

GUIDELINES FOR THE RESOLUTION OF RAILWAY NOISE AND VIBRATION COMPLAINTS UNDER THE CANADA TRANSPORTATION ACT

INTRODUCTION

On June 22, 2007, Parliament enacted amendments to the *Canada Transportation Act* (the CTA) which came into force the same day.

The CTA now authorizes the Canadian Transportation Agency (the Agency), a quasi-judicial administrative tribunal of the federal government, to resolve complaints regarding noise and vibration caused by the construction and operation of railways under its jurisdiction.

These guidelines have been developed to assist persons, municipal governments, and railway companies to resolve disputes over railway noise and vibration. The guidelines set out the collaborative measures that parties must apply before the Agency conducts an investigation or a hearing into a complaint regarding railway noise and vibration and the elements that the Agency considers in determining whether a railway company is in compliance with the noise and vibration provisions of the CTA.

Among other responsibilities, the Agency is responsible for resolving disputes arising between federal railway companies and other interested parties such as utility companies, road authorities, and landowners.

APPLICABILITY OF THE GUIDELINES

These guidelines apply to the activities of railway companies that operate under federal jurisdiction. A list of these companies is available on the Agency's Web site at: http://www.cta-otc.gc.ca/rail-ferro/companies/index_e.html. The guidelines also apply to the activities of public passenger service providers such as urban transit authorities.

The guidelines apply to all forms of railway noise and vibration produced during the construction and the operation of a railway. For instance, this can be noise from passing trains or idling locomotives, shunting noise, or noise from the compression or "stretching" of trains. However, it should be noted that train whistles which are blown for safety reasons to warn of a train's passage are a legal requirement of the *Railway Safety Act*.

The guidelines are designed to encourage collaboration among the parties to a railway noise or vibration complaint. They are also designed to encourage predictability, transparency and consistency in the Agency's decision-making on noise and vibration complaints. Although these guidelines are not a regulation, Agency decisions are legally binding on the parties involved subject to the appeal rights presented later in these guidelines.

The guidelines are meant to address principally noise and vibration disputes with regard to *existing* railway infrastructure or facilities. For proposed projects that require Agency approval under subsection 98(1) of the CTA, railway companies must evaluate the potential environmental impacts - including noise and vibration issues. Before authorizing the construction

of a railway facility, the Agency must be satisfied that the proposed infrastructure and facilities will not create significant adverse environmental impacts.

Likewise, municipal and regional administrations may also have jurisdiction to authorize a residential, commercial or public development near existing railway infrastructure and facilities. Ongoing communications between railway companies and municipal governments can help prevent future incompatible land uses and other proximity issues.

PROVISIONS OF THE CTA REGARDING NOISE AND VIBRATION

Section 95.1 of the CTA states that a railway company shall cause only such noise and vibration as is reasonable, taking into account:

- its obligations under sections 113 and 114 of the CTA, if applicable;
- its operational requirements; and
- the area where the construction or operation is taking place.

Section 113 of the CTA details the level of service a railway company must provide to its customers for, among other aspects, the loading, unloading, transportation and delivery of merchandise. Section 114 specifies a railway company's obligations regarding the transfer of merchandise from its railway to that of other railway companies, the return of rolling stock of other companies and the obligation, where a railway forms part of a continuous line with the railway of another company, to maintain the continuous line of transportation.

A railway company's operational requirements include not only those operations necessary to effectively run a railway and to fulfill its obligations under sections 113 and 114 of the CTA, but also any statutory or legal obligations under other legislation such as the *Railway Safety Act*.

The area where the construction or operation is taking place encompasses those residential and commercial establishments in the immediate proximity to the railway operations that are affected by those operations.

Subsection 95.3(1) of the CTA authorizes the Agency to hear complaints and conduct investigations. The Agency evaluates each case on its own merits. It may then order a railway company to undertake any change in its railway construction or operation it considers reasonable to comply with the noise and vibration provisions set out above.

Subsection 95.3(2) of the CTA specifies that before the Agency can investigate a complaint regarding railway noise or vibrations, it must be satisfied that the collaborative measures set out in these guidelines have been exhausted.

COLLABORATIVE RESOLUTION OF NOISE AND VIBRATION COMPLAINTS

Both complainants and railway companies have a stake in collaborating to resolve issues. A solution in which both parties have had input is more likely to constitute a long-term solution and is one that can often be implemented more effectively and efficiently than a decision rendered through an adjudicative process.

To resolve disputes in a collaborative manner certain conditions and certain measures must be undertaken:

1. **Direct communications must be established between the complainant and the receiver of the complaint, in this case the railway company.** The complainant should have the opportunity to express its concerns clearly and describe the impact of the noise or vibration. The railway company should have the opportunity to be adequately informed of the situation, to receive the information necessary to understand the noise or vibration issue and to explore solutions. The type of information that should be provided to a railway company for it to understand the issue can be found in Appendix A.
2. **An open dialogue must be engaged.** For this dialogue to be productive, each party's representative must have a mandate to negotiate and decide on the solutions proposed.
3. **Both parties must propose constructive and feasible solutions and be receptive to the solutions proposed by the other party.** The proposed solutions will need to reflect the elements to be considered in resolving noise and vibration complaints presented below. They must also be assessed by both parties in good faith.

The parties are encouraged to make use of existing facilitation and mediation services that are available.

Should the parties be unsuccessful in their attempts to resolve an issue through collaborative measures, they may, on agreement, request the mediation services of the Agency. In a mediation, the parties jointly make decisions to resolve the disputed issue and ultimately determine the outcome. An Agency mediator manages the process to focus the discussion and improve the lines of communication, but does not decide on the outcome. More information on the Agency's mediation process can be obtained at:

http://www.cta-otc.gc.ca/mediation/index_e.html.

The parties are expected to act expeditiously, without undue delay, toward the resolution of issues. If a party does not respond in a timely fashion or there has been no significant progress in the resolution of the issue, a complaint may then be filed with the Agency. **The Agency will only conduct an investigation or hear a complaint once it is satisfied that the parties have tried and exhausted the collaborative measures set out above.**

Railway company contacts can be found at <http://www.proximityissues.ca/english/railway1.cfm>. They can also be obtained from the Agency by calling 1-888-222-2592.

ELEMENTS TO BE CONSIDERED IN RESOLVING NOISE AND VIBRATION COMPLAINTS

In determining whether a railway company has caused only such noise or vibration as is reasonable under section 95.1 of the CTA, the following elements need to be considered:

- the railway company's obligations to provide adequate and suitable service to its customers under sections 113 and 114 of the CTA as well as its operational requirements, such as issues of logistics, efficiency and safety;

- the area impacted by the railway construction or operation, the area's zoning and its occupation, and the proximity of the affected persons as well as their sensitivities;
- the characteristics and magnitude of the noise [such as the level and type of noise (impulse or constant), the time of day, duration, and frequency] or vibrations;
- the presence of ambient noise other than railway operations, such as highway noise;
- the impact of the noise or vibration disturbance on the persons affected;
- the existing goals or standards of maximum acceptable noise and vibration levels for residential or commercial areas;
- the history of railway operations as well as residential and commercial development in the impacted area;
- any changes in railway operations (volume of traffic, methods of operation, network consolidations, concentration of operations) as well as changes to land use;
- the availability of noise and vibration control and abatement methods;
- a balance between the needs of the community and those of the railway company;
- technically, operationally, and economically feasible solutions;
- efforts made by the parties to reduce or contain noise at its source, to prevent its propagation and mitigate its impact on the persons affected;
- regulatory precedents regarding noise;
- other issues specific to the complaint.

STANDARDS AND GUIDELINES

The Agency recognizes that goals or standards of maximum acceptable immission (at the point of reception) noise levels have been developed at the municipal, provincial, and international levels whereas emission standards have been developed by the railway industry. While recognizing the importance of industry self-regulation practices and joint initiatives with municipalities to address noise issues, the Agency is not bound by the measures or prescriptions that resulted from such processes.

WHAT IS REASONABLE?

The Agency will consider all of the elements mentioned above in determining what is "reasonable" noise or vibration on a case-by-case basis. It will also consider the efforts made by the parties (railway companies and municipal authorities) to reduce or contain noise at its source, to prevent its propagation and mitigate its impact on the persons affected.

The Agency will also consider the jurisprudence regarding what is “reasonable”. Reasonableness must be determined on a case-by-case basis, having regard in an objective sense for what is just and proper in a given circumstance. What is reasonable in some circumstances may be unreasonable in other circumstances.

The challenge is to carefully balance the concerns of communities with the need for a railway company to maintain efficient railway operations. Overall, this balance is inherent in the statutory requirement that the allowable noise or vibration be only that which is reasonable.

FILING A COMPLAINT

Once collaborative measures have been exhausted, a complaint may be filed with the Agency requesting a determination whether the railway company has caused only such noise or vibration as is reasonable, considering the railway company’s obligations, its operational requirements, and the surrounding area. Information brought before the Agency should be specific and substantiated. However, legal representation is not required.

A complaint must be made in writing, include all supporting information (see Appendix A), be signed by the complainant, and be sent to the Agency at the following address:

Secretary
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

To hand deliver or courier your complaint, please use the following address:

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec J8X 4B3
Facsimile: 819-997-6727

Alternatively, you may file correspondence electronically to the following email address:
secretary.secretaire@cta-otc.gc.ca

In addition, a copy of the complaint filed with the Agency should be sent concurrently to all parties involved.

PROCESS

In accordance with its General Rules, after receiving a complaint, the Agency ensures that each interested party has the opportunity to comment on the complaint and any disputed issues. In general, the Agency invites the other interested parties to answer within 30 days, and then allows the complainant 10 days to reply. The Agency reviews all material submitted, makes its final decision or determination, and issues the necessary decisions or orders. The Agency may

also pose its own questions where necessary in order to ensure it has a full record of the matter before it.

The Agency must process all complaints within 120 days of receiving the originating documents, unless the parties to the complaint agree to an extension. In some cases, given the complexities involved or the number of parties, this goal may not be met. In such cases, the Agency will act as expeditiously as possible.

Parties are encouraged to continue any negotiations even though a complaint may be before the Agency.

DECISIONS AND APPEALS

Any Agency decision is subject to the following conditions:

- it is binding upon the parties and remains in effect until it is amended or rescinded; or until the railway line is no longer subject to the Agency's jurisdiction;
- it may be reviewed by the Agency, if there are new facts or circumstances (section 32 of the CTA);
- it may be appealed to the Federal Court on a matter of law or jurisdiction within one month of the date of the order or decision (section 41 of the CTA); and
- it may be appealed to the Governor in Council at any time (section 42 of the CTA).

CONFIDENTIALITY

All documents filed with the Agency become part of the public record and may be made available for public viewing. However, in accordance with the Agency's *General Rules*, a claim for confidentiality can be made.

OTHER AVAILABLE AGENCY DOCUMENTS

- *Canadian Transportation Agency General Rules*
- *Determining Net Salvage Value*
- *Environmental Assessment Procedures*
- *Guide to Certificates of Fitness*
- *Guide to Private (Farm) Crossings of Railways*
- *Guidelines on Apportionment of Costs of Grade Separations*
- *Guide to Railway Charges for Crossing Maintenance and Construction*
- *Guide to Railway Crossings of Other Railways*
- *Guide to Railway Line Construction*
- *Guide to Railway Operation Compensation*
- *Guide to Railway Works Cost Apportionment*
- *Guide to Relocation of Railway Lines in Urban Areas*
- *Guide to Road Crossings of Railways*
- *Guide to Utility Crossings of Railways*
- *Railway Safety Management Systems Regulations*

- *Railway Third Party Liability Insurance Coverage Regulations*
- *Resolving Disputes Through Mediation*
- *The Canada Transportation Act and the Rail and Marine Transportation Branch*
- *The Rail Infrastructure Directorate: A Guide*
- *Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations*

The above are available in alternate formats.

SOURCE OF ADDITIONAL INFORMATION RELATED TO NOISE AND VIBRATION

Consultation Guide on Railway Noise and Vibration Guidelines

FOR MORE INFORMATION

For more information or copies of the above documents:

Toll Free: 1-888-222-2592

Facsimile: 819-953-8353

TTY: 1-800-669-5575 or 819-953-9705

cta.comments@cta-otc.gc.ca

For more information on the *Canada Transportation Act*, the Agency and its responsibilities, or Agency decisions and orders, you can access the Agency's Web site at www.cta.gc.ca.

Appendix A

INFORMATION TO INCLUDE IN A COMPLAINT TO A RAILWAY COMPANY OR TO THE AGENCY

- Your name and contact information as well as the name of any residential or community group that you represent;
- The location of the source of noise or vibration (street name; subdivision and railway mileage; railway yard or road crossing);
- The name of the railway company and contact information of persons with whom you have communicated to resolve the issue;
- The name of your municipal government and contact information of persons with whom you may have communicated;
- The nature of the complaint which should include:
 - ▶ source and type of noise and/or vibration generated (engines, cars, switching, shunting, etc.)
 - ▶ frequency, time and duration of the occurrence (if you have kept a diary or record, please provide a copy of it)
 - ▶ recent change in the railway company's activities
 - ▶ sketch or map of the area
 - ▶ type of adverse effect(s) of the noise and/or vibration
 - ▶ impact of the noise and/or vibration on the complainant;
- A description of the area in which you live or work that should include:
 - ▶ approximate distance between your residence/business and the source of noise and/or vibration
 - ▶ occupation, zoning, and other characteristics of the area in which you live or work and which is impacted by the railway facility
 - ▶ length of time you have lived there and the length of time you have experienced the noise or vibration
 - ▶ whether the area is a new or older development
 - ▶ general land use and history of land development in the area
 - ▶ mention of any noise barrier that may be in place, and if so, the type of barrier as well as any changes that have been made which could impact its effectiveness.
- Any initiative that you or your group have taken to resolve this issue in collaboration with the railway company and/or the municipal government;
- Any steps that you or your group have taken to alleviate the noise or vibration;
- The solution (or solutions) that you propose to resolve the issue and the impact you foresee that the solution would have for you and for the railway company;
- Any other information that you would like the railway company or the Agency to consider.