

The oil train disaster in Lac Mégantic (Quebec) : A Safety Board report sharply critical of Transport Canada

Tuesday 2 September 2014, by [ANNIS Roger](#) (Date first published: 29 August 2014).

Safety Board final report on Lac Mégantic disaster is sharply critical of railway regulation, but federal gov't unmoved

Canada's Transportation Safety Board issued a 181-page report [[1](#)] on August 19 detailing the breakdown in application and enforcement of federal rail safety regulations that caused the deaths of 47 people in the oil train disaster in Lac Mégantic, Quebec on July 6, 2013. [[2](#)]

The TSB report identified 18 distinct causes and contributing factors in which safety procedures and regulations failed or were not applied [[3](#)]. These pertain to the operations and equipment of Montreal, Maine and Atlantic Railway, the short-line company that was receiving crude oil trains from CP Rail south of Montreal and then running them through Quebec and Maine to Irving Oil in New Brunswick; the oil tanker cars that are used by railways across North America to transport oil; and lax procedures and enforcement by Transport Canada over railway operations in Canada.

The report is sharply critical of Transport Canada for failing to oversee the rail safety regime that it has modified and slackened over the years at the behest of successive federal governments. But Transport Minister Lisa Raitt has responded to the report by saying that the regulations in place are just fine and all that is needed to avoid more oil rail disasters is more rigorous application of the existing regulations.

"Today's report does indeed talk about higher expectations for Transport Canada," Raitt told media following the report's release. "I share those expectations and I know the public shares those expectations as well, too."

"We need to remember that in terms of (rail) safety, the government puts the rules in place. The companies are expected to follow the rules. The company did not follow the rules."

But the TSB report speaks differently than Raitt's blame-the-company obfuscation. It said Transport Canada has failed to fulfill the vital mandate with which it is entrusted—ensuring rail safety. TSB chair Wendy Tadros told the press conference releasing her report, "Who then was in a position to check on this company, to make sure safety standards were being met? Who was the guardian of public safety?"

"That is the role of the government, to provide checks, balances and oversight. And yet this booming industry where unit trains were shipping more and more oil across Canada and across the border ran largely unchecked."

Tadros underscored the whole mess in saying, "MM&A really only had a safety management system on paper".

The TSB is deeply troubled that Transport Canada failed to act on concerns that it had identified in

the MM&A's operations. "The problem is not just about the frequency of Transport Canada's audits," Tadros said, "but also extended to a failure to follow up on issues that came up during the regulator's routine inspections."

One specific example of MM&A maintenance negligence was examined by *The Globe and Mail* on Aug. 18 [4]. It detailed the poor condition and maintenance record of MM&A Locomotive 5017, the one left running on the night of July 6, 2013 in order to hold the train's air brakes. A fire broke out in the locomotive after it was stationed for the night, causing a release of the air brakes and setting the train on a ghost roll into the town.

Lawyers say MM&A employees are being scapegoated

As a result of the TSB findings, lawyers for two of the three employees of MM&A facing criminal charges over the disaster are demanding that charges against their clients be dropped [5]. They made their case at an August 28 press conference, also attended by Daniel Roy, Quebec director of the United Steelworkers. Locomotive engineer Thomas Harding and railway traffic controller Richard Labrie are members of the union. (The third employee is Jean Demaître, a manager.)

The three employees were charged with criminal negligence during an initial court appearance on May 13 [6]. Their trial is set to commence on Sept. 11.

Attorney Thomas Walsh represents Harding. He says Harding's actions amount to "human error", not wanton and reckless disregard. Proof of the latter is required in order to obtain a criminal conviction.

Walsh says what is needed in the aftermath of the disaster is to "pierce the curtain which protects the people who are actually out there neglecting things [railroad safety]".

"Who's responsible for the system?" Walsh asked. "It's not Thomas Harding. He works in that system."

Walsh went one step further at the press conference. He called on authorities to consider pressing charges against corporate and government officials whose decisions have contributed to systemic deficiencies in rail safety.

Townpeople in Lac Mégantic have voiced similar calls. Journalists who attended the court appearances on May 13 were universal in reporting that townspeople believe the "wrong people" are being charged. They say the culprits are company and government officials.

A reader of the local weekly newspaper *L'Écho de Frontenac* wrote online, "What a farce! It's incredible how all the attention is focused on everything but the real problems - a federal government that has lessened rail regulations; federal inspectors who closed their eyes despite formal complaints [about the condition of the rail line]; a company that defied all safety regulations to earn more profits; and a company president who cannot be charged because it is said he can't be assumed to know everything going on in the company."

TSB leaves issues unanswered and unaddressed

The TSB report is seriously deficient in two important areas. One, while it is critical of the failings of the Transport Canada's auditing duties, it does not challenge the fundamentals of the auditing process, which is the product of changes to railway regulations over the past three decades that deliberately *devolved to the rail companies themselves the duty and responsibility for railway safety*. The TSB does not question the regulatory changes that have diminished Transport Canada's

enforcement role and powers, reducing much of its work to auditing of rail company reports.

Two, the TSB report makes an unproven assumption—that shipping vast quantities of oil by railway can be made safe.

This assumption is at the heart of Minister Raitt's tinkering of crude oil transport regulations in April of this year [7]. Now in the wake of the TSB report, Raitt says that required safety improvements were already made in April. But will those changes make much difference?

Key changes in April were phasing out within 30 days of the oldest (pre-2011) DOT 111 oil tanker cars and mandatory crash-resistance improvements within three years to be made to post-2011 models. It is unclear if improvements to newer models will actually be made, considering the fierce opposition to this by the oil and rail industries in the U.S. If that opposition holds up, it is difficult to imagine a complex system being put in place to keep unimproved models from crossing the busy U.S.-Canada border.

Regardless, how much safety improvement will changes to post-2010 DOT 111s produce? Studies have shown that at normal operating speeds, physical improvements to DOT 111s provide only minimal improvements to crash resistance. In July, the Energy Policy Information Center in the U.S. reported [8]:

"In 2011, following numerous accidents and investigations, some rules were put in place to improve the safety of future tank car designs. These measures included increased head and shell thickness, use of normalized steel (which improves both the durability and flexibility of the cars), a half-inch head shield covering, and improved top-fittings. However, even these newer cars have performed poorly in recent crashes—ten of the 13 cars that derailed in the recent explosion in Lynchburg, Virginia were constructed after 2011. Only about 18,000 of the 98,000 DOT-111s currently in use for flammable or hazardous material shipment were constructed following marginal safety improvements put into place in 2011, and the original design of DOT-111s dates back to the 1960s. According to the Rail Supply Institute, an additional 55,000 new cars have been ordered through 2015."

As for the older cars, have these been withdrawn from service as promised?

Meanwhile, Raitt, her government and the rail industry are totally opposed to measures that might bring small improvements—lowering train speeds to truly safer levels in populated areas, rerouting trains carrying dangerous cargos around high-population areas, and providing municipalities with advance notice of dangerous cargos being transported through them.

Amazingly, the TSB report fell flat when addressing a Transport Canada decision which can easily be cited as a major contributing factor to the disaster—the approval granted to the MM&A in late 2012 to operate its trains with only one employee on board. Bruce Campbell of the Canadian Center for Policy Alternatives calls this, "probably Transport Canada's single most egregious regulatory breach in relation to the accident". But the TSB says its investigation "was not able to conclude that having another crew member would have prevented the accident".

The Board's recommendation is actually a regression from an already-regressive policy. In April, Raitt said the single-employee practice would henceforth be prohibited for trains carrying dangerous cargos only. The TSB report says, rather unhelpfully, "If railways in Canada intend to implement single-person train operations, then they need to examine all the risks and make sure measures are in place to mitigate those risks."

In the U.S., the largest carrier of oil by rail, Burlington Northern and Sante Fe, is pressing hard for

new collective agreements with its unionized train operators that would allow one operator for its trains [9]. BNSF crude oil trains are routinely much longer than the fateful train that blew up in Lac Mégantic.

On August 19, the CCPA released a 32-page report examining the railway regulatory failures that led to the Lac Mégantic disaster. Bruce Campbell is the executive director of the research institute. [10].

The explosive rise of oil train traffic across North America is stirring a rising movement of citizen opposition. Opponents are concerned for the safety of people operating the trains and the safety of communities and neighbourhoods through which highly dangerous crude oil trains are now routinely passing.

They are also concerned about the grave climate consequences of the rise in fossil fuel extraction and consumption which oil trains are facilitating.

Annette Klapstein is a retired attorney living near Seattle who worked for the Puyallup Indian Tribe for 21 years, primarily on fisheries issues. She explained in a recent article why she joined two other environmental activists last month in blocking a crude oil train at the Tesoro oil refinery in Anacortes, Washington. Her article titled 'Why I blockaded an oil train' was published in the *Bainbridge Island Review*, Aug. 16, 2014 [11].

Klapstein wrote about the grave dangers of crude oil trains passing through communities. She also wrote, "If we do not take drastic measures to address climate change immediately, our children and grandchildren will have to live through the collapse of our civilization within decades. I cannot live with that on my conscience.

Roger Annis

P.S.

* "Safety Board final report on Lac Mégantic disaster is sharply critical of railway regulation, but federal gov't unmoved". The Vancouver Observer, Aug 29, 2014:
<http://www.vancouverobserver.com/opinion/safety-board-final-report-lac-m-gantic-disaster-sharply-critical-railway-regulation-federal>

Footnotes

[1] <http://www.tsb.gc.ca/eng/enquetes-investigations/rail/2013/r13d0054/r13d0054.asp>

[2] Read the 12-page executive summary here:
<http://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054-r-es.asp>

[3] <http://www.theglobeandmail.com/news/national/lac-megantic-report-18-things-that-went-wrong/article20110506/?from=20106828>

[4] <http://www.theglobeandmail.com/news/national/low-cost-repair-linked-to-engine-fire/article20>

[091811/#dashboard/follows/](#)

[5] <http://www.ctvnews.ca/canada/lawyers-for-2-men-accused-in-lac-megantic-disaster-want-charges-dropped-1.1981218>

[6] <http://www.rogerannis.com/oil-by-rail-on-trial-in-lac-megantic-quebec-and-in-maine/>

[7] <http://www.rogerannis.com/safety-and-climate-concerns-as-oil-by-rail-and-railway-profits-surge-forward-in-north-america/#more-5317>

[8] <http://energypolicyinfo.com/2014/07/dot-buckles-down-on-crude-by-rail/>

[9] <http://www.labornotes.org/2014/08/rail-workers-revolt-against-driving-solo>

[10] You can read his blog post summarizing the report here:
<http://behindthenumbers.ca/2014/08/18/ten-areas-of-regulatory-failure-that-contributed-directly-or-indirectly-to-the-lac-megantic-disaster/>. You can read or download the full report here:
<https://www.policyalternatives.ca/publications/reports/willful-blindness>

[11] <http://www.bainbridgereview.com/opinion/271526721.html>