The Transportation of Hazardous Materials: Insurance, Security, and Safety Costs

A report to Congress as required by Section 1555(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53)

Prepared by:

U.S. Department of Transportation

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While $1 billion is more than sufficient to cover losses from "routine" TIH-related incidents, it is well short of the $5-$6 billion that Class I railroads estimate would be necessary in a "nightmare scenario," e.g., an accidental release of TIH gas in close proximity to a large number of people.[45] Once their primary insurance has been exhausted, carriers would be held liable for the balance, forcing even the largest railroad into bankruptcy.

Class II and III railroads that haul TIH commodities claim that their situation is especially precarious, as they cannot acquire, or would have a difficult time acquiring, adequate insurance coverage. According to Keith Borman, Vice President and General Counsel for the ASLRRA, small railroads cannot afford premiums for "meaningful" amounts of insurance coverage, necessary to protect against ruinous liability.[46] Based on a conversation we had with another ASLRRA representative, Class II railroads would likely be content with $200 million in coverage and Class III carriers would likely be satisfied with $100 million in coverage. While there is sufficient capacity within the rail insurance market to satisfy this demand, many short line haulers simply do not have the cash-flow to pay for such insurance coverage. As such, Class II and III railroads that haul TIH material only maintain $10 to $100 million in coverage.

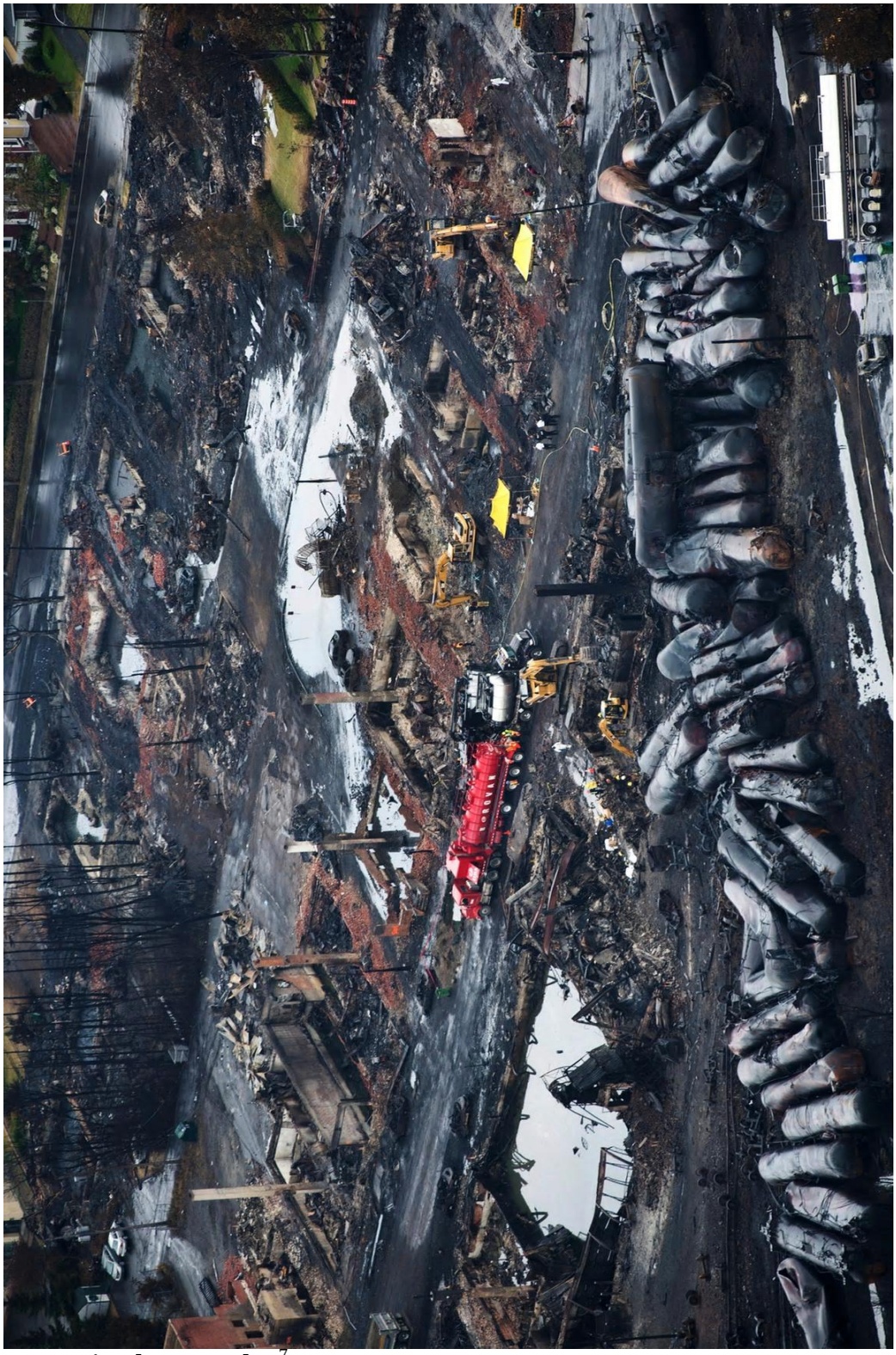
3.5 Liability Sharing Controversy

Railroads, particularly Class I carriers, assert that they are forced to "bet the farm" with every TIH movement because the liability from a catastrophic incident can potentially be in the billions of dollars – well beyond what carriers can protect against through current means (i.e., commercial insurance). Given that this level of risk is derived primarily from TIH movements, which only account for about 0.3% of total annual carload haulage, rail carriers are attempting to establish a liability sharing arrangement with TIH shippers. They hope to achieve this by either (1) requiring shippers to indemnify liability costs; (2) requiring shippers to maintain a second layer of insurance for "catastrophic coverage;" or (3) establishing a *Price-Anderson*-like arrangement in which shippers would contribute into a secondary liability coverage pool. The *Price-Anderson* model is derived from the Price-Anderson Nuclear Industries Indemnity Act, which was enacted in 1957 for the nuclear power industry as a means of indemnifying nuclear power producers against excess liability.[47] Under this arrangement, nuclear power reactor licensees are required to carry the maximum amount of insurance available to them in the insurance market to protect against the liability of nuclear-related incidents. Any monetary claims that fall within this insurance coverage would be paid by the insurance company. In the event that an individual power producer's primary insurance has been exhausted, a liability pool, funded by a contribution of $95.8 million from each of the U.S. nuclear power producers, could be tapped to cover the balance of its liability. Should this liability pool

[45] This figure was derived from testimony by Class I carriers in STB Ex Parte No. 677 (Sub-No. 1).
[46] Based on the written testimony of the ASLRRA, submitted to the STB in Ex Parte No. 677 (Sub-No. 1).
[47] See Pub. L. 85-256.

LAC MEGANTIC, QUEBEC

July 6, 2013



Lac-Megantic Photograph 1[7]

[7] Lac Megantic Photograph 1 published August 19, 2014, at http://www.theguardian.com/world/2014/aug/20/lac-megantic-oil-train-disaster-inquiry-finds-string-of-safety-failings.

Lac-Megantic Photograph 2.[8]

[8] Lac-Megantic Photograph 2 published July 13, 2015, at http://globalnews.ca/news/2107803/judge-rejects-canadian-pacifics-challenge-of-lac-megantic-lawsuit/.

Lac-Megantic Photograph 3[9]

[9] Lac-Megantic Photograph 3 published May 6, 2015 at http://www.sightline.org/2015/05/06/oil-train-explosions-a-timeline-in-pictures/

ATTACHMENT 2

US Dept. of Transportation, The Transportation of Hazardous Materials, (December 2009), Excerpt