

# Lessons from Lac-Mégantic

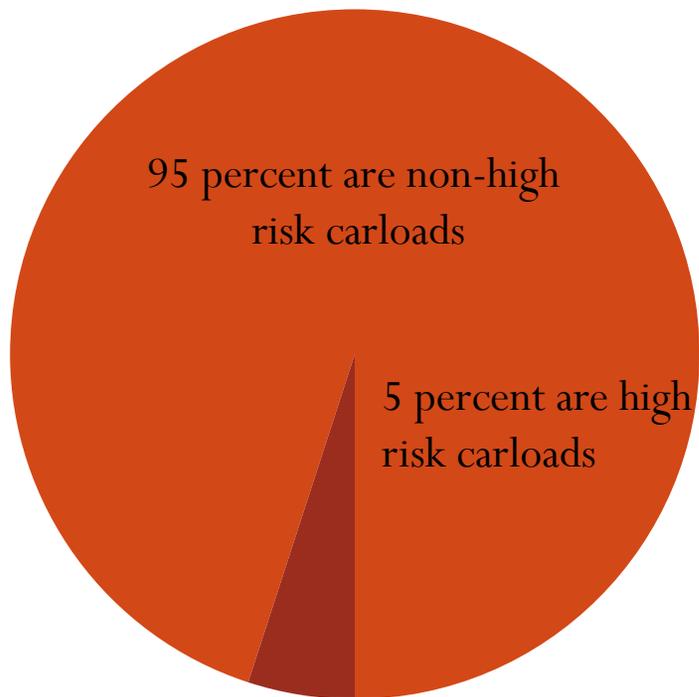
## Risk in the Transportation of Dangerous Goods in Canada

Mary-Jane Bennett  
Vancouver, BC

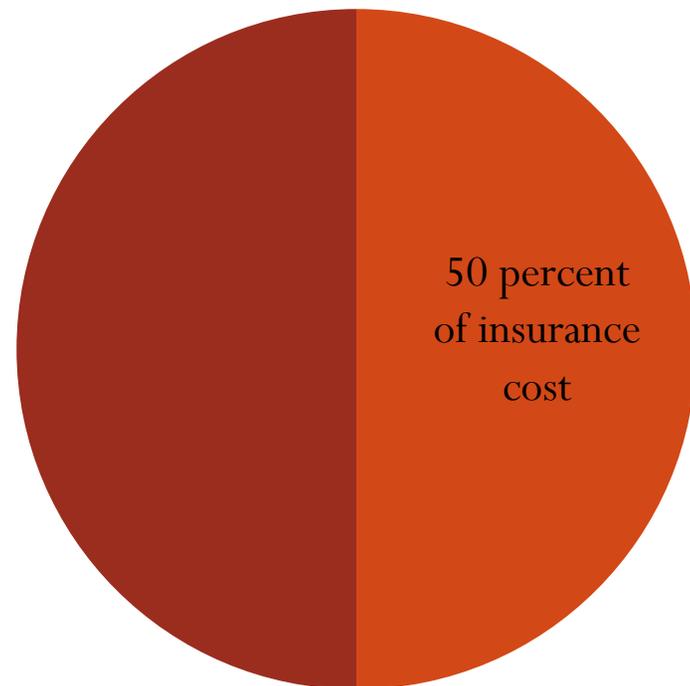
# What is a DANGEROUS GOOD?

- Classified under the Act, a dangerous good includes:
  - Explosives
  - Gases
  - Flammable liquids – which includes crude oil
  - Poisonous materials
  - Radioactive materials
  - Corrosive

# What does a dangerous good represent to a railway?



- AND -



# RISK AND INSURANCE

## THE PROBLEM:

### 1. RISK:

- unquantifiable
- uncontrollable
- unknown until the transit has been complete

“ . . . one impatient driver, one faulty repair by the owner of a tank car or one prankster – not a terrorist – caused an incident which could have been disastrous if the accident had involved the release of these materials. “ - Charles Moorman, CEO of Norfolk Southern

### 2. INSURANCE:

- Number of insurers willing to write railway insurance has contracted
- Also insurers will not provide the coverage needed – down from \$1.5 billion to about \$1 billion
- The next loss could spell the end of the railway. And the end of insurance to all railways. This would seriously impact the economy.

# Industry Weighs In . . .

“There is not enough available coverage in the commercial insurance market anywhere in the world to cover the worst case scenario.”

- James Beardsley, Global Rail Practice Leader,  
Marsh and McLennan Insurance

“Your worst nightmare is sabotage of a train carrying a toxic substance in heavily populated area. The estimates of lives and damage – I don’t even want to repeat what it would be.”

- Hunter Harrison, CEO, CP

“The accident in Graniteville for example at a different time of day would’ve potentially bankrupted the safest railroad in the country. Every railroad knows it could happen to them.”

- James Beardsley, Global Rail Practice Leader,  
Marsh and McLennan Insurance

“The DOT-III tank cars are vulnerable to puncture even at moderate speeds”

- Transportation Safety Board of Canada

“The DOT-III tank cars are one of the most important systemic issues in the July deadly explosion in Lac-Mégantic, Quebec.”

- Claude Mongeau, CEO, CN

# FOUR POLICY CHOICES OF THE PAST COMBINE TO CREATE A “BET THE COMPANY” RISK FOR RAILWAYS

1. Common Carrier Obligation
2. Poor Regulator Oversight
3. The Tank Cars (DOT-III)
4. Insurance

# 1. COMMON CARRIER OBLIGATION

- Requires railways to carry all goods presented for carriage
- Although subject to “reasonable limits” the obligation has been narrowly interpreted:

Following the Lac-Mégaric tragedy, CP requested that the Canadian

➔ Transportation Agency disallow MMA access to its network until its safety and risk profile had been assessed.

- CP’s request was denied

In 2009, Omaha-based Union Pacific was compelled to carry chlorine over

➔ long distances even though manufacturers could access chlorine in closer proximity.

## 2. POOR REGULATOR OVERSIGHT

Report of December 2011 by Scott Vaughn, Canada's top environmental watchdog.

It found Transport Canada:

- Doesn't know who is transporting dangerous goods
- Doesn't follow-up or track high-risk violators to ensure they'd changed their ways
- Isn't aware of what is contained in the rail cars criss-crossing the country
- Inadequately trains its inspectors
- Poorly designs its inspections
- Had approved only half the country's Emergency Response Plans, leaving communities and first responders at great risk
- Poor oversight meant that shippers were complying with documentation, labelling and placarding about 50 percent of the time
- The report found: "These weaknesses were identified more than five years ago. They have yet to be fixed."

### 3. SAFETY AND THE TANK CARS

“Authorities demand and expect railroads to set the bar for safety – often with very little acknowledgement of the industry’s stellar safety record yet seems to be setting a paradox for tank car safety standards”

Douglas John Bowen, Managing Editor, RailwayAge

“The DOT-III’s are today’s Ford Pinto.”

Karen Darch, Rail Safety Advocate

“The DOT-III tankers can almost always be expected to breach in derailments.”

US Transportation Safety Board

## 4. SAFETY AND INSURANCE

- Railways can no longer obtain the insurance they require
  - and -
- Shippers refuse to share in insurance
  - In 2011, Union Pacific attempted to protect itself in the event of a spill of toxin. This was denied as the language was “overly broad”.
  - CP attempted a similar limit. Chemical producers were outraged claiming that insurance as part of a tariff amounted to an “unreasonable term and condition”

# Protecting Canadians and their communities

“Can we do this safer? Yes. But who’s going to pay? If you decide this commodity must be moved in the public interest, then I think all of us have to pay. We all have a part to play here.”

- Hunter Harrison, CEO, CP Rail to  
Wall Street Journal, December 2013

# POLICY OPTION

- If dangerous goods, such as oil, are necessary in the public interest, then we must all share the risk.
- High risk public interest enterprises, such as oil, banking and nuclear industry, all have such schemes.
  - Risk is pooled
  - everyone is implicated
  - long term policy must:
    1. incorporate the cost of exposure
    2. ensure that it is incorporated into freight rates
    3. create a fund to pay claims in the event of a release by a per barrel charge

# THE ALTERNATIVES

- Governor Cuomo (New York) asked for a review of rail safety and spill preparedness
- Port of Portland will not allow any rail terminals to be built until safety is addressed
- Chicago proposes a fee on using older rail cars with revenue towards emergency response. Also proposed a ban of DOT-III cars from entering the city as a public nuisance
- Washington, D.C. and Albany, N.Y. have expressed concern about crude oil/rail in their communities
- Minnesota has advised that it is unable to deal with a major train oil fire