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935, rue de La Gauchetière Ouest  
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July 7, 2014

Patrick Gordeyko, Chair, ASB Provincial Committee  
c/o Trent Keller, Secretary, ASB Provincial Committee  
3602 - 48<sup>th</sup> Avenue  
Athabasca, AB T9S 1M8

**Subject: Resolution #1: CN Weed Control**

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Mr. Gordeyko,

This is in reference to your letter dated June 11, 2014, addressed to Mr. Jim Vena, which has been forwarded to me for response.

As you may already be aware, CN has an extensive weed control program in Alberta, and, indeed, throughout its network. We hire professional contractors to carry out the program, and these contractors are required to respect all applicable laws and regulations. Furthermore, these contractors are required to carry out all weed control activities in an environmentally responsible manner and following best-established industry standards.

Spraying for weeds on the railway is carried out for safety reasons. The elimination of weeds greatly reduces tripping hazards where CN personnel and contractors are working, and also limits the potential for drainage problems and damage to the track infrastructure caused by invasive or fast-growing weeds. Furthermore, effective weed control also limits the future need for brush cutting in order to protect sightlines along our corridors. CN's weed control program helps us operate a safe and efficient railway.

As CN strives to be a good neighbour in all of the communities where we operate, we try to incorporate community concerns pertaining to specific locations and issues into the weed control work schedule, whenever feasible.

We note your letter states that railway safety concerns often obstruct municipal inspectors from being able to do their legislated inspection and enforcement duties. The process CN has put in place for accessing its property was developed for safety reasons. Under the *Railway Safety Act*, railways are responsible for all aspects of railway safety which includes ensuring the safety of CN personnel, the safety of operations through the communities we cross and the safety of third parties while on the right-of-way. Uncontrolled access to the rail right-of-way, without proper briefing and instructions, can have serious consequences. CN's right-of-entry process was developed for this very reason, and application of this process also ensures compliance with the provisions of the *Railway Safety Act*.

Resolution #1 also refers to the simplified access procedure for regulators in the line of duty. It is important to note that this simplified procedure only applies to federal regulators specifically charged with overseeing CN compliance with various aspects of rail and workplace safety; these include Transportation Safety Board investigators and Transport Canada inspectors, and their equivalents in the United States. Representatives of these organizations are trained in railway safety and fully understand the risks associated with entry onto a railway right-of-way.

We hope that the information above has shed some light on CN's weed control program. CN would be pleased to collaborate with the ASB in the handling of any specific weed control issue you may identify in the future.

Best regards,

A handwritten signature in black ink that reads "Mario Pagé". The signature is written in a cursive, flowing style.

Mario Pagé  
Chief of Staff

*Alberta* ■ Agriculture and  
Rural Development

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AR-46684

July 11, 2014

Mr. Patrick Gordeyko  
Chair, ASB Provincial Committee  
c/o Trent Keller, Secretary  
3602 – 48 Avenue  
Athabasca, AB T9S 1M8

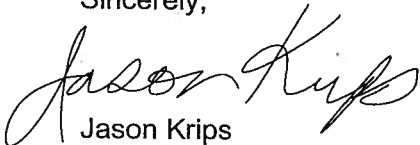
Dear Mr. Gordeyko:

Thank you for sending me copies of your June 11, 2014, letters in reference to the 2014 Resolution Number 1: CN Railway Weed Control. As you indicated in your letter, the Agricultural Service Board Provincial Committee was unclear whether an inspector appointed under the *Alberta Weed Control Act* was considered to be a "Regulator in the Line of Duty".

By way of clarification, the term "Regulator in the Line of Duty" is in the CN policy that grants access to Federal Agencies: "Regulators in line of duty for example: (Transport Canada, Transportation Safety Board, Human Resources Development of Canada, Federal Railroad Administration, National Transportation Safety Board)". According to the enclosed CN document, *CN Guidelines Regarding Access to Workplace*, Weed Inspectors appointed under the *Alberta Weed Control Act* are not Regulators in the Line of Duty.

I assure you that Agriculture and Rural Development is committed to addressing this issue, and will keep you informed regarding our discussions with the railways on this matter.

Sincerely,



Jason Krips  
Deputy Minister

Enclosure

cc: David Feindel, Branch Head, Crop Research and Extension Division



# Municipal District of Smoky River No. 130

P.O. Box 210 FALHER, ALBERTA T0H 1M0

Phone: (780) 837-2221

Fax: (780) 837-2453

July 16, 2014

Mr. David Feindel  
Branch Head of ARD's Crop Research and Extension Division  
17507 Fort Road NW  
Edmonton Alberta  
T5Y 6H3

RE: CN Weed Control and AARD's response to the 2014 Resolution

Dear Mr. Feindel:

Council of the M.D. of Smoky River No. 130 reviewed the responses to the Provincial ASB Conference resolutions at their July 16<sup>th</sup> meeting, and Council wishes to express their dissatisfaction with the response to the M.D. of Smoky River sponsored resolution "CN Railways Weed Control" - a copy of the response received so far is attached to this letter.

First, the Therefore Be It Resolved of the Resolution asks that AARD work with Alberta Justice (and others...) 'to confirm that CN Rail is bound by the Weed Control Act of Alberta'. It is our understanding that Alberta Justice has not yet disproved CN's stated opinion they are not bound by the Act. The statement in the response: "While railway right-of-ways in Alberta are covered under the WCA..." is to our knowledge attributable to Deputy Minister Krips. This Council has no wish to demean the importance of DM Krips or his opinions, however this ASB, and by passing the Resolution at the Provincial ASB Conference, the ASB's of Alberta have requested a legal opinion from Alberta Justice on this matter. CN operates throughout the Province and has repeatedly ignored their responsibilities to destroy Prohibited Noxious and control Noxious weeds in many municipalities both urban and rural. CN has also repeatedly ignored weed notices issued under the Act under the guise they are above the laws of the province. Can we not have a legal opinion from Alberta Justice to settle this matter once and for all?

Second, the Further TBIR is not addressed in the response whatsoever. Inspectors must be able to enter onto CN property to fulfill their duties, and doing so safely is certainly of paramount importance to everyone. Completing a work permit application to allow someone to walk within the right-of-way does not assure a person's safety. CN needs to recognize the difference between inspecting (which for efficiency's sake may need to be done immediately, without giving notice) and weed control which would require planning and therefore giving notice is not an issue.

In 2013 after the 5 work permits were submitted and approved by the M.D. of Smoky River we needed to pay and take the time to complete an online Contractor's Safety Course, give 10 days

notice of our intent to enter and meet with the CN Track Supervisor for orientation, and then we were supposed to give 24 hours notice each time we planned to enter and inspect CN property. This is not conducive to allowing for inspections to take place when often all that is required is a 5 minute walk from a municipal right of way to confirm the identity of a plant noticed while driving by. Inspectors appointed under the Weed Control Act need to be recognized by CN as 'Regulators in line of duty'.

We ask that Alberta Agriculture fulfill the requests outlined in the CN Railways Weed Control resolution so that the inspectors appointed under the Weed Control Act of Alberta are able to perform their duties knowing they have the jurisdiction under the Weed Control Act, and without the need to complete the onerous work permits and contractor training required by CN.

Feel free to contact me, or our Agricultural Fieldman Normand Boulet at 780-837-2221 ext 115, cell 780-837-0043 or e-mail [asb@mdsmokyriver.com](mailto:asb@mdsmokyriver.com) with any questions in this regards.

Sincerely,



Robert Brochu, Reeve and ASB Chairman  
780-837-0522

Cc: Honourable Verlyn Olson, Minister of Agriculture and Rural Development  
Jason Krips, Deputy Minister  
Patrick Gordeyko, Chairman Provincial ASB Committee

August 1, 2014

Mr. Robert Brochu  
Reeve and ASB Chairman  
M.D. of Smoky River  
Falher, AB T0H 1M0

Dear Mr. Brochu:

Thank you for your July 16, 2014, letter to David Feindel, Director, Agriculture and Rural Development (ARD), regarding the M.D. of Smoky River's dissatisfaction with ARD's response to the Provincial Agricultural Service Board (ASB) Resolution on CN Railway Weed Control.


You have requested that Alberta Justice provide a legal opinion on whether the Alberta *Weed Control Act* (WCA) binds CN Rail. Alberta Justice is not in a position to provide legal advice to third parties outside of the Government of Alberta (GOA). Information requested by ARD, from Alberta Justice, is subject to solicitor-client privilege.

While ARD cannot share specific legal advice, ARD has expressed our general position on the application of the WCA to railways to Patrick Gordeyko, Chair, ASB Provincial Committee, in the March 11, 2014 response which you referenced.

To address your concern that an Agricultural Fieldman be recognized as a "Regulator in the Line of Duty," a July 3, 2014, response letter was sent by Mario Page, Chief of Staff, CN, to Mr. Gordeyko, outlining CN's policy in this regard. ARD cannot speak further to this internal CN policy matter. For your information, I have enclosed a copy of my July 11, 2014, letter to Mr. Gordeyko on this issue.

CN has expressed a willingness to further discuss specific weed control concerns issues. ARD has requested that Agricultural Fieldmen document cases where they feel they have not been able to conduct their duties due to railway policy or actions. ARD is willing to meet with the parties to discuss these issues, and assist where possible in resolving weed control issues with the railways. Thank you again for writing to share your concerns.

Sincerely,



Jason Krips  
Deputy Minister

Enclosure

cc: Norm Boulet, Agricultural Fieldman, M.D. of Smoky River  
David Feindel, Director, Pest Surveillance Branch



# Municipal District of Smoky River No. 130

P.O. Box 210 FALHER, ALBERTA T0H 1M0

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August 13, 2014

Patrick Gordeyko, Chair  
Provincial ASB Committee  
c/o Trent Keller, Secretary  
3602 – 48<sup>th</sup> Ave  
Athabasca, AB  
T9S 1M8

Re: CN's July 7<sup>th</sup> letter of response to Resolution #1: CN Weed Control

Dear Mr. Gordeyko:

The M.D. of Smoky River ASB are strong believers in the ASB Resolution process and in the work of the Provincial ASB Committee. It is our hope the Committee will continue to push for responses and action to resolutions when these are deemed as unsatisfactory to the requests posed by the Resolution.

The July 7<sup>th</sup> response from CN's Mario Pagé, Chief of Staff is in our opinion an unsatisfactory response. We find it interesting and telling that CN states their contractors have to respect all applicable laws, but at no time does CN state they must do weed control for lawful reasons, i.e. in accordance with the Weed Control Act (WCA). Many other reasons; tripping, drainage, infrastructure protection, sightlines, 'being a good neighbour' are cited, but it appears they maintain that CN does not have to abide by Alberta's WCA. This continues to leave our municipal inspectors and enforcement programs in a quandary, and being as Alberta Justice does not wish to have their opinions shared, the simplest answer would be to have CN admit they have legal responsibilities under the WCA.

Regarding the question of CN's right-of-entry process, and a potentially simplified access procedure; we certainly hope that the resolve of the Committee does not sway at the first 'no' it receives. Certainly our municipal inspection programs would not go far if we shied away from an issue just by being told 'no'!

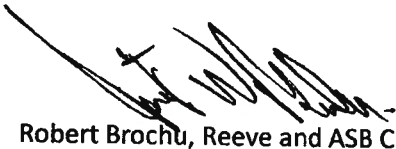
The safety of our municipal inspectors is paramount to all concerned, however there must be consideration given to the difference between inspection and enforcement. Entering rail right of way with equipment to conduct enforcement is completely different and certainly requires more notification than inspection. However even for enforcement; completing an 18 page Safe Work Permit (one permit for each municipality being inspected), taking an online contractor's safety course, receiving an orientation from the track superintendent, giving 10 days notice to the track superintendent, and then giving 24 hours notice prior to entering each time is beyond the bounds of being reasonable. Rather, it appears to be a process intended to either have people give up and ignore the problem, or just go forward with inspections and enforcement without notification of entry – and hope they don't get caught. Neither of these avenues serves the end needs.

Our inspectors receive training and orientation to enter onto other hazardous sites, like oil and gas exploration and production areas. They can be trained in railway safety and already understand the risks associated with entry onto a railway right-of-way – so allowing a simplified access procedure is possible, CN just has to agree that it is something they wish to allow.

The M.D. of Smoky River ASB hopes the Provincial ASB Committee will continue to press for positive changes on behalf of the ASBs of Alberta.

Feel free to contact myself or our Agricultural Fieldman Normand Boulet, CCA at 780-837-0043 [asb@mdsmokyriver.com](mailto:asb@mdsmokyriver.com) with any questions.

Sincerely,



Robert Brochu, Reeve and ASB Chair  
780-837-0522

Cc: Honourable Verlyn Olson, Minister of Agriculture and Rural Development  
Jason Krips, Deputy Minister  
Corey Beck, Peace Region Representative, Provincial ASB Committee  
Maureen Vadnais, ASB Specialist





# Municipal District of Smoky River No. 130

P.O. Box 210 FALHER, ALBERTA T0H 1M0

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August 14, 2014

Jason Krips  
Deputy Minister  
Alberta Agriculture and Rural Development  
#300, 7000 – 113 St.  
Edmonton, AB  
T6H 5T6

Dear Deputy Minister Krips:

Thank you for responding to our letter of July 16<sup>th</sup> to Mr. Feindel, and for including a copy of the July 11<sup>th</sup> letter to Chairman Gordeyko. We certainly appreciate your interest in this matter, and the work AARD has done and is continuing to do on behalf of all Albertans to rectify these situations.

It is extremely disconcerting to this Council that the legal opinion expressed by Alberta Justice cannot be shared with the municipalities – your partners under the Weed Control Act. We are certainly not legal experts, but it would seem that a question posed to Alberta Justice on the applicability of a Provincial Act under which a local authority ‘shall appoint inspectors to enforce and monitor compliance with this Act’, should be shared with the very people to which the question has the most bearing. Especially when the answer could have serious repercussions to the local authorities ‘empowered’ under this legislation. According to our research, there are 347 municipalities in Alberta which are legally required to appoint inspectors under the WCA. Although we are not certain how many have CN properties within their borders, it stands to reason that many of them do. As Alberta Justice will not share their findings, and if a municipality decides to request their own legal opinion it would most likely also not be allowed to be shared with others either, we have to wonder where exactly we stand. ARD’s opinion is that the WCA applies, CN’s opinion is that it does not – not a particularly comfortable position for municipalities to be in. Having each affected municipality request their own legal opinion in such a matter would be a criminal waste of money, in addition to potentially creating more issues if some legal opinion was positive (we have jurisdiction) and others were negative.

As the discussions between the Provincial ASB Committee, AARD and CN progress (and in reference to your letter to Mr. Gordeyko dated July 11<sup>th</sup>) we would like to be very clear on the “Regulators in line of duty” issue. We acknowledge that CN Policy does not currently recognize inspectors appointed under the Weed Control Act as “Regulators in line of duty”, but we maintain that Policies can change. It requires a desire to change on behalf of CN. For there to be a desire to change, CN needs to recognize that an issue exists – and we certainly hope the information being gathered by the municipalities will provide your staff the tools needed to resolve these issues.


To reiterate points made in our letter of August 13<sup>th</sup> to Chairman Gordeyko, through these discussions a distinction needs to be made between inspection and enforcement (weed control). Inspection may need to take place on very short notice, without the time for notification to take place. However inspection can also be as simple a matter as walking a few hundred meters from a road right of way or field onto rail property. During an extremely busy and short inspection season, inspectors with large areas of a municipality to cover do not have the luxury of time to give 24 hours' notice and return to an area they were in the day before. Certainly there are instances where a day of rail inspections can be planned and notice given, but often inspections are done on the spur of the moment, when a potential issue is seen and needs to be dealt with while the inspector is in the area.

Enforcement would require planning and equipment which could include rail riding vehicles or ATVs. Obviously notification and involving railway personnel is needed to ensure this type of work can be done safely, without impeding rail service.

However, to go through the entire onerous process of 18 page work permits, online contractor training, orientation, 10 days advance notice and then give 24 hours' notice to make a 5 minute inspection onto a rail ROW, perhaps just to confirm the identity of a plant (and likely to pick that plant if it is a regulated weed) is ludicrous.

Feel free to contact me, or our Agricultural Fieldman Normand Boulet at 780-837-2221 ext 115, cell 780-837-0043 or e-mail [asb@mdsmokyriver.com](mailto:asb@mdsmokyriver.com) with any questions in this regards.

Sincerely,



Robert Brochu, Reeve and ASB Chairman  
780-837-0522

Cc: Patrick Gordeyko, Chairman, Provincial ASB Committee  
David Feindel, Branch Head, Crop Research and Extension Division  
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Trent Keller, AAAF First V.P. and Secretary Provincial ASB Committee