain volume of dangerous goods. Of those nine, some had a volume at a level that required them to submit risk assessments, so five out of nine were required to submit risk assessments.

Mrs. Kelly Block: What are the volumes?

Ms. Brigitte Diogo: The definition of a key route is any track that carries 10,000 or more loaded tank cars of dangerous goods. The department is currently working with the National Research Council to look at that definition and see whether that threshold remains the correct threshold or not.

Mrs. Kelly Block: Do these companies include companies that transport goods from the United States into Canada?

Ms. Brigitte Diogo: Yes.

Mrs. Kelly Block: I have one last question. What research are you doing or conducting on track conditions to discourage rail companies from operating trains at lower speeds, rather than upgrading their track, for example? Will new regulations follow, or is this a voluntary adoption approach?

Ms. Laureen Kinney: If I may just briefly outline the way that the railway regime is structured, there are various classes of track. Depending on the speed that is desired to travel, a certain level of maintenance and quality of investment in that track is required to travel at that speed. There is a range across Canada, across various railways and railway tracks, as to what speed is planned and proposed, and therefore what level of maintenance and investment is done on that track. This becomes, to some degree, a business decision of the railway. However, if a railway is operating at any particular class level, there are a very significant set of requirements for what must be done to be able to travel at that speed.

You will see situations where, for example, a temporary repair needs to be made. At that point, it might be that the train could operate at a lower speed, so a lower track speed is applied while the repair is made, because it doesn't meet the requirements for a higher level. Then, once it's repaired, it could go back to the higher level.

In general, it's a business decision.

The Chair: Thank you very much.

Ms. Dabrusin you have six minutes.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you.

I'd like to follow up on the question that Ms. Block just asked. In looking at the report from March 2015, on page 10 it reads:

To ensure that railway companies do not use speed reductions as a replacement for track maintenance, the federal government is currently conducting research on track conditions which it hopes to use to encourage industry to be more proactive in upgrading railway infrastructure.

It then refers to amendments that were going to come into force on April 1, 2015, to help support that. I know there's been some discussion about track speed, but I was wondering if you could let me know what research has been done on that specifically.

• (1640)

Ms. Brigitte Diogo: In terms of research, it is ongoing. We all participate in research with our U.S. counterparts on rail integrity, rail wear, and what standards need to be established in this area. We also continue to take a look at what we can learn from accidents that have occurred, since Lac-Mégantic, that were due to the track. That work is ongoing.

The reference that you have here is about the transportation information regulations that came into force on April 1, 2015, whereby companies were required to submit certain sets of data to Transport Canada starting January 1, 2016.

We have received that information and it will be what we call "leading indicators", so what is the information we need to review in advance to prevent accidents rather than taking into account...? Before that, we had information post-event, or indicators post-event. So that information is part of what we would analyze and take into account regarding how we set our inspection priorities starting in April and on an ongoing basis. It's a source of information to study and to determine where we need to act.

Ms. Julie Dabrusin: Just talking about inspectors, the number one recommendation in this report—and it was addressed in your initial comments, Ms. Kinney—was about increasing the number of inspectors. You said a number of considerations were being looked at to determine the appropriate number of inspectors.

Could you outline for me what those considerations are that are being taken into account?

Ms. Laureen Kinney: The way that Transport Canada manages the national oversight plan each year, which is a key part of the work that is done to maintain the oversight of the railway safety regime and other safety regimes, is to do a national oversight plan. That plan looks at what the risk factors are; what is happening with companies; what's been the history, the records, etc; and as we get these new leading indicator data we will be able to incorporate elements like that.

As you look at that you develop a plan for what the risk-based inspection plan is: what our highest risks are, what the intensity is, where the locations are, and where that inspection activity should take place. It includes a variety of types of oversight, including planned inspections and reactive inspections, where you see an incident of some kind occurring or an event that requires more investigation, or simply a company that has had a compliance problem or a safety issue that you're following up on.

There's a wide variety of work. That work is put together each year into a national oversight plan, and then it is applied. That national oversight plan largely gives us the number of inspectors that you need to do that. As that changes over time, you have to review and look at what your requirement is, but generally it stays on a relatively stable basis from a year-to-year requirement.

There are some other requirements that are included in our analysis as well, but those are the main ones.

Ms. Julie Dabrusin: Is that oversight plan for the past year available publicly?

Ms. Laureen Kinney: I think we may have mentioned, and I certainly did mention in the beginning of the comments that I made, that our annual plan for this year had in the vicinity of 33,400 inspection types of activities planned.

Ms. Julie Dabrusin: I was talking about...because you said in regard to the risk assessments that there were certain locations and certain high risks that had been identified. I was wondering if that was available.

Ms. Laureen Kinney: No.

• (1645)

Ms. Julie Dabrusin: I was going to request that, because I would like—

Ms. Laureen Kinney: It's a bit of an iterative process where regional offices develop their information and then feed it into a national system. Then a national assessment is done, and you go back to see what the timing is. It's quite an iterative process.

Ms. Julie Dabrusin: When the assessment was made you knew the goal would be 33,400. There was some type of oversight assessment that had been made to track that and where it would be done. Can I please have that information?

Ms. Laureen Kinney: I would suggest the committee might want to look, Madam Chair, at what type of information you'd like us to provide in terms of.... I'm just not quite sure I understand.

Ms. Julie Dabrusin: That was just one. I was looking at the considerations. There were specific considerations you listed that went into the assessment you would be targeting. You said a number of 33,400, I believe, and a number of inspectors. I think you mentioned high-risk areas. Off the top of my head, I didn't have all of them, but there were certain things that you had taken into account as an oversight plan that would lead to that number, so I think it would be helpful to have that information.

Ms. Laureen Kinney: I think we can provide a summary of that, if you like.

The Chair: We'd appreciate that very much.

Ms. Duncan, you have six minutes.

Ms. Linda Duncan: I notice in the information provided, and in the legislation, that industry, at least by policy, consults with the municipalities as they're doing the risk management studies. But are they also required to disclose those and get feedback from the municipality—for example, from the first responders—to see if they're satisfied with the risk assessment and the response?

Ms. Brigitte Diogo: The key route and key train rules require them to consult and to take into account the concerns expressed by

municipalities in their risk assessment. There is a requirement for railway companies to respond to municipalities on how those concerns are being mitigated.

Ms. Linda Duncan: Do they then reveal that to the people who raised the concerns?

Ms. Brigitte Diogo: That's the expectation. That's what the rule has—

Ms. Linda Duncan: Is there no oversight to see if they've provided that information?

Ms. Brigitte Diogo: Certainly, Transport Canada will be seeing whether the process that the Federation of Canadian Municipalities and the railways have agreed to is working and things are happening. Yes, we will be doing that.

Ms. Linda Duncan: In the Wabamun spill, the derailment and the spill of 700,000 cubic litres of bunker C, was caused, the Transportation Safety Board said, by a replacement with refurbished used rail. There was an inspection of that rail before that train went by, yet they didn't detect a defective rail. Have you now required or prohibited replacement with refurbished rail? Are you now requiring replacement with new rail?

Ms. Laureen Kinney: I believe that the requirements are very significant in terms of the engineering standards and the actual rules of the quality that has to be achieved. We would have to look at specific elements of exactly what is precluded or not included.

I would add that the inspection requirements have gone into much more detail over the years, and the technology has gotten much better. There's a considerable amount of technology that's used, including spectrum, to try to see if any cracks are developing in rail, and there's a variety of other technical aspects that are used by the railways. They are required to do that on their own. As well, Transport Canada does actual track inspections to make sure the quality is maintained.

Ms. Linda Duncan: Yes, which did not detect any problems.

As you know, this issue about rail, about worker fatigue, was addressed even before 2003. That's 13 years, and Transport Canada has still not intervened to address the serious concerns that were raised. The advisory council raised a lot of issues and very clearly put on the record a lot of significant issues. Is it not time for Transport Canada to intervene and take action? Why do you have to wait for the rail companies to agree to these changes?

Ms. Laureen Kinney: If I may, perhaps I could just refer to the safety management system regulations that came into effect on April 1, 2015, as a result of some of the ongoing discussions in this area and some of the considerations raised in various fora. This is a requirement. It is very clear.

It's laid down in the regulations as to what is required and what must be done. That is something that we will be doing, providing oversight, doing audits, and providing inspections as well of SMS requirements, as the new regulations come into effect. I'm pleased to say that is the case in the safety management system regulations.

• (1650)

Ms. Linda Duncan: You require that they have a plan, but you're not requiring that these very significant concerns that have been raised be addressed, such as start time unpredictability and sleep quality not being assured because most of them are on call.

There was a study done of I think the CP Rail line. They found that only 17% of freight service employees had a work schedule; 83% were on call day and night; only 7% were in a time pool; 36% were on a spare board; and there was an extremely irregular schedule. How are we to be assured that this is being addressed? Isn't it past time for Transport Canada to actually prescribe rules for addressing fatigue management rather than letting the companies put profit ahead of safety in their rail lines?

Ms. Laureen Kinney: If I may, I have a general comment in terms of the requirements for addressing fatigue as well as the safety management system regulations that are in place. We do have work-rest rules that are in place, on top of the rules that are in place that are enforced and overseen by Transport Canada. In fact, some action has been taken where we found problems with compliance to those rules. We have and will take action, and we have no hesitation in taking action.

I would also say, though, in general, that this is an issue that does require considered work and continued work. As in all cases of areas of critical importance to the safety of railway operation, it can continuously be improved. In principle, I think it's fair to say that there are obligations and there are accountabilities. Certainly, the railway companies, the employees, and Transport Canada all work together to address those issues.

Ms. Linda Duncan: Thanks.

The Chair: Thank you very much.

Mr. Sikand, please.

Mr. Gagan Sikand: Thank you. With regard to the recommendations, could you please tell us which recommendations have not been acted upon, and for those that haven't been acted upon, what their status is?

Ms. Brigitte Diogo: I think we have initiated work on all of the recommendations. The one that has not led to either rule regulations or amendments to the act would be the locomotive and video and voice recorders. When we talk about rail safety, that's one area where we are doing a study right now with the Transportation Safety Board. That should lead to options for consideration on how we move forward on this particular issue.

It's the only one that I'm aware of.

Ms. Laureen Kinney: I think we just did a quick review of those in terms of the way that the question was raised, and I think that all of the other recommendations have been addressed. That recommendation is being addressed as well.

Mr. Gagan Sikand: Can we get the update on the status?

Ms. Laureen Kinney: If you'd like, we could just walk through the recommendations and note what the status is.

If I'm using the same list, on page 43, there's recommendation 1, regarding staff. As I mentioned, there is staff who are maintaining our oversight regime. It has been allocated in Transport Canada.

I just want to make sure, for my—

Ms. Linda Duncan: Page 43 of what?

The Chair: The safety review report. Does everybody have that?

Ms. Laureen Kinney: Yes, sorry.

Mr. Vance Badawey: For clarification, would that be the report that we've been discussing all afternoon?

The Chair: Yes.

Ms. Laureen Kinney: Recommendation number 2 has been met in terms of establishing a new standard in a phase-out schedule. That was published last spring, at the end of April 2015.

Recommendation number 3 is to harmonize the retrofit or replacement of the tank cars. That was the case, and a considerable amount of work was done to ensure that these were harmonized, and the announcement of the two reciprocal regimes was made at the same time.

Recommendation 4 was the comprehensive reform of the liability and compensation regime, which was actioned, obviously, by Parliament.

• (1655)

The Chair: Further questions from Mr. Sikand? You have two and a half minutes left.

Mr. Gagan Sikand: I'm going to share my two minutes.

The Chair: Okay. Ms. Dabrusin, would you like to pick it up where Mr. Sikand left off.

Ms. Julie Dabrusin: I would mention there is a confidential reporting line that has been in place, I think, as part of your systems management. Have any calls to this reporting line resulted in proactive actions being taken for safety?

Ms. Laureen Kinney: Perhaps I may initially slightly clarify my comments from earlier. Transport Canada is always open to calls from employees at railway stations or from the general public, for that matter, and does act on those. In addition to that, there is a confidential formal reporting system through the Transportation Safety Board, which is what I was referring to.

Absolutely, though, I can tell you that Transport Canada has taken action to go out and investigate comments that have come in regarding employees' or union members' issues that have been raised, and actions have been taken in those cases, where required.

Ms. Julie Dabrusin: I have a question. It's based on the route planning section on page 9 of the 2015 report that said that the Minister of Transport had ordered all railways to conduct risk assessments of key routes and file them by October 2014 and that the department was intending to complete a full review of the risk assessments over the course of the 2015 winter period.

Has this been done?

Ms. Laureen Kinney: Yes. I'm pleased to say that the risk assessments were all received and they were fully reviewed by our rail safety teams. That was completed during the time schedule planned, and we were able to look at that and consider whether any further actions were needed.

Ms. Julie Dabrusin: Was it determined that any further actions were required?

Ms. Brigitte Diogo: As part of the review, there were meetings in discussion with the companies either to clarify aspects of the risk assessment or to request additional information.

Ms. Julie Dabrusin: I was just trying to determine if there were action items that were taken as a result of that review.

Ms. Laureen Kinney: I believe that some changes to the specific requirements of the key trains and routes risk assessments did come out of some of that conversation and some of the analysis, for example, to be a little clearer about definitions.

Ms. Julie Dabrusin: Would I be able to have a copy of the assessment that was completed over the 2015 period and what the action items were coming out of that?

Ms. Laureen Kinney: The assessments were done case by case, so each of those assessments were provided individually. They are fairly long and complex technical documents over very long routes in some cases, so they are quite bulky. The assessment was done in terms of each of those different ones, so as the assessments information was converted into changes to the system, I'm not sure we have a summary that would be easily available.

Ms. Julie Dabrusin: Is there a list of the action items taken?

The Chair: Your time is up. I think you got the point that Ms. Dabrusin was making. If there was a summary of some of those risk assessment locations and you could supply the committee with the information, it would be appreciated.

Mr. Badawey, you have six minutes.

Mr. Vance Badawey: Thank you, Madam Chair.

When looking at the report we've been discussing this afternoon, starting on page 9, if I may, it states, "During their appearance before the Committee, representatives of CN Railway offered to provide the company's risk assessment for Ontario to the Committee but ultimately submitted only a description of the risk assessment process."

Moving forward to the next paragraph, it says that the Auditor General recommended that Transport Canada "obtain better access to the railways' own risk assessments". Moving on to the following paragraph, it states, "Transport Canada has also finalized amendments to the Transportation Information Regulations, which were proposed in July 2014, that require the railways to provide more information to the department respecting track and other rail infrastructure."

When you move on to page 25, the top paragraph states, "The Auditor General recommended that Transport Canada better define the SMS audit methodology and undertake analysis to gain a better understanding of its resource requirements to provide adequate rail safety oversight."

With respect to delegation versus taking it on yourself as Transport Canada, ladies, who ultimately is accountable for ensuring that the March 2015 recommendations as well as the regulations are both not only understood but implemented and enforced?

The second question to that is: who is accountable then to measure the performance on a continual basis moving forward as the Auditor

General recommended with ongoing audits ensuring the performance is consistent as well as the expectations as outlined in the recommendations and your own regulations are actually once again both implemented, and of course, enforced?

• (1700)

Ms. Laureen Kinney: Perhaps I can give a summary of that, and there might be more detailed questions.

In general, as with any regulatory requirement, under the safety management system regulations the companies are obliged to follow the regulations and to put in place systems that allow them to meet the requirements of any regulation or rule or engineering standard, so they are accountable for doing that.

Transport Canada is accountable for maintaining the oversight systems and does do that. As part of the implementation of the new safety management system regulations, Transport Canada did go through a very large review of just how we were applying safety management systems.

The results of the Auditor General's recommendations, and some of that input, and the comments that were made were all fed into the new requirements in terms of the legislative and the regulatory requirements. It was fed into the requirements for what documents and proof is needed to be provided by the companies, and our inspectors were provided with new training and new requirements on how to apply these requirements.

Guidelines were also then provided to the industry on how to do this in terms of meetings that were held and guidance that was provided to the industry. Through this first year of transition, as we've mentioned previously, the initial stages of doing inspections against the SMS requirements have been taking place. Starting in this new fiscal year, audits and evaluations will continue to be made of the new use of the safety management system, and we will be beginning to look at the actual performance effectiveness of the safety management system again on an ongoing, continuous basis.

Mr. Vance Badawey: Thank you, Madam Chair.

The Chair: Thank you very much.

Ms. Watts, you have six minutes.

Ms. Dianne L. Watts: Thank you.

Actually, my questioning was along the same line in terms of the risk assessments. With the new regulations they would have had to take remedial actions or do some work in terms of risk assessment and all of that, so that information is fed in to you. Is that correct?

Ms. Laureen Kinney: If I may clarify, in terms of the safety management systems regulations requirements, the railways must do risk assessments on various types of operations, with a major change in operation.

Those risk assessments are done by the railway company and are held by them. They are available on request by Transport Canada. They're not sent in on an updated basis. When we do an inspection or when we do an audit, that is part of the documentation that is reviewed by the inspector, typically, or someone doing an SMS evaluation, coming up over the next fiscal year.

Ms. Dianne L. Watts: Okay, so they don't yearly send them in to you or anything else.

My question, then, is this. How often are the inspections or the audits done for the railway companies? If they're doing their assessments and they have a stack of them and they're following all the regulations, when does Transport Canada go in there, just to make sure that the checks and balances are in place, and say, "Okay, now I want to see what you're doing"?

Ms. Laureen Kinney: It's a mix of inspections and audit evaluations, if you will, of safety management systems. There are inspections against the safety management system regulations, and those go happen on a regular basis, and there's a fairly substantial number per year as part of those 33,400 total inspections that I mentioned earlier.

In addition to that, there are specialized safety management system audits or evaluations that go on. In this first transition year, we've been doing safety management system inspections. Starting in the new fiscal year we will be doing, on a regular basis, the evaluation of the actual SMS programs and how they're working under this new regulatory requirement. Those will be done on a three- to five-year rotational cycle once the system is in place.

While the system is getting going we'll be looking more frequently I believe it's fair to say.

Ms. Dianne L. Watts: Am I hearing that it's every five years that there will be an audit from the railway companies on the information that they undertake?

Ms. Laureen Kinney: As to what we do in terms of the inspections, we do a risk-based system, but part of the response to the Transportation Safety Board recommendations in terms of doing the audits was to go to full audits on a more cyclical basis.

We're looking at between three to five years, depending on the risk assessment of the particular type of operation, the compliance record, and the other types of factors you'd take into account. That will depend on the company.

• (1705)

Ms. Dianne L. Watts: But the company does their own risk assessment...?

Ms. Laureen Kinney: The companies are accountable to do their risk assessments, and Transport Canada then will be doing the safety management system audit evaluation.

I should note that if any major change in operation occurred and there was not a risk assessment done, then that would be something that Transport Canada could take action on, of course, but in the meantime the regular updating of the audits would occur on a three- to five-year risk-based cycle.

Ms. Dianne L. Watts: Do you find, in your experience, that when one does their own risk assessment, they may not fully disclose all of the information?

Ms. Laureen Kinney: This is something that is part of an oversight system, but I think it's fair to say that in general the companies want to maintain their safety record. They have business losses and people losses and certainly reputation losses if they have even minor accidents, so this is something that the companies presumably have a strong interest in doing on their own. But even if they don't, they have a regulatory requirement, and this is something that Transport Canada oversees.

At the end of the day, however, the responsibility in the regulation is for the company to understand their business and understand what kinds of risks are being created by their specific type of business, the way they operate, and where they operate, and bring that into account. So it does seem reasonable that the company is best placed to do that risk assessment. Transport Canada looks at that risk assessment and asks whether it's adequate or effective, and whether sufficient mitigation steps are being taken.

Ms. Dianne L. Watts: Right, but that's typically done only every three to five years.

Ms. Laureen Kinney: That's the maximum, but depending on the environment and other risk factors, it could well be done on a much more frequent basis. For example, if there has been a significant change in operation of any railway company, it must do another risk assessment. In such a case, Transport Canada would be aware of the change in operation and would be looking at it.

Ms. Dianne L. Watts: Has Transport Canada ever undertaken an independent audit on all the routes?

Ms. Laureen Kinney: I'm not sure I understand.

Ms. Dianne L. Watts: I'm talking about the condition of the routes.

Ms. Laureen Kinney: These 33,400 inspections—

Ms. Dianne L. Watts: That's how it's covered off, then.

Ms. Laureen Kinney: —include track inspection, bridge inspection, operating rules, following operating rules, the train securement, and other rules.

Ms. Dianne L. Watts: Right, okay. Perfect.

Thank you.

The Chair: Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

I want to get back to the use of remote control devices. I understand that these are meant to be used in rail yards. Is that correct? Yes or no is fine.

Ms. Laureen Kinney: Mainly.

Mr. Ken Hardie: That's what I thought. I've heard that the rail operators can arbitrarily designate sections of track outside rail yards, including main lines, where they will assume permission to use remote control. Is that correct?

Ms. Brigitte Diogo: Transport Canada does not provide authorization for how they're going to use the equipment. When we become aware that they are using it in a manner different from what they had been doing, the requirement is for them to submit to us a risk assessment of the change in operations.

• (1710)

Mr. Ken Hardie: Do they need to do this in advance?

Ms. Brigitte Diogo: Under the SMS regulations, they are required to notify Transport Canada of any changes in their operations. If they're planning to make new use of their equipment, they would be required to report this in advance.

Mr. Ken Hardie: Would there be a record of the number of times this has been requested?

Ms. Brigitte Diogo: You mean the notification that we would have received?

Mr. Ken Hardie: I mean the notification to Transport Canada that they intend to operate outside the rail yards.

Ms. Brigitte Diogo: Yes, that would be recorded.

Mr. Ken Hardie: Can we get a copy of that record?

Ms. Brigitte Diogo: We will take a look at that and follow up.

Ms. Laureen Kinney: I would add that there are strict safety standards in place for the use of remote operating equipment: how the equipment must operate, what the training is, and how the people using it must operate. Any use of the belt pack or the remote operating equipment must be done under those rules. I just want to make sure that's clear.

Mr. Ken Hardie: Thank you.

In terms of on-site or on-the-ground inspections of operations, how many full-time on-the-ground inspectors—and not people who might be levered in on an as-needed basis—does Transport Canada have?

Ms. Laureen Kinney: As of December 31, 2015—and we keep it on a quarterly basis, because they do turn over—we had 137 rail inspectors working in railway inspections.

Mr. Ken Hardie: Is that the highest number of inspectors you've had on record in your organization's history?

Ms. Laureen Kinney: We might have had 138 or 139 at some point in time, but generally speaking it's been—

Mr. Ken Hardie: Give or take, it's about that.

How are they deployed across Canada?

Ms. Laureen Kinney: We have a series of regional offices across the country. We also have Transport Canada centres where particular staff are deployed. Depending on the mode of transport, they are located close to where the work is. In a city like Vancouver for example we have a “surface office”, as we call it, for railway and transportation of dangerous goods inspectors who work out of New Westminster, which is close to the railway yards. Then there are a number of other Transport Canada centres where staff work, and that is distributed across Canada. I'd have to get you a list, but there is a large group of people out in the regions.

Mr. Ken Hardie: That's not specific to rail. Would that include trucking, as well?

Ms. Laureen Kinney: Transport Canada generally doesn't provide oversight of trucking directly. It's usually done through the provinces, depending on exactly what the particular mode and arrangement is.

Mr. Ken Hardie: The Transportation Safety Board has a number of active rail recommendations, and some of them date back to 1991, specifically the fencing along railway rights-of-way. These are all on a watch list. There are 10 of them. Can you give us any sense as to how we're proceeding and any progress that has been made, because most of the assessments from the Transportation Safety Board are either “satisfactory intent”, or “satisfactory in part”? Given the age of some of these items on the watch list, they've been around for a while.

Ms. Laureen Kinney: If I may touch on the access control, as it's often called, or the fencing and the control of people trespassing at times onto railway tracks, that is an issue that has been looked at for some time. It is an issue that was a significant part of the discussions in the 2007-08 Railway Safety Act review in terms of jurisdiction and how to manage the appropriate jurisdiction.

The short story of that long process and those discussions, even at this committee, did lead to amendments that were made to the Railway Safety Act in 2013 that clarified jurisdiction and led to the grade crossing regulations, which is a similar area of issues. There is work going on in terms of looking at the appropriate methodology to address access control issues. Steps have been taken and work is being done on various fronts, but it is a complex issue.

Mr. Ken Hardie: Thank you.

The Chair: Thank you, Mr. Hardie.

Mr. Godin, you have five minutes.

[*Translation*]

Mr. Joël Godin: Thank you, Madam Chair.

Ms. Girard, earlier, you started providing the breakdown of figures regarding DOT-111. You also talked about new safer cars. You talked about 105,000 cars across North America and said that 5,000 of them have been removed from service in Canada. You also mentioned 7,500 cars.

I would like to know how the train registry—including the information on the number of trains and the description of each train for each company—is established by Transport Canada.

Do you have access to that information? What does the registration procedure involve?

•(1715)

Ms. Nicole Girard: We work closely with our U.S. counterparts, including the Association of American Railroads, or AAR. They work with us on accounting for the changes made to the tank cars. We take care of providing oversight. Once regulations come into force, we have to ensure that, when cars are inspected, the changes are made and the cars are transporting the right dangerous goods. We ensure that the products are properly classified and marked, so that they can be publicly identified. We also make sure that the dangerous goods are placed in the appropriate car. That is part of the oversight process we provide.

Mr. Joël Godin: Beyond oversight, can you know how many cars are travelling on Canadian railways, be they registered in Canada or in the U.S.? Is there such a registry?

Ms. Nicole Girard: There isn't one in Canada. The AAR is working with us to help us quantify the number of tank cars in the North American network and find out which companies own them. We are also trying to determine whether the cars are DOT-111, CPC-1232, or other types of tank cars.

Mr. Joël Godin: Do you have a registry that provides the exact number of cars in the network?

Ms. Nicole Girard: We don't have that kind of a registry. We work with others.

Mr. Joël Godin: Okay.

According to a recommendation on page 6 made on October 29, 2014, railway companies are compelled to, “conduct an assessment of safety and security risks and incorporate the use of a standardized number of handbrakes, ...”.

What is the standardized number of handbrakes that should be activated when a train is on a railway?

Ms. Brigitte Diogo: Transport Canada has not established a standardized number. However, in regulations the department published, it lists the factors—such as the railway grade and the weight of the train—to take into account to determine the required number of handbrakes to activate. A combination of factors determine how many handbrakes are necessary. Before being updated, the regulations simply stated that a sufficient number of handbrakes should be used. Since then, the requirement has been standardized by establishing a chart relative to the grade and the weight, making it possible to determine the minimum number of required handbrakes.

Mr. Joël Godin: Madam Assistant Deputy Minister, my next question is more for you.

The conditional tense is used a lot in the various documents I have consulted. Am I right to think that Transport Canada does not really have the enforcement and control powers to impose fines on railway companies at fault? I will actually rephrase the question. Are you lacking the power you need to intervene?

•(1720)

Ms. Laureen Kinney: It is hard to generalize when it comes to this. However, I can say that the Railway Safety Act is very powerful. It is very useful in many respects and gives the department, inspectors and chief executive officers many possi-

ilities in terms of reacting in all sorts of situations. It is a powerful piece of legislation.

Mr. Joël Godin: In fact, what we are—

[*English*]

The Chair: Mr. Godin, I'm sorry you didn't get your question in. Your time is up.

Mr. Joël Godin: It's okay.

[*Translation*]

Thank you.

[*English*]

The Chair: Next is Ms. Duncan, for three minutes.

Ms. Linda Duncan: Thank you very much, Madam Chair.

I'm a bit puzzled about the responses on the remote control devices. We've had some really serious accidents in the Edmonton area. One of the incidents using the remote control spilled almost 100,000 litres of styrene, and it involved a staff member who had only been employed for a month. That doesn't sound to me like somebody who is well trained. We've certainly been hearing concerns from the locomotive engineers about this practice. We have heard that it's being moved outside the yards and that CP in particular is pursuing the use of these devices to cut down on the costs of using locomotive engineers.

I've reviewed these new railway safety management system regulations. They require, when there is such an anticipated change in the use of technology, that they do an environmental management plan. Have the rail companies submitted environmental management plans on their proposal to expand the use of remote control devices, and if so, could we see them?

Ms. Laureen Kinney: I would make just a general comment first and then a more specific one.

In general, the requirements for the use of the remote operation equipment has not changed. Should any occurrences arise...and certainly in any of those that did come up, immediate steps were taken to investigate, to find out what was going on, and to take necessary action. Every year our inspectors take a variety of actions in terms of notices and orders. Where there's a threat, they will take that action.

In terms of changes to the operation, I do not believe any of the railways have come forward with any changes to these proposals to change their use of the equipment, but perhaps Madam Diogo could clarify.

Ms. Brigitte Diogo: I'm not aware of any company coming forward with changes.

I just want to clarify something with regard to the Canadian rail operating rules. Earlier we were saying that the remote control locomotive system is used mainly in yards. However, CROR does allow the equipment to be used on main lines under certain conditions. So it's not something that isn't covered by regulations.

Ms. Linda Duncan: I guess one can be concerned that if CP is informing its union but it's not informing the department that it's planning to expand this technology on main tracks in Montreal, Calgary, Edmonton, Welland, Lethbridge, Regina, and Bredenburg in central Saskatchewan, this is cause for concern. I'm becoming deeply concerned that the department sees its role as simply responding after the fact. In meeting with municipalities, the Federation of Canadian Municipalities is deeply concerned about the lack of consultation and the sort of freewheeling of the industry. The fire chiefs are deeply concerned about the lack of attention to intervening to prevent incidents rather than trying to respond after the fact.

To go back to my earlier question, why is it that in this industrial sector we're retaining this attitude that this is an industry that can do as it sees fit? It develops its own environmental management system and its own safety management systems, with maybe follow-up with the department. That's not the case with other industrial sectors, so—

• (1725)

The Chair: Ms. Duncan, I'm sorry—

Ms. Linda Duncan: The time is up already...?

The Chair: I was trying to be as generous with you as I could, but you've gone way over. If there's an opportunity to answer, well, we have a couple more questions.

Mr. Iacono, you have six minutes. You can use it or share it with your colleagues.

Mr. Angelo Iacono: I'll share it.

The Chair: All right.

Please go ahead.

Mr. Angelo Iacono: Thank you, Madam Chair.

Did you say that the Canadian Transport Emergency Centre is coming to the end of their mandate, and that their last meeting is coming up? If yes, what is Transport Canada's plan to work with local first responders to ensure safety at future accidents?

Ms. Laureen Kinney: I may have slightly confused issues in my remarks, so let me clarify.

CANUTEC, which provides response immediately to first responders on information about chemicals and potential spills, is continuing. It is fully supported and will continue in the future. There is no change proposed there. The emergency task force, which was put together for a one-year mandate and then was extended to more than a year and a half plus, is coming to the conclusion of its work. It has made its recommendations and is finalizing its reports.

I should note, which I hadn't previously, that their work will be continuing through a new subcommittee under the minister's policy advisory committee for the transportation of dangerous goods. So there will be a committee continuing the very good work that has been done by the emergency task force.

Thank you.

Mr. Angelo Iacono: Thank you.

Do I still have some time?

The Chair: You still have some time.

Mr. Angelo Iacono: When you develop your safety protocols for rail or dangerous goods, how do local responders learn those protocols? You mentioned that you have a national committee to help develop these protocols. How do we ensure that small towns in rural Saskatchewan or Nova Scotia learn the protocols and have the resources to deal with an accident?

Ms. Laureen Kinney: This is an excellent question. The task force has been working for a year and a half. They've developed a series of very good recommendations with incident command, protocols, and various advice on training and guidance materials, etc. However, the challenge now will be to make sure that those are distributed and available, and an awareness is out there of those items in the communities and with the first responders.

One of the key elements in developing the task force was to bring in those members of the Canadian Association of Fire Chiefs and various other associations that have those connections, as well as industry members who carry out training for various first responders. There will need to be a unified effort to distribute that information.

Mr. Angelo Iacono: Thank you.

The Chair: Thank you.

Mr. Badawey.

Mr. Vance Badawey: Just as an extension to that, once again I look forward to seeing that summary because fire chiefs and those folks who are in the business are enablers and they actually are resources, but it's the actual preparedness managers who are in fact putting those in place, and of course establishing those protocols. I look forward to seeing the summary on how far you've taken that.

With respect to a comment you made earlier, with respect to fatigue and of course the working above the 14-hour threshold, you mentioned that we haven't got that far yet because there was no agreement reached with those you were having discussions with. I believe that's what I heard earlier. With that said, I was under the impression that the minister—I believe it was the former minister of transportation—actually mandated to Transport Canada that in fact the threshold be at 14 hours max. Can I get some clarification on that?

Ms. Laureen Kinney: If I can just first of all clarify that there are two elements in existence now that apply to railways and to fatigue. One is the requirement for fatigue management plans, which was a new requirement added to the safety management system regulations that were put in place on April 1 of last year, so that is a significant new step. On top of that, there are work-rest rules that lay out specific elements of the requirements.

I should also mention there are contractual arrangements that are negotiated as well on the issue of how work-rest should be managed beyond the regulatory requirements. I would say that this work is there. It is in place. It is operating. It's about whether or not those should be changed or whether there are new areas that need to be looked at that are still issues of development.

In terms of that comment that you made, in terms of the 14 hours, I don't recall that. I would have to go back and check.

• (1730)

Mr. Vance Badawey: Okay, thank you.

The Chair: Time is up.

I want to thank our witnesses very much for your patience today as well. The committee has a lot of interest in many of these issues.

You were asked to supply a variety of reports. I don't know if it was the intent of the committee members to have you provide 3,000 pages in both official languages, but I think you got the points that were being asked. If you could do the best you can to supply that information, again in both official languages, there may be some follow-up to that, but if you could supply that to the clerk so that all members of the committee would have that information we would appreciate it very much.

Thank you all very much. We look forward to having you back possibly another afternoon, a pleasant afternoon with your committee.

Ms. Block.

Mrs. Kelly Block: I have a comment on that. Would the clerk be providing this to us electronically? For those of us who may require whatever is going to be sent, if we wanted to access it electronically, would that be possible? I know we're doing a lot more on our iPads.

The Chair: We're trying to get everything electronically so we can save some additional trees, if that's possible.

Ms. Laureen Kinney: Let us look at that and we'll certainly do our very best to give everything electronically. It certainly makes good sense.

Mrs. Kelly Block: Sure, all right. Thanks.

The Chair: Thank you all very much.

I move adjournment now.

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