Have the Fundamental Causes of Regulatory Failure been Remedied?

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Source: CBC website
What I will talk about

• History of rail safety regulation
• Government regulatory philosophy
• Where we were in 2013
• Key failures leading to the Lac Megantic disaster
• Where we are in 2016
• Unresolved issues
Historical Regulatory Approach

- Railway Act (since 1800’s): wide range of legislative powers – immature, growing industry
- Railway Safety Act 1985, National Transportation Act 1987- mature industry
- Separation of economic, safety and investigation functions into CTA; Transport Canada; and the Transportation Safety Board
- Like many industries, railways have traditionally tried to slow regulatory change, unless the changes lower costs, sometimes with a commensurate relaxation of safety standards (such as TSR)
Regulatory Philosophy behind Railway Safety Act of 1985

- “to provide the railway industry with greater freedom to act in the area of economic regulation”
- “to simplify, update, and improve safety regulation”
- Railways know their business best (implying “regulation lite”)
- TC will monitor to ensure safety not compromised
- TC will take action if threats are identified (sec. 31 RSA)
- Performance-based rules, proposed by railways - essentially quasi-regulations
- Initially a collaborative environment; but not so much since late 1990s
Where were we in 2013?

- Most TC rail safety inspectors recruited from railways
- A powerful railway lobby in place
- Rule M came into effect in 2008 (Minister approved)
- SMS regulations in effect since 2001
- TC HQ: no risk assessment considered necessary for change in MMA oil traffic
- MMA track, equipment, training and certification of crews were all substandard; their sms was incomplete
- Despite this lamentable record, in 2012 TC allowed single person train operations (SPTO) to commence on MMA lines

Source: thestar.com
What key failures are we talking about?

- Rule M introduction in 2008, giving carte blanche for SPTO
- Safety management systems 2001 - still a work in progress
- Complete failure of MMA to assure safety before change to SPTO in 2012
- TC was extremely slow to introduce new regulations
- Incremental relaxation of rules – towards performance-based rather than prescriptive rules
- Entrenched railway safety cultures (non-transparency)
- Maybe TC had a safety culture issue as well
- Did TC decision makers listen to staff, or to lobbyists?

Source: thestar.com
What has changed since the accident?

- TC senior management turnover
- CTA increased insurance requirements
- Two crew members on trains carrying dangerous goods
- Key trains and key routes identified
- Introduction of TC 117 tank cars (at last)
- Withdrawal of legacy TC 111 cars from oil service

- SMS regulations modified in 2015 – effectiveness not yet clear
- Grade crossings regulations came into effect in 2014 (after 28 years of development)
- Administrative monetary penalties introduced in 2015 (but effect so far not clear)
- In 2016, of four railway company appeals against inspectors’ section 31 orders or a ministerial order, these appeals were either upheld or else referred back to TC by the Transportation Appeals Tribunal (TATC)
Where are we in 2016?

• Most TC rail safety inspectors recruited from railways
• 29 federally regulated railway companies in Canada
• Oil by rail traffic currently at 50% of 2014 levels
• Two new Canadian pipeline projects just approved (the equivalent of 30 oil unit trains daily)
• DG involvement in derailments down by 50% vs last 5 years average
• Runaways 17% higher than 5 year average
• Inspectors have tripled the rate of issuance of section 31 RSA orders since 2012
Unresolved Issues

• Regulatory capture may still be an issue
• Tradition continues of blaming train crews
• What about corporate accountability for safety critical decisions?
• Why was a public inquiry not announced to explore many issues in more depth? (last inquiry was in 1986 – Hinton AB)
  e.g. fatigue, locomotive maintenance, short lines, corporate safety culture...
• Canada behind in introduction of new technologies: electronic brake systems, railcar monitoring systems; positive train control...
• Effectiveness of sec. 31 orders and AMPs
What can TC do immediately?

• Remind rail safety staff that when they join TC they have to take off their railway hats and put on their regulators’ hats
• Equivalent level of safety: if railways are to remove a safety requirement, they must replace it with something at least as effective before changing operations
• Use regulatory teeth: ensure strong staff response to lobbying to protect public interest; use sec 31 RSA and AMPs
• Improve internal communications and working relationships
• Publish, on the web, all safety R&D work done
In Conclusion

• In my opinion, the fundamental causes of regulatory failure have not been completely remedied
• Lots of changes have been made, but big, underlying, issues remain
Merci beaucoup