

A photograph of a passenger train traveling through a scenic valley. The train is on the right side of the frame, curving into the distance. The landscape features rolling green hills, a few trees, and a clear sky. A solid red vertical bar is positioned on the left side of the image.

# RAC DG COMMITTEE MEETING

June 4, 2021

**People. Goods.  
Canada moves by rail.**



Railway Association  
of Canada

## **Competition Law Compliance Policy**

### **STATEMENT**

The RAC is committed to compliance with all **competition laws** applicable in Canada, including Canada's *Competition Act*.

Under the leadership of its Board of Directors, the RAC carries out its activities in strict compliance with all **competition laws**, provides guidance to its committees and its employees on how to comply with these laws, and promotes with them the importance and value to the RAC of complying with them.

The RAC Corporate Secretary ensures that RAC, its committees and its staff are familiar and comply with this policy.

### **COMPETITION LAW**

**Competition laws** are designed to maintain and encourage competition in the marketplace. Non-compliance with the **competition laws** relating to improper coordination among competitors could constitute a criminal offence to which significant fines and prison terms can be attached, and for which significant damages can be awarded in private lawsuits, including large class actions.

RAC is a forum for railway members to exchange information and views on the railway sector. Particularly because RAC is an association that represents most of the players in the rail sector in Canada, including many that compete with one another, any activity it conducts must be in strict accordance with the **competition laws**, and avoid even the perception of possible improper conduct.

### **PROHIBITED ACTIVITIES**

Due to the presence of multiple competing entities in RAC, any activity, including discussions or agreements that relate, directly or indirectly, to the following "**Prohibited Topics**" are strictly prohibited:

- ☐ Prices (rates) charged to shippers for services provided by members of the RAC
- ☐ Prices (costs) paid to suppliers for services provided to members of the RAC
- ☐ Any other conditions associated with services provided to shippers or received from suppliers of RAC members, including discounts, rebates, etc. and level of service provisions
- ☐ Customer or territory allocation
- ☐ Limitation of supply of services provided by RAC members to their customers

### **GUIDANCE**

Any activity, including discussions or agreements that could even remotely be construed as relating to the above Prohibited Topics, cannot take place at the RAC or any of its committees or any meeting organized or attended by RAC staff, or otherwise among RAC members.

To ensure compliance with these rules, when meeting, members of a RAC committee or of the Board of Directors must:

- ☐ Have a pre-set agenda and take minutes, recording resolutions adopted and summarizing the essentials of conversations that took place.
- ☐ Limit themselves to issues identified on the agenda, except if circumstances call for other issues to be addressed, in which case careful notes of the additional issues discussed must be recorded.
- ☐ If any participant believes that Prohibited Topics have been raised or discussed, they must advise all participants of their concern and any discussion relating to that issue be ceased immediately pending legal advice.
- ☐ Require legal advice if any issue to be discussed might cause the members to believe that **competition laws** could be infringed.
- ☐ Suspend or even postpone to a later date discussions on such issues if legal advice cannot be sought in a timely manner.

Staff of the RAC shall in their duties ensure the confidentiality of information brought to their attention by members, avoid conflict of interest or situations that would discredit the RAC, unless doing so could violate the **competition laws**.

## RAC DG COMMITTEE MEETING

June 4, 2021; 10:00 (EDT)

## MICROSOFT TEAMS MEETING

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### AGENDA

	SCHEDULE	DISCUSSION LEADER	TIME
1.	Welcome, Call to Order, Roll Call	Darlene Nagy (Chair)	10:00
1.1	Competition Law Compliance Policy – Forward Statement	Andy Ash	10:05
2.	Approval of Meeting Minutes (January 27, 2021)	Darlene Nagy (Chair)	10:10»D
3.	RAC DG Committee Terms of Reference Update	Andy Ash	10:15»
4.	RAC DG Committee Membership Review	All	10:20
5.	TDG Regulations – Part 8 – Reporting Discussion	All	10:25
6.	Equivalency Certificate for DP Train Marshalling / RAC application and REGC	Darlene Nagy / Christine Gatti	10:45
7.	RAC DG Team Report	Andy Ash	11:05
8.	General Discussion (TP14877, CID, TDGR Harmonization, HMRC/STCC)	All	11:20
9.	Miscellaneous / Adjournment	Darlene Nagy (Chair)	11:30

### **D Decision Required**

» *Supporting material*

**RAC Dangerous Goods Committee Meeting Minutes**  
**Wednesday January 27, 2021**  
**(Platform – MS Teams)**

**In Attendance:**

Christine Gatti, CN – Chair and meeting leader  
Jim Kozey, CP – Vice-Chair  
Andy Ash, RAC – Secretary  
Norm Adams, GWRR – committee member  
Guy Langis, ONR – committee member  
Darlene Nagy, CP - guest  
Caroline Healey, RAC – guest  
Curtis Myson, RAC – guest

**Regrets:**

Sylvain Briere, GWRR – committee member  
Ryan Payne, SRY – committee member

Anti-Trust Statement – C. Healey

**Agenda Items:**

1. **GPAC (General Policy Advisory Council)**, recap of November 18-20, 2020 meeting.
  - CANUTEC: introduced the ERG 2020, also introduced a simulation call video of a FL railcar derailment, link: <https://www.youtube.com/watch?v=jL513ddX0bE>
  - Auditor General's Report: indicated issues with Transport Canada inspectors not following up on violations or identifying corrective actions.
  - Temporary Certificates: discussed Certificate TU-0750.1, Training, set to expire January 31, 2021, TU-0752.3 Hand Sanitizers. Also discussed was the temporary certificate obtained by CN SR-13459 which allows relief from TDGR Part 6.3.(3)(a) with employee not having to sign the Certificate of Training.

\*\* Background on TU-0750.1\*\*

**Temporary Certificate Pursuant to Subsection 31(2.1) of the TDG**

Due to the outbreak of COVID-19 Transport Canada issued a Temporary Certificate TU 0750 which permitted an employee requiring the Transportation of Dangerous Goods (TDG) training under the TDG Regulations and who was in possession of a valid and compliant TDG Training certificate on March 1, 2020 to continue working without recertification until Sept 21, 2020. Transport Canada does not want to renew this certificate. RAC submitted comments Aug 27th, 2020, requesting the extension of the certificate due to limitations on classroom sizes

and certain provincial isolation requirements (14 days) which limited travel. An extension to Jan 31st, 2021 was approved by Transport Canada

- Regulatory Non-Compliance: TC gave a presentation on specifics of non-compliance to the TDGR indicating the part of the regulations and specifics. The information provided indicated Part 3 – documentation, Part 5 – Means of Containment, Part 6 – Training among the leaders of non-compliance. It would be appreciated to have detailed information by mode of transport and regions/locations.
- New Policy and Regulatory Affairs: this is a new GPAC sub-committee. This committee wonders whether the working group on Part 8 – Reporting should move to this sub-committee from the Compliance and Response sub-committee. RAC, CN and CP to be on the Part 8 working group.
- Electronic Shipping Documents Sandbox: this electronic shipping document program is aimed at testing carrier, shipper procedures, hardware, and software to be able to electronically generate, modify and transfer DG shipping documents. TC is offering Temporary Certificates to participate in this “exercise”. At this point there has not been a lot of participation in Canada. Train crews will be able to update shipping documents “real-time” and any requests for information will be compiled as statistics. The US seems to have marginally more participants in the project. CN is in possession of a DOT exemption to conduct these operations in the US. This will be shared with CP. **Action Item – C. Gatti, CN.**

\*\* Background on Electronic Shipping Document Pilot Project\*\*

### **Electronic Shipping Documentation Equivalency Certificates**

Transport Canada issued equivalency certificates to CN and CP for the use of electronic shipping documents in lieu of paper documentation when goods are transported by rail. The equivalency certificate was issued as part of the Sandbox Regulatory Pilot Project which Transport Canada is currently undertaking to evaluate whether an equivalent or greater level of safety can be achieved with electronic shipping documents.

- TC TDG Remote Oversight Inspections: Railways are looking for consistency in the remote inspection process across Canada. Some inspectors are asking for sensitive information such as traffic volumes, types of commodities apparently for risk ranking reasons. Railways suggest an inspection template system to ensure consistency. This will be brought up at the next GPAC meeting in May 2021. Other issues reported that TC conducted inspections of an IM Marine to Rail site, where they took exception to some shipping documents (Part 3) and allocated violations to the railway and not the shipper.
- CID (Customer Information Database): The Committee got an update on this TC project that is designed to gain information as to what DGs are being shipped and where. This is a result of the Auditor General’s report indicating that TC is not fully aware of what is being produced, shipped, and transported in Canada. The completion date is scheduled for April 2022.

### **\*\*Background on the CID\*\***

#### **Client Information Database (CID) Consultation**

Proposed Scope for TDG CID: Any person who imports, offers for transport, handles, or transports dangerous goods in Canada is required to register with TC via TDG CID. Registrants are required to provide their basic identifying information (e.g., legal business name, DG site addresses, etc.) and risk-relevant information on specific DG activities (e.g., UN numbers, types and frequency of DG activities, type and volumes of DGs involved, etc.); and stakeholders are required to renew their registration at regular intervals to ensure TDG CID remains up to date and accurate. Due to unforeseen pandemic measures the new forecast is:

- Legislative changes in the Transportation of Dangerous Goods Act (TDG Act) to be tabled in Parliament → April-June 2021.
  - Regulatory changes in the TDG Regulations, with publication in Canada Gazette I → January 2022.
  - Regulatory changes in the TDG Regulations, with publication in Canada Gazette II → September 2022; and
  - CID launch → October 2022.
- TDGR Part 6 (Training): A training standard is now published (CGSB 192.3) and is yet to be referenced in the TDG regulations. (Canada Gazette I Fall 2021). Note: it is understood that the requirements of the new standard can be applied to railway training programs now. An amendment to Part 6 is also expected but no consultation drafts have been produced at this point.

### **\*\* Background on CGSB 192.3\*\***

#### **CGSB Committee 192GP32 TDG Competencies**

In 2017 the CGSB established a standards committee to develop a new standard for Competency-based training and assessment for the transportation of dangerous goods. The standard will be incorporated by reference into the TDG Regulations and published in part I of the Canadian Gazette I in the fall of 2021 and DGII in the winter of 2022.

#### **Initial Consultation Part 6 Training May 1, 2020**

Transport Canada shared a working document for a rewrite of Part 6 of the TDGR which includes the proposed draft provisions for the incorporation by reference of the proposed standard CGSB-192.3, Transportation of Dangerous Goods Training, Assessment and Competency to the TDG Regulations. RAC comments were submitted May 14, 2020. One year after that, training programs must be in place and in use. Those with valid certs will be allowed to continue until expiration.



- ECCC (Environment and Climate Change Canada) – Environmental Protection Regulations – The Committee discussed the transport of hazardous waste by rail. The CEPA (Canadian Environmental Protection Act) regulations have changed to require HazWaste information to be placed on shipping documents which is burdensome to the shipping document production systems on railways. These requirements were put in place without consideration of railway difficulties in compliance. Railways are thus required to apply for PELES (Permits of Equivalent Levels of Environmental Safety) in order to use hazwaste manifests. Each railway will have to apply for their own as EC will not accept an Association application for PELES.
- TRANSCAER®: 2020 was a very slow year for presentations and outreach due to the pandemic restrictions. There were more activities conducted in the US due to reduced restrictions. There have been efforts to conduct TRANSCAER activities virtually and information was introduced to the Committee by CN regarding an online platform called SILDO. (slido.com) CP reports they have done some Covid protocol presentations and have an Augmented Reality app that is being developed to conduct various training incident scenarios which will include the requirement to ID railcars, take readings, produce response options and obtain documents relative to the incident.
- RAC Dangerous Goods Team (DGT): Update – the DGT is currently working under the three-year RAC Strategic Plan. Some of the deliverables currently under way is the delivery of the Emergency Response Plan template, ICS100, Inspections and Training for Shortline RAC members. The DGT is also dedicated to the TRANSCAER program including the development of a new safety training tank car with the CIAC. The DGT is always available to assist in emergency response to incidents involving dangerous goods.
- REGC (Regulation Enforcement Guidance Committee): Background – a TC TDG inspector issued a violation regarding train marshaling of an intermodal train that had a placarded IM container next to the lead locomotives under TDGR Part 10.6. The railway and RAC responded that the violation was in error and misinterpreted by presenting such points as the history of safety, definition of railway vehicle and harmonization with the US. This was rejected by the REGC summarily. The RAC requested further consultation with TC and is currently waiting a response. Legal departments are being consulted on this issue.
- RAC DG governance, Terms of Reference (ToR) and nominations for Chair and Vice Chair:  
ToR shall be updated, a new Chair will be chosen, new Committee members will be solicited, and new schedule of 2021 meetings will be set.

- **New Business:** CN indicated that they are going to apply for a TC Equivalency Certificate for the empty movements of railway rolling stock that contain Generators for cooling (GenSets) that should not need to be placarded and require shipping documents.
- **Notice – Publication of updated Transport Canada standard Containers for the Transport of Dangerous Goods by Rail TP 14877 (January 2018)**  
Transport Canada has engaged the CGSB to carry out the process to revert the TP14877 Transport Canada standard back to a CGSB National Standard of Canada. The CGSB Committee will be tasked to review the existing Transport Canada standard and to develop a National Standard of Canada that will continue to support the Transportation of Dangerous Goods Regulations. The RAC is represented on the Committee.
- **Consultation on the International harmonization updates to the Transportation of Dangerous Goods Regulations**  
Transport Canada is currently consulting on proposed amendments to the Transportation of Dangerous Goods Regulations (TDGR) to harmonize, where possible, with the most recent changes in the UN Recommendations (20th Revised Edition), ICAO TI (2019-2020) and IMDG Code (2018). Publication in the Canada Gazette, Part II planned in fall 2021.
- **BC Ministry of Environment and Climate Change**  
**Spill Response Information Orders**  
Spill Response Information Orders were issued to BNSF, CN and CP under Section 91.11(5) of the BC Environmental Management Act on September 28, 2018. The Spill Response Information order requires reporting of volumes of crude oil shipments and plans to publish public reports on the transportation of crude oil in B.C. The orders were appealed by the railways on the grounds that there is already a Federal requirement (Transport Canada Protective Direction 36) requiring railways to provide information on dangerous goods shipments to municipalities under a confidentiality agreement and because of security concerns associated with making this information public. The BC Environmental Appeal Board (EAB) hearings took place in September and October with final completed in December. In 2020, EAP reached its decision and determined that the Spill Information orders were invalid as ultra vires and alternatively inapplicable to the federal railways on the basis of interjurisdictional immunity.
- **Environmental Management Act – Permitting Regime**  
BC Court of Appeal held that BC's proposed amendments to its Environmental Management Act were beyond the powers of the province and consequently unconstitutional. These amendments would have imposed a mandatory permitting regime on all railroads and pipelines carrying heavy oil through BC. Nineteen groups



intervened, including oil producers, oil industry associations, first nations, and select provinces. BC launched an appeal to the Supreme Court of Canada and ultimately upheld the BC Court of Appeal's decision that the proposed amendments were beyond the powers of the province and as a result unconstitutional.

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Andy Ash  
Recording Secretary  
Dangerous Goods Committee  
Railway Association of Canada



Railway Association  
of Canada

Association des chemins  
de fer du Canada

## ***Dangerous Goods Committee***

### **TERMS OF REFERENCE**

1. **Name:**

The organization shall be known as the RAC Dangerous Goods Committee (DG Committee).

2. **General Mandate:**

The general mandate for this Committee is to provide the members of the RAC with a forum for the identification and assessment of industry issues directly related to train operations involving the transport of dangerous goods (TDG); to monitor and advise on proposed changes to existing regulations (including US / cross border regulations); to evaluate the impact of such changes on the industry; to oversee the development of necessary rule-makings or associated revisions to referenced standards under the Transportation of Dangerous Goods Act; to identify and recommend opportunities for operational improvements within the industry; The Committee will provide reports and/or recommendations to the SOMC on matters within the scope of its mandate. The Committee will serve as a focal point for sharing of ideas, technology and new initiatives that provide positive improvements in operational practices within the industry. Finally, The Committee will provide direction to the RAC Dangerous Goods Team.

3. **Officers:**

There shall be a Chair and Vice-Chair, elected by its membership. Their terms of office shall normally be 2 years. The positions can alternate or new officers elected after each 2 year term.

At the beginning of each regular meeting the Chair will appoint a Secretary from the membership in attendance.

An officer from the RAC will be appointed to the Committee as a member and will assist in the management of the Committee.

#### **4. Duties of Officers:**

The Chair shall be responsible for the general supervision of the affairs of the Committee, preside at meetings and be empowered to call special meetings as conditions warrant. The Chair will act as Committee spokesperson to the SOMC, or may delegate said activities. The Vice-Chair shall perform duties of the Chair whenever the Chair is unable to perform the duties of his/her office.

The Secretary will record the events of the proceedings including but not limited to discussion topics, resolutions, action items and responsibilities. The Secretary will draft minutes of the meeting and forward them to the Chair for approval/distribution within 30 calendar days

#### **5 Duties of the Dangerous Goods Committee:**

- 5.1 Manage rules and regulations under their mandate including new rules or revisions to existing rules related to the transportation of dangerous goods in train operations.
- 5.2 Monitor, assess and report findings and recommendations to the SOMC on issues emanating from within the committee's mandate.
- 5.3 Research and report on issues assigned to the committee by the SOMC.
- 5.4 Provide direction and guidance to the RAC Dangerous Goods Team.
- 5.5 Ensure that its mandate provides value-added benefit to the Railway Association of Canada and the member Railways via the work undertaken by the Committee.
- 5.6 Ensure that regulators overseeing the transport of dangerous goods by railways and other agencies with an interest in TDG represent railway perspective by working within the MACTDG (Multi Association Committee for TDG) and the Ministers' Advisory Council.
- 5.7 Review, assess, develop and implement appropriate broad industry strategies that promote the reputation of RAC members. These could include industry best practices and guidelines, training packages, presentations, and other activities.
- 5.8 Liaise as required with other organizations and associations involved in the promotion of operational efficiency in the industry, including AAR, CIAC and others.

#### **6. Reporting Relations and Liaison:**

- 6.1 The Dangerous Goods Committee will report to the SOMC. The Committee will liaise with other RAC committees and working groups (e.g. Environmental Committee, Mechanical Committee) on matters which are of mutual interest and benefit.
- 6.2 The Dangerous Goods Committee will provide information and guidance to the RAC VP of Operations.

## **7. Membership:**

- 7.1 Membership is open to the RAC and RAC member companies. Persons shall be nominated by their respective companies and shall serve until the person notifies the Chair of his/her resignation. Membership will be of special interest to those with responsibilities in the dangerous goods function of corporate operations, regulatory affairs, maintenance and risk management.
- 7.2 A member who is unable to attend a meeting should/may send a representative who shall be counted in determining a quorum and be permitted to vote in place of the regular member.
- 7.3 Decisions will be made on a consensus basis with recommendations being made to the SOMC that reflect this consensus. Non-consensus will be addressed by SOMC.

## **8. Frequency of Meetings:**

- 8.1 The Dangerous Goods Committee shall meet on an as needed basis or on a schedule to be determined by the Committee. Special meetings may be called in response to significant developments.  
Meetings may be held by telephone or video conference at the discretion of the members.
- 8.2 A quorum shall consist of the Chair (or Vice-Chair) and RAC member. The Vice-Chair will be recognized as a member when not acting as Chair.

*DG Committee– May 2012*



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