Smart Regulation and Public Safety: Safety Management Systems and the Lac-Mégantic Disaster

Mark Winfield
Faculty of Environmental Studies
York University
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Rail Safety Regulatory Regime

- Transport Canada operating rules and standards
- Company developed and TC approved operating rules
- Company developed and TC audited Safety Management System (SMS) plans
- TDG Rules
- CTC Insurance requirements
- TSB Accident Investigation/OAG audits
Regime Updates

- RSA Amendments (2012); revised SMS Regulations 2015
  - Reinforce role of SMS as centerpiece of system

- RSA Amendments 2015
  - Ministerial orders
  - Insurance
  - Clean-up fund
Post-Lac-Megantic Updates

- DOT-111 Phase out
- Introduction of updated rail car standards and operating procedures
- Improved access to information on TDG by rail
Reflexive Regulation and Safety Management Systems (SMS)

- SMS as reflexive regulation

- Reflexive regulation within the federal government
  - Transport Canada SMS
  - Food safety and HACCP
Critiques

We’ve replaced a culture of safety with a culture of risk. We’ve replaced proactive regulation with industrial self-regulation. We’ve replaced active inspections with paper inspections”

Mike McBane
Canadian Health Coalition
Quoted in Globe and Mail January 2010
## Evaluation

| Governance          | Policy/administration separation  
|                    | Conflict of interest in structure  
|                    | Capacity of agents  
|                    | Impacts on democratic discourse and dialogue  
| Accountability     | Clarity of lines of responsibility and authority  
|                    | Oversight and control mechanisms  
|                    | • Transport Canada  
|                    | • Legislative Officers (OAG, TSB)  
|                    | • Public Liability  
| Performance/Outcomes | Safety outcomes  
|                    | Reflexive vs. paper responses  
|                    | Operational/policy decoupling  
|                    | Cost-Effectiveness  

Findings

- Policy choices re: safety vs. efficiency embedded in company rules and SMS
- Accountability gaps given status of SMS as 3rd party records
- TC lacks capacity to oversee SMS development and implementation and continue conventional safety oversight functions (field inspections etc)
- Performance failures
Alternative models for “reflexive” regulation

- Officers’ and directors’ liability as driver for “reflexive” regulation

- Environmental law experience
  - Statutory duties of care
  - Establishment of Environmental Management Systems (EMS)
43. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.
Proposal

- Remove SMS from the formal regulatory regime
- Replace with a statutory duty on part of railway company officers and directors to take “all reasonable care” to prevent violations of RSA
- Provide general offense provision in RSA
- Establish a more active enforcement regime
<table>
<thead>
<tr>
<th>Year</th>
<th>TC Region</th>
<th>Description</th>
<th>Result / Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>Pacific</td>
<td>Canadian National pled guilty to failing to comply with a Notice and Order issued under S.31 of the RSA in 2007 regarding the matter of inaccurate train consists on the Alberda Subdivision.</td>
<td>Fined - $45k</td>
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<td>2006</td>
<td>PNR</td>
<td>A Canadian National Rail Conductor was found guilty of violating Canadian Rail Operating Rules (CROR) 103(b) and 103(g).</td>
<td>Conductor found guilty in Nov. 2007 - fined $3,450 The Alberta Court of Appeal denied the appeal and conviction was upheld in 2008.</td>
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<td>2006</td>
<td>Quebec</td>
<td>Canadian National was found guilty of violating a RSA Section 31 Notice and Order for not obeying a slow order issued because of unsafe track conditions.</td>
<td>Convicted Fined - $200K</td>
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<tr>
<td>2006</td>
<td>Ontario</td>
<td>Canadian National was found guilty of operating trains on track with unsafe conditions.</td>
<td>Pledged Guilty to 10 charges Fined - $248K</td>
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<td>2005</td>
<td>Pacific</td>
<td>Canadian National pleaded guilty under section 11 of the RSA for &quot;omissions inconsistent with sound engineering principles&quot; in the evaluation of a railway line work - A bridge near McBride collapsed.</td>
<td>Convicted Fined - $75K</td>
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<tr>
<td>2002</td>
<td>Ontario / Pacific</td>
<td>Canadian National pleaded guilty in court to violations of a RSA Section 31 Notice and Order relating to incomplete communications about railway track switch positions.</td>
<td>Convicted Fined - $80K</td>
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<tr>
<td>1999</td>
<td>Pacific</td>
<td>Canadian National was found guilty of violating a RSA Section 31 Notice and Order prohibiting CN from storing railway equipment on a track without positive protection to prevent uncontrolled movements.</td>
<td>Convicted Fined - $7.5K</td>
</tr>
<tr>
<td>1997</td>
<td>Pacific</td>
<td>Canadian National was found guilty of violating a RSA Section 31 Notice and Order restricting rail movement speed over a public crossing at grade to 10mph because of unsafe track conditions.</td>
<td>Convicted Fined - $5K</td>
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</tbody>
</table>
Figure 1 – Number of Rail Accidents – 2006-2015 (TSB 2016)