

**THE CORPORATION OF THE CITY OF WINDSOR**  
**Office of Chief Administrative Officer - Fire Rescue Services Department**



**MISSION STATEMENT:**

*"Our City is built on relationships – between citizens and their government, businesses and public institutions, city and region – all interconnected, mutually supportive, and focused on the brightest future we can create together."*

<b>LiveLink REPORT #: 17188 SWE/3069</b>	<b>Report Date: April 28, 2014</b>
<b>Author's Name: Bruce Montone</b>	<b>Date to Council: June 9, 2014</b>
<b>Author's Phone: 519 253-3016 ext. 238</b>	<b>Classification #:</b>
<b>Author's E-mail: bmontone@city.windsor.on.ca</b>	

**To: Mayor and Members of City Council**

**Subject: Transport Canada - Protective Direction No. 32**

**1. RECOMMENDATION: City Wide:  Ward(s): \_\_\_\_\_**

THAT the Fire Chief, as the Designated Emergency Planning Official, **BE AUTHORIZED** to provide an undertaking regarding the matters required by Protective Direction No. 32; and,

THAT the Fire Chief, as the Designated Emergency Planning Official, **BE AUTHORIZED** to execute a non-disclosure agreement with all affected rail carriers regarding the transportation of dangerous goods with respect to Protective Direction No. 32, subject to the negotiation of satisfactory terms, which agreement shall be satisfactory in legal content to the City Solicitor and in technical content to the Fire Chief.

**EXECUTIVE SUMMARY:**

N/A

**2. BACKGROUND:**

In July of 2013, an unattended 74 car freight train carrying Bakken formation crude oil, derailed at high speed in the heart of Lac-Mégantic, Quebec, resulting in the fire and explosion of multiple tank cars. 47 people died and more than 30 buildings in the town's centre, roughly half of the downtown area, was destroyed. Initial newspaper reports described a 1 km blast radius. This was the 4<sup>th</sup> deadliest rail accident in Canadian history.

As a result of this accident, Marie-France Dagenais, Director General of the Transport Dangerous Goods Directorate, announced on November 20<sup>th</sup>, 2013, changes to rail regulations with Protective Direction No. 32. (See Appendix A). In summary, it states that when any

Canadian Class 1 railway company that transports dangerous goods through the municipality, it is required to provide the municipality with yearly aggregate information on the nature and volume of these goods.

Additionally, in April of 2014, Federal Transport Minister, Lisa Raitt announced regulations that will force the industry to take the most dangerous rail cars out of service immediately, and give it three years to retire or retrofit other outdated cars – known as DOT-111s – that were built before safety standards were raised in 2011, along with reducing maximum train speeds in populated centres if carrying hazardous materials.

### **3. DISCUSSION:**

Protective Direction No.32 states that Class 1 railway companies must provide information about dangerous goods being carried through the municipality. Within the Explanatory note of the Directive, although not in the Directive itself, the passage states:

*“The parties will agree between themselves prior to the exchange of information on the standard provisions governing the extent to which the information received under items 1 or 2 may be disseminated.”(emphasis added)*

“Items 1 or 2” refer to the portions of the directive requiring the disclosure.

Subsequent contact ensued between Windsor Fire & Rescue Services and Canadian National Railway, Essex Terminal Railway and Canadian Pacific Railway which lead to the first two of these three carriers requesting signage of a specific form of nondisclosure agreement before they would provide the municipality with information on the nature and volume of dangerous goods being transported by rail through the municipality. This form of agreement was apparently established between the Railway Association of Canada and the Federation of Canadian Municipalities. The City does not have a record of providing input into the development of this agreement.

The Office of the City Solicitor has expressed concerns about certain aspects of the non-disclosure agreements presented; specifically, the acceptance by the City of injunctive relief in the event of a disclosure that the railway feels is unacceptable. This means that the City would agree in advance to a court order being granted against it prohibiting dissemination of the information if the railway is unhappy with the way the City is managing or disseminating the information.

The primary purpose for the establishment of the directive is to meet community needs for emergency planning and emergency response. To that end, the directive stipulates that the designated official is permitted to disclose the information only for those purposes. While the concept of “emergency response” is fairly clear, the notion of what may constitute “emergency planning” and who may be involved in it is not so simple. Therefore, what the City may consider to be appropriate and reasonable with respect to dissemination of information to meet its own emergency planning obligations may cause objection by the railway and may ultimately result in a court order. There is no duty of reasonableness and no clarification of intent within the non-disclosure agreement; final discretion with respect to what would constitute an inappropriate disclosure of information would rest with the railway and the City would be bound by this.

The question put forth to Council remains: Should we advise CN, CP and Essex Terminal Railway that the terms and conditions of the nondisclosure agreements they have provided are not acceptable and further that they negotiate with the City of Windsor to establish terms and conditions acceptable to both parties? Transport Canada staff and the Canadian Railway Association representatives have indicated that they were of the impression that the Federation of Canadian Municipalities and the Canadian Association of Fire Chiefs supported the templates provided. This approach of creating a "one size fits all" nondisclosure is in direct conflict with the explanatory note provided with the Directive No.32 which refers to an agreement between the municipality and the railroad governing the use of the information.

The City acknowledges that section 3(c) of the Directive indicates information is not required to be provided to a municipality if:

"the Emergency Planning Official has not undertaken or agreed to:

- i) use the information only for emergency planning or response;
- ii) disclose the information only to those persons who need to know for the purposes referred to in (i); and
- iii) keep the information confidential and ensure any person to whom the Emergency Planning Official(s) has disclosed the information keeps it confidential, to the maximum extent permitted by law."

The City is prepared to give this undertaking. While the non-disclosure agreement proposed by the railways addresses these issues, it also adds the additional consideration of injunctive relief based on criteria which is discretionary and unclear. The Explanatory Note indicates that the parties will agree on the "standard provisions...governing dissemination." The proposed non-disclosure agreement does not actually define these provisions and yet it provides for sanctions in the event that they are breached.

#### **4. RISK ANALYSIS:**

Without giving the undertaking described above, the railroad is not required to provide the information described in the Directive.

If this information is not provided then the City will not have knowledge of the goods being carried through the municipality and Emergency Planning efforts will be less effective in proactively planning for emergencies and disastrous consequences such as those that occurred in Lac-Mégantic. Even if the DOT-111s rail cars are retrofitted or removed from service, not knowing the contents of the rail cars reduces the ability to plan accordingly in case of an emergency and increases the length of time it would take to remedy an emergency when unknown substances are in play.

If the non-disclosure is given in the form required by the railways, the City risks facing an injunction for a dissemination of information that any given railway may disagree with. The likelihood of this occurring is unknown although it is expected to be fairly remote.

**5. FINANCIAL MATTERS:**

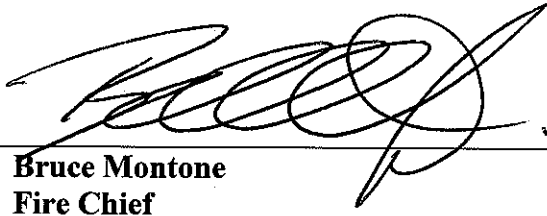
N/A

**6. CONSULTATIONS:**

N/A

**7. CONCLUSION:**

The municipality must be provided with information regarding dangerous goods transported by Canadian Class 1 railway companies operating within our borders. The nondisclosure agreements from CN Railway, CP Railway and ETR need to be negotiated with the city of Windsor.

  
Bruce Montone  
Fire Chief

  
Shelby Askin Hager  
City Solicitor

  
Helga Reidel  
Chief Administrative Officer

smh

**APPENDICES:**

Appendix A – Transport Canada Protective Direction No. 32

**DEPARTMENTS/OTHERS CONSULTED:**

Name:

Phone #: 519 ext.

**NOTIFICATION :**

Name	Address	Email Address	Telephone	FAX



Transport  
Canada

Transports  
Canada

Safety and Security

Sécurité et sûreté

Transport  
Dangerous Goods  
Directorate

Direction générale du  
transport des marchandises  
dangereuses

Tower C, Place de Ville  
330 Sparks Street  
Ottawa, Ontario  
K1A 0N5

Tour C, Place de Ville  
330, rue Sparks  
Ottawa (Ontario)  
K1A 0N5

## PROTECTIVE DIRECTION No. 32- ORDRE PRÉVENTIF n° 32

I, Marie-France Dagenais, Director General of the Transport Dangerous Goods Directorate, being a person designated by the Minister of Transport to issue Protective Directions under section 32 of the *Transportation of Dangerous Goods Act, 1992*, and considering it necessary to deal with an emergency that involves a danger to public safety, do hereby direct that

- 1) Any Canadian Class 1 railway company that transports dangerous goods must provide the designated Emergency Planning Official of each municipality through which dangerous goods are transported by rail, with yearly aggregate information on the nature and volume of dangerous goods the company transports by railway vehicle through the municipality, presented by quarter;
- 2) Any person who transports dangerous goods by railway vehicle, who is not a Canadian Class 1 railway company,

Je, Marie-France Dagenais, directrice générale de la Direction générale du transport des marchandises dangereuses, à titre de personne désignée par le ministre des Transports pour émettre des ordres préventifs en vertu de l'article 32 de la *Loi de 1992 sur le transport des marchandises dangereuses*, et l'estimant nécessaire pour répondre à une urgence présentant une menace pour la sécurité publique, ordonne par les présentes

- 1) Que toute compagnie canadienne de chemin de fer de classe 1 qui transporte des marchandises dangereuses doit fournir à l'agent désigné de la planification des mesures d'urgence de chaque municipalité par laquelle des marchandises dangereuses sont transportées par chemin de fer, les données globales annuelles sur la nature et le volume des marchandises dangereuses que la compagnie transporte par véhicule ferroviaire à travers la municipalité, le tout présenté par trimestre;
- 2) Que toute personne qui transporte des marchandises dangereuses par véhicule ferroviaire, qui n'est pas une compagnie

---

must provide the designated Emergency Planning Official of each municipality through which dangerous goods are transported by railway vehicle with:

- a) yearly aggregate information on the nature and volume of dangerous goods the person transports by railway vehicle through the municipality; and
  - b) any significant change to the information provided in (a) as soon as practicable after the change occurs;
- 3) A Canadian Class 1 railway company that transports dangerous goods and a person who transports dangerous goods by railway vehicle are not required to provide an Emergency Planning Official(s) with the information in items 1 or 2 of this Protective Direction if:

- (a) the Emergency Planning Official is not listed on the list of Emergency Planning Officials maintained by Transport Canada, through CANUTEC, that is provided to the railway company or the person;
- (b) the Emergency Planning Official or the Chief Administrative Officer of a municipality, by request made in writing to CANUTEC, informs CANUTEC that it no longer wants to be provided with the information; or

canadienne de chemin de fer de classe 1, soit tenue de fournir à l'agent désigné de la planification des mesures d'urgence de chaque municipalité par laquelle des marchandises dangereuses sont transportées par véhicule ferroviaire :

- a) les données globales annuelles sur la nature et le volume des marchandises dangereuses que la personne transporte par véhicule ferroviaire à travers la municipalité;
  - b) toute modification importante aux renseignements fournis au point a) dès que possible après que la modification est survenue;
- 3) Qu'une compagnie canadienne de chemin de fer de classe 1 qui transporte des marchandises dangereuses et qu'une personne qui transporte des marchandises dangereuses par véhicule ferroviaire ne sont pas tenues de fournir à l'agent ou aux agents de la planification des mesures d'urgence les renseignements des points 1 ou 2 du présent ordre préventif si :

- a) l'agent de la planification des mesures d'urgence ne figurent pas sur la liste des agents de la planification des mesures d'urgence tenue par Transports Canada, par l'intermédiaire de CANUTEC, fournie à la compagnie de chemin de fer ou à la personne;
- b) l'agent de la planification des mesures d'urgence ou l'agent administratif principal d'une municipalité, à la suite d'une demande par écrit à CANUTEC, informe CANUTEC qu'elle ne veut plus

- 
- recevoir les renseignements;
- (c) the Emergency Planning Official has not undertaken or agreed to:
- (i) use the information only for emergency planning or response;
  - (ii) disclose the information only to those persons who need to know for the purposes referred to in (i); and
  - (iii) keep the information confidential and ensure any person to whom the Emergency Planning Official(s) has disclosed the information keeps it confidential, to the maximum extent permitted by law.
- 4) A Canadian Class 1 railway company who transports dangerous goods and a person who transports dangerous goods by railway vehicle must provide in writing to Transport Canada, through CANUTEC, contact information including the name, title, address, e-mail address, fax number, telephone number and cell phone number, of the person(s) who will be liaising with a municipality's Emergency Planning Official, and must immediately notify CANUTEC in writing of any changes to the contact information;
- 5) A Canadian Class 1 railway company who transports dangerous goods and a person who transports dangerous goods by railway vehicle must provide any information shared under items 1 and 2 to Transport Canada, through
- c) l'agent de la planification des mesures d'urgence n'a pas entrepris ou accepté :
- i) d'utiliser les renseignements uniquement pour la planification des mesures d'urgence ou l'intervention d'urgence;
  - (ii) de divulguer les renseignements uniquement aux personnes qui doivent les connaître pour les besoins énumérés au point i);
  - iii) de tenir confidentiel les renseignements et de garantir que toute personne à qui l'agent ou les agents de la planification des mesures d'urgence divulguent des renseignements les tiennent confidentiels, dans les limites autorisées par la loi.
- 4) Qu'une compagnie de chemin de fer canadienne de classe 1 qui transporte des marchandises dangereuses et une personne qui transporte des marchandises dangereuses par véhicule ferroviaire fournissent par écrit, à Transports Canada, par l'intermédiaire de CANUTEC, les coordonnées, notamment le nom, le titre, l'adresse, l'adresse électronique, le numéro de télécopieur, le numéro de téléphone et le numéro de téléphone cellulaire de la ou des personnes qui assureront la liaison avec l'agent de la planification des mesures d'urgence de la municipalité, et avisent immédiatement par écrit CANUTEC de tout changement aux coordonnées;
- 5) Qu'une compagnie de chemin de fer canadienne de classe 1 qui transporte des marchandises dangereuses et une personne qui transporte des marchandises dangereuses par véhicule

---

CANUTEC.

ferroviaire fournissent tous les renseignements communiqués selon les points 1 et 2 à Transports Canada, par l'intermédiaire de CANUTEC.

- 6) A Chief Administrative Officer of a municipality may request Transport Canada, through CANUTEC, that the name of its designated Emergency Planning Official be added to the list of Emergency Planning Officials referred to in item 3(a) by providing the following information: the name, title, organization, address, e-mail address fax number, telephone number and cell phone number of the Emergency Planning Official that he or she designated. This contact information will be shared with any Canadian Class 1 railway company who transports dangerous goods and any person who transports dangerous goods by railway vehicle.
- 6) Qu'un agent administratif principal d'une municipalité puisse demander à Transports Canada, par l'intermédiaire de CANUTEC, que le nom de son agent désigné de la planification des mesures d'urgence soit ajouté à la liste des agents de la planification des mesures d'urgence mentionnée au point 3a) en fournissant les renseignements suivants : le nom, le titre, l'organisation, les adresses postale et courriel et les numéros de téléphone cellulaire et télécopieur de l'agent désigné. Ces coordonnées seront communiquées à toute compagnie de chemin de fer canadienne de classe 1 qui transporte des marchandises dangereuses et à toute personne qui transporte des marchandises dangereuses par véhicule ferroviaire.

For the purposes of this Protective Direction, information to be provided to CANUTEC is to be provided to the following address:

Canadian Transport Emergency Centre  
(CANUTEC)  
Place de Ville, Tower C  
330 Sparks Street, 14<sup>th</sup> Floor,  
Ottawa, Ontario, K1A 0N5  
Attention: Mr. Angelo Boccanfuso,  
Director of CANUTEC  
Or by email to .CANUTEC@tc.gc.ca

Pour les besoins du présent ordre préventif, les informations à fournir à CANUTEC doivent être envoyées à l'adresse suivante :

Centre canadien d'urgence transport  
(CANUTEC)  
Place de Ville, Tour C  
330, rue Sparks, 14<sup>e</sup> étage,  
Ottawa (Ontario) K1A 0N5  
À l'attention de : M. Angelo Boccanfuso,  
Directeur de CANUTEC  
Ou par courriel à : CANUTEC@tc.gc.ca



---

This Protective Direction No. 32 takes effect immediately upon signing. It remains in effect for three years from the date of signing or until cancelled in writing by the Director General of the Transport Dangerous Goods Directorate, Transport Canada.

Le présent ordre préventif n° 32 entre en vigueur dès sa signature. Il demeure en vigueur pour une période de trois ans de la date de signature, ou jusqu'à ce qu'il soit annulé par avis écrit du directeur général de la Direction générale du transport des marchandises dangereuses, Transports Canada.

**SIGNED AT OTTAWA, ONTARIO**, this 20<sup>th</sup> day of November 2013.

**SIGNÉ À OTTAWA (ONTARIO)**, ce 20<sup>ième</sup> jour de novembre 2013.

Marie-France Dagenais  
Director General, Transport Dangerous Goods Directorate  
Directrice générale, Direction générale du transport des marchandises dangereuses

---

## **Explanatory note**

*For the purposes of this Protective Direction*

*“Chief Administrative Officer” means the person holding the most senior staff position within a municipal organisational structure or band council, whether that office bears that title or an equivalent one.*

*“Emergency Planning Official” means the person who coordinates emergency response planning for a municipality, who may also be a First Responder for that community*

*“municipality” means a corporate body constituted under the applicable provincial or territorial legislation, in each province or territory, relating to the creation of municipal administrations, be they designated as cities, towns, villages, counties or by other names and includes aboriginal communities with their own First Responders. In cases where a territory is governed by two tiers of municipal administrations, the expression refers to the tier which has the primary responsibility for emergency planning, meaning either to the lower tier or the upper tier administrations but not both. The decision as to which tier is to receive the information provided under this Direction is to be made locally and the name of the appropriate designate is to be communicated in accordance with this Direction.*

*“nature” means class, UN number and name of the dangerous good. “volume” means the number of car loads of a dangerous good.*

*The parties will agree between themselves prior to the exchange of information on the standard provisions governing the extent to which the information received under items 1 or 2 may be disseminated.*

## **Note explicative**

*Pour les besoins du présent ordre préventif*

*« agent administratif principal » signifie la personne occupant le poste de cadre supérieur dans un organigramme municipal ou un conseil de bande, que ce bureau porte ou non ce titre ou un équivalent.*

*« agent de la planification des mesures d'urgence » signifie la personne qui planifie l'intervention d'urgence pour une municipalité, qui peut également*

---

*être le premier intervenant pour cette collectivité.*

*« municipalité » signifie une collectivité constituée en vertu de la législation provinciale ou territoriale applicable, dans chaque province ou territoire, liée à la création des administrations municipales, qu'elles soient désignées comme étant des villes, des villages, des comtés ou autres, y compris les collectivités autochtones ayant leurs propres premiers intervenants. Dans les cas où un territoire est gouverné par deux ordres d'administrations municipales, l'expression renvoie à l'ordre qui assume la première responsabilité pour la planification des mesures d'urgence, c'est-à-dire soit l'administration de niveau inférieur, soit l'administration de niveau supérieur, mais pas les deux. La décision qui déterminera à qui les renseignements seront envoyés en vertu du présent ordre préventif doit être prise à l'échelle locale, et le nom de la personne désignée appropriée doit être communiqué conformément au présent ordre préventif.*

*« nature » signifie la classe, le numéro UN et le nom de la marchandise dangereuse.*

*« volume » signifie le nombre de chargements de wagons d'une marchandise dangereuse.*

*Les parties conviendront entre elles, avant l'échange de renseignements, des dispositions normales régissant la mesure dans laquelle les renseignements reçus conformément aux points 1 et 2 peuvent être diffusés.*