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Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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• (1530)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): We'll call our meeting to order.

We're just beginning our study on rail safety review.

With us today from the Department of Transport, we have Mr. McDonald, Mr. Bourdon, Ms. Dagenais, Mr. Eley, and Mr. Roussel. I don't know who's going to start, but I understand, Mr. McDonald, that you have a presentation.

Just so members are aware, this presentation will be longer than the normal 10 minutes. There's a lot of information, and then we'll move into questioning.

With that, Mr. McDonald, you may begin.

Mr. Gerard McDonald (Assistant Deputy Minister, Safety and Security, Department of Transport): Thank you very much, Mr. Chair.

Thanks to the committee for inviting us here today to talk about what we feel are some very important issues facing the transportation industry.

As you know, Minister Raitt appeared before the committee last week, and she tasked the committee with looking at both the safety of transportation of dangerous goods and the implementation of safety management systems in the transportation sector.

What we'd like to do for you today is help you start off that study by presenting a bit of a primer on safety management systems and how we operate them at Transport Canada. Then on Wednesday, I believe, we've been asked to come back and we'll be giving you a presentation of our transportation of dangerous goods program.

We're very pleased that the committee is undertaking this work, and obviously, beyond those two presentations, we'll remain at the disposition of the committee to come back and answer any further questions that may arise subsequent to your other witnesses appearing. We eagerly anticipate the results of this study and the recommendations that the committee may have.

With that, I'll start my presentation. I'll be doing the main introduction to the safety management systems piece. I'll ask my colleagues to talk to their specific modal areas with respect to how safety management systems are implemented in the various modes of Transport Canada, and then I'll reach a conclusion thereafter.

Obviously, safety management systems are a key priority for maintaining transportation safety in Canada. Indeed, it's an

international priority to ensure that our shared skies, seas, and rails are safe, reliable, and ready to move people and goods safely and efficiently. Transportation safety, first at home and then abroad, makes a significant contribution to Canada's agenda with respect to public safety and economic growth. As a trading nation with a huge land mass, we must rely on transportation to get our goods to market, our consumables into Canada, and our citizens to their families and communities.

First, let me give you some context on Transport Canada's safety portfolio. There are some 3,400 employees in the safety and security group, of which I'm the assistant deputy minister, across our regions and at headquarters. Of these employees, 2,900 are professionals focused on the safety of the air, marine, and surface modes of transportation. The rest have responsibilities to keep our transportation system secure.

Safety employees are responsible for policies and rule-making, licensing and certification, monitoring, enforcement, and third party outreach programs. Almost half of our employees are inspectors responsible for delivering our oversight program, which includes monitoring, compliance, and enforcing legal requirements. Most of these highly trained professionals are in the regions, on the ground, and interacting with Canada's transportation industry.

Various activities are used by the department to achieve a safe transportation system. For example, one of our regulatory roles and our responsibilities includes consultation, where any change in a policy or regulation is discussed with the relevant transportation industry to outline the intent, direction, and benefits of the changes before they are brought into effect.

The department also plays a role in the granting of licences and certificates. This is to ensure that document holders meet the standards of fitness and skill. Otherwise, the department is required to cancel or refuse to review a new document. One of our biggest responsibilities concerns the oversight of our regulatory program. Departmental monitoring and surveillance comes in various forms, including safety management systems, or SMS, audits and assessments, in addition to traditional inspections.

Another major responsibility concerns our duty to protect the public and individual operators. When a document holder contravenes a regulatory requirement, it is our responsibility to deter them from doing it again in order to promote safety. Deterrent actions the department can take range from a written warning, to suspending a document or licence, to pursuing judicial action. Selecting the appropriate action is central to promoting future compliance.

The continual evolution of the world is something we see every day and it affects transportation and how Transport Canada must do business. We are faced with concurrent challenges and opportunities that require us to adapt and to be agile.

● (1535)

When we look at a transportation accident, we know that most links in the accident chain are controlled by the organization. The accident is likely to have been caused by a series of events or a combination of factors related to human error, the organization, technical problems, or the environment. We also know that an organization can comply with all of our regulatory requirements and still pose a risk to safety, which combined suggest that there are few opportunities to improve safety by means of addressing a single issue or event.

[Translation]

The department knows that Canada has one of the best transportation records in the world. However, this record is being jeopardized by population growth, globalization, increasing traffic and emergence of new technologies. All these factors are leading to a more complex and extensive transportation network.

This means that Transport Canada has to position itself in order to respond to the constantly evolving rate of change. This, as well as increased pressure to meet international standards, has led the department to adopt safety management systems.

We adopted safety management systems in order to respond to the evolving nature of the transportation sector. This marks the beginning of an approach that will allow the industry to systematically manage risks.

[English]

SMS builds on the principles of quality management that are already embraced by most of our transportation industries and provides them with a systematic way to identify hazards, control risks, and continually improve. Put another way, the department requires transportation entities to integrate the management of risk into their day-to-day activities.

Safety management systems allow industry to become more responsible for proactively identifying and mitigating critical safety risks. They also move an organization towards more effective compliance and force it to be more proactive in its management of risks. The bottom line for SMS is that it fosters a culture of safety throughout organizations, and the transportation system, as a safety management system, promotes the adoption of a safety culture. Safety management systems also allow the department to prioritize and target its resources towards areas that pose the greatest risk and require the most attention.

Safety management systems require action and performance from industry. On top of the need to comply with our regulatory requirements, SMS places an additional responsibility on the industry to manage its own safety through the identification, assessment, and control of risks.

If I can use an analogy, to protect our children, society has mandated the wearing of helmets for children riding a bicycle or playing hockey. However, as parents, we know that the simple wearing of a helmet does little to address the potential risks a child faces when out riding in the street or skating along the boards. As a result, we not only make sure they wear their safety equipment but also teach them about the potential danger of cars, of riding with no hands, or of standing with the puck while facing the boards.

The same can be said for safety management systems. As the regulator, Transport Canada requires industry not only to follow the rules but also to put policies and processes in practice to identify and address potential safety issues. Some of the minimum actions or processes that industry must implement include: hazard identification or having a method for identifying hazard; occurrence reporting, a process for the acquisition of safety data; risk management, a standard approach for assessing risks and applying risk controls; performance measurement, having management tools to analyze principles and determine whether the entity's safety goals are being achieved; quality and safety assurance, which are processes based on quality management principles that support continuous improvements of the entity's safety performance; and safe employee involvement and senior management commitment to ensure all components are supported and function effectively.

● (1540)

When monitoring a transportation entity, should any of these components be missing or if a safety concern or a regulatory infraction is identified, the department will follow up with the entity to verify if the issue or concern has already been identified by the entity itself, and if it has, find out what is being done about it.

With the adoption of safety management systems, our oversight of the transportation industry is strengthened in a number of ways, including: increased accountability and responsibility in the industry; active pursuit of efficiency; systematic risk management of safety and security; monitoring and evaluation of performance to achieve objectives; and that the results support Transport Canada's strategic outcome, which is safety.

Safety management systems have gained international acceptance and have been adopted by standardizing bodies such as the International Civil Aviation Organization, the International Maritime Organization, and the International Organization for Standardization. As a member of these international bodies, this acceptance has placed additional pressure on Transport Canada to adopt safety management systems, and for good reason.

[Translation]

The need to use SMS dates back to 1998 when marine safety implemented the international safety management code for certain vessels trading internationally.

As you may know, rail and civil aviation safety followed in their footsteps and told the industry to formally adopt SMS in 2001 and 2005 respectively.

In the following slides I will focus on each mode of transportation, the implementation of SMS, and the work that remains to be done.

Before I begin, I would like to point out that dangerous goods transport has no formal SMS program but the SMS principles have been embodied in the various components of the program.

[*English*]

With that introduction, Mr. Chair, I'll turn to my colleague, Mr. Martin Eley, the director general of civil aviation, who will give us a short overview of how SMS applies in the aviation sector.

Mr. Martin Eley (Director General, Civil Aviation, Department of Transport): Thank you.

The accident rate in the last 10 years has continued to decrease. At the same time, we've seen a significant increase in air traffic. The outcome of that is that the actual number of accidents has gone down year over year. In fact, last year the total number of accidents in Canada declined to the lowest recorded figure in modern aviation history.

As previously mentioned, many of today's air transportation accidents can be attributed to human or organizational factors. Safety management systems offer the most promising means of preventing these types of accidents by requiring companies to have processes that proactively and systematically minimize the risks caused by these factors.

When our inspectors inspect a company, they determine the effectiveness of its safety system, verify its regulatory compliance, and analyze its corrective actions, if applicable. By interviewing employees, managers, and CEOs, and asking how they assess risk, we broaden our scope to help companies minimize risk at every level.

The path to achieving excellence in safety can be entirely different from one company to the next. This is why we have moved toward a systems-based approach that asks companies to have systems in place to identify, assess, and mitigate risks; to acquire safety data; to analyze if the organization is meeting its safety goals; and that support continuous improvement in the organization's safety performance.

It's worth noting that a recent review by the Australian Civil Aviation Safety Authority found that recent studies have demonstrated that well-implemented SMS, especially those where the organization invests effort into the SMS, are associated with enhanced safety performance.

In terms of implementation, Transport Canada is a world leader in SMS requirements for aviation organizations and continues to work with the front-line staff and the industry to further improve the program. At the present time, our level of implementation covers 90% of the fare-paying passenger kilometres in Canada. We're one of the few authorities in the world that have implemented SMS to that extent.

We've conducted SMS assessments of all Canada's airlines and related maintenance organizations to verify that the SMS in these companies are working and contributing to a healthier safety culture within the organization.

In 2008 and 2009 we also introduced regulations for airports and air navigation service providers in Canada. Following implementation in those sectors, a decision was made to further delay implementation in other commercial sectors to make sure we had additional time to refine our own procedures, training, and guidance based on both inspector and industry feedback. Since then, we've begun an assessment on further implementation that will help us determine industry readiness and Transport Canada's capacity to carry out the necessary surveillance.

We are currently considering additional information with respect to the feasibility, timing, and benefits of implementing SMS in these other areas. We will review and communicate proposals for moving forward within the next year.

Since the implementation of SMS, we have also refined our oversight tools. A lot of progress has been made internally to strengthen the oversight of aviation organizations subject and not subject to SMS requirements. We found that many of the tools we had developed were equally applicable in both worlds.

We exercise a systems-based approach to safety oversight that includes assessments, program validation inspections, and process inspections.

Assessment means the surveillance activity conducted to look at the effectiveness of a company's SMS, and the level of compliance with the civil aviation regulations. We use the compliance level for all sorts of companies.

The second form, the program validation inspection, means a systematic review of one or more regulated areas of a company subject or not subject to SMS. It is used to determine if regulatory requirements are documented, implemented, in use, and effective within certified organizations.

Third, the process inspection means an in-depth review of the processes used to produce an output, for example, the maintenance of training records. Other inspection activities occur in the course of delivering services to the industry.

These surveillance tools complement one another and together provide for comprehensive oversight of compliance with safety regulations.

Multidisciplinary inspection teams work together to provide the necessary surveillance of a company's entire operation. On-site inspections are built into Transport Canada's surveillance schedule and can be planned or unplanned. The department conducts thousands of such inspections a year.

Companies with SMS are required to have management tools to analyze whether the company's safety goals are being achieved and processes based on quality management principles that support continuous improvement of its safety performance.

•(1545)

Our own program, our risk-based surveillance program, has brought several benefits to the organization in terms of resource allocation. We are now in a better position to proactively allocate resources to provide the greatest benefits. We can also better achieve a balance between workload and capacity by moving resources and/or moving work around as those priorities are identified necessary.

This new approach links the surveillance of activities to risk profiles of companies, allows flexibility for smaller oversight interventions and unplanned work, and allows us to assess the adequacy of resources to deliver the program. We've also identified specific points in the planning process to make sure that we have adequate management review and we review the data annually in conjunction with ongoing workload and capacity analysis.

From an enforcement perspective, as we introduced safety management system regulations as a means to trigger proactive approach to regulatory compliance, we also needed to make sure that we didn't just react to findings when they arrived from TSB, for example.

Our approach has been two-pronged. One, it focuses on a non-punitive reporting culture in the companies, which encourages companies to take corrective and preventive measures even before we necessarily become aware of an issue. It also provides for punitive measures when TC inspectors do identify non-compliance, and the enforcement action TC takes can include oral counselling, fines, or even suspension or cancellation of the company's certificate. We do not hesitate to take action if we determine such action is necessary.

Enforcement is taken with a firm but fair approach and is based on the examination of surveillance activity, historical records, and informed judgment. When necessary, we may place a company under an enhanced monitoring program that provides for increased surveillance, as well as additional assurance that deficiencies are being dealt with effectively and appropriately. If Transport Canada detects a situation that poses an immediate threat to aviation safety, an inspector may issue a notice of suspension of the organization's certification or detain the aircraft.

Internally, we've developed an action plan to guide the civil aviation program. That was not entirely, but largely, aimed at many of the results that came out of the OAG audit that was released in April 2012. The action plan included many activities to strengthen the civil aviation program, including in areas related to the oversight of aviation organizations and their safety management systems.

Transport Canada has staff instructions that describe the procedures and responsibilities of inspectors when it comes to surveillance and enforcement activities. Beginning last year, we also held oversight workshops with inspectors across the country to discuss surveillance and enforcement. Those staff instructions were revised based on some of the feedback we had during those meetings. TC continues to work with the front-line department employees in industry to improve understanding of the SMS regulatory approach.

In summary, to continue this improvement, as discussed, further analysis is needed prior to moving forward with SMS implementa-

tion into other areas of air transportation, and we continue to further refine our processes to ensure that we focus our resources consistently on the areas of highest risk.

Thank you.

•(1550)

Mr. Gerard McDonald: Thank you, Martin.

We'll now ask Donald Roussel, our director general of marine safety, to talk about the marine mode.

Mr. Donald Roussel (Director General, Marine Safety and Security, Department of Transport): Thank you very much.

In response to a number of significant marine accidents, the International Maritime Organization instituted SMS through the incorporation of the international management code for the safe operation of ships and for pollution prevention, which is called the International Safety Management Code, or the ISM Code. It was introduced into the International Convention for the Safety of Life at Sea, SOLAS, in 1998.

All countries that are signatory to SOLAS have implemented the ISM Code. Pursuant to the Canada Shipping Act, Canada implemented the ISM Code in 1998 by introducing the safety management regulations.

As Canadian vessel operators recognize the benefit of SMS, many have adopted the ISM Code voluntarily.

Currently the safety management regulations apply only to vessels subject to the SOLAS convention. However, Transport Canada is proposing to amend the safety management regulations to apply to the Canadian domestic fleet. As a result, preliminary consultations were initiated in the fall of 2010, and consultations will continue through 2013.

The proposed regulations will apply to the following vessels and the companies that operate them.

A Canadian vessel subject to chapter IX of SOLAS currently covered by the safety management regulations will have an SMS audited and certified.

We are proposing that a Canadian vessel of 500 gross tonnage and upwards have an SMS audited and certified.

We're proposing also that a Canadian vessel certified to carry more than 50 passengers have an SMS audited and certified.

For smaller vessels that are more than 24 metres in length and less than 500 gross tons, we propose to have SMS but no audit and certification requirement.

We are currently preparing alternate means to encourage SMS and safety culture on smaller vessels. For instance, we are publishing an online SMS manual and guidelines. The work towards the development of the regulation is well under way. Drafting of the proposed regulation is targeted for completion by the second quarter of 2014.

We strive for continuous improvement. Amending the safety management regulations will improve the safety culture of Canada. By moving forward with the proposed regulations, Transport Canada would establish one set of safety management requirements based on the International Safety Management Code.

In addition, this will facilitate industry's ability to comply with regulations and other requirements, which will improve safety performance overall. It will also enhance risk management, information sharing, and allow for flexibility and innovations. Companies will be able to develop safety management systems that reflect their specific operation; each SMS is tailored for the individual vessel and its operator.

Finally, as part of our effort to improve continuously, we are preparing alternate means of encouraging SMS and safety culture on smaller vessels, leveraging and educating municipalities and provinces involved in the issuance of commercial licences and compliance programs. We are informing underwriters and proposing to increase the number of agreements with provincial compensation boards.

Thank you.

• (1555)

[*Translation*]

Mr. Gerard McDonald: Mr. Chairman, I will now call upon my colleague, Mr. Luc Bourdon, the director general of rail safety, to describe the railway situation.

[*English*]

Mr. Luc Bourdon (Director General, Rail Safety, Department of Transport): Merci, monsieur McDonald.

The SMS regulations were added to the Railway Safety Act in 2001, following some amendments that came into force in 1999. As per a provision in section 51 of the act in 1988, four years after, there was a mandatory review that took place, in 1994, and that was followed by another one. Nothing that was recommended in 1994 was actually put into the RSA review.

In 1998 there was a second review and it was recommended that the Railway Safety Act be amended to include the provision to have the SMS regulations in place, so that in 2001 the provision came into force.

As we speak, the SMS regulations apply to all federally regulated railways and some of the provincial railways. Some provinces have adopted the federal regime.

A company must implement the 12 components of SMS as part of the SMS regulations. The components deal with policies targeted toward systems, processes, procedures, and documentation.

The regulations require railway companies to develop their own safety policies and procedures and measure their safety record. It's

important to note that before SMS, a company still had the responsibility to develop their own policies and procedures. Since SMS came into force, now it is regulated to do so. It's not something that we transferred to industry. They were doing it before. Now it's regulated under the safety management system regulations.

In order to support industry and the unions, we developed some guidance material in 2010 jointly with the unions and management, the Railway Association of Canada, their members, and Transport Canada. We produced some guidance material, which is in the kit that we can distribute later on, which is guidance material to help the company. We've got best practices for all railways, best practices for small railways. There is also a little brochure on the safety culture, as well as a little pocket document on SMS in order to assist the railways and the unions.

Currently, there are approximately 35 railways in Canada that are subject to the SMS regulations. Once the SMS regulations are amended, we'll have about 80 railways, 79 that will come under SMS.

On progress to date, both the Railway Safety Act review, which was a panel that was mandated by the minister to do a review and they tabled a report in 2007, as well as the Standing Committee on Transportation, Infrastructure and Communities, made some recommendations in 2008 and enhanced the implementation of SMS on the rail industry. Many of these recommendations required legislative amendment. All of them, or most of them, are included in the act that was amended on May 1.

In terms of continuous improvement, as a result of the amendments to the Railway Safety Act that came into force on May 1, 2013, work is under way to amend the SMS regulations that respond to the RSA review, as well as the Standing Committee on Transport, Infrastructure and Communities recommendations. We're currently amending the SMS regulations to include many of the recommendations.

Amendment to the RSA reflect the central importance of SMS and recognize the responsibility of railway companies to demonstrate that they continuously manage risk related to safety matters using SMS. That's now clearly in the act. As well, we've also included, as a result of risk management analysis, that a railway must maintain the highest level of safety.

Amendments to the regulations will also clarify Transport Canada's expectations and require railway companies to identify an accountable executive as a focal point of accountability for the safety of a company's operation. This will require the involvement of employees and their bargaining agent, which was a recommendation also on the Railway Safety Act, as well as developing a non-punitive reporting system and to have the ability for employees to report directly to Transport Canada in a confidential manner.

●(1600)

We were planning to prepublish the SMS amendment in the *Canada Gazette*, part I, by summer 2014.

Mr. Gerard McDonald: Merci, Luc.

In summary, Mr. Chair, after more than 10 years of experience with safety management systems, we've learned a few lessons along the way that will benefit ourselves as the regulator, as well as the transportation industry we serve.

For instance, we realized that performing SMS assessments must be supported by random or planned inspections. The use of monitoring and surveillance activities is necessary for the department to get a true picture of the operations of a transportation entity. Another point we've learned over the past decade is that we cannot take a one-size-fits-all approach to SMS, as this would advantage larger transportation organizations. To be fair to smaller businesses and operations, regulations and policies must be scoped and tailored so that safety requirements are appropriate to smaller operators.

[Translation]

We are very aware of the fact that before we apply SMS to other areas, whether it be the aviation or marine sectors, we will have to undertake a full evaluation of the risks and resources in order to ensure that all parties have the ability to implement safety management systems.

Even though Canada has one of the best transportation safety records, we acknowledge that there are still challenges.

I can tell you that our department strongly supports safety management systems and that it is determined to improve the overall safety of the transportation network.

[English]

I'm confident that we can address any challenge by continuing our hard work with our employees, unions, stakeholders, and interested parties. Together we can all enhance and strengthen the safety of Canada's transportation system.

I want to thank you, Mr. Chair, for allowing us to make this presentation today. Of course, we would be happy to take any questions that members of the committee may have.

The Chair: Thank you, Mr. McDonald and all your officials.

Before we get started, I want to recognize somebody who is here today as a spectator. Ms. Esther Bardo was a former member of the international parliamentary internship program in 2006. I had the pleasure of having her in my office for six weeks. She's sitting over on the far side. She obviously had a good experience here in Canada and she came back. Please welcome her.

I also want to remind the members of the committee that part of the job of the officials here today is to carry out policy for the government. I want to remind you to be cognizant of that as you ask your questions.

With no further ado, Ms. Crowder, for seven minutes.

●(1605)

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

You're telling me that the officials can't rewrite policy as we speak then.

The Chair: Yes.

Ms. Jean Crowder: I want to thank the officials for coming before us today.

I have a question that comes out of an article in the *Toronto Star*. To give you a bit of context, it says: As a growing number of train derailments raise public safety concerns, documents that contain a rail company's safety plan — and play a key role in the regulation of the rail industry — are “locked up in a vault,” say some industry experts and safety advocates.

Amid calls for increased transparency about rail companies and the products they carry, company-specific safety regimes — which detail practices, policies, employee training and more — are not available through Transport Canada.

Although the federal regulator audits the safety plans, known as safety management systems (SMS), for compliance, a spokesperson said they're “third-party information” and should be accessed through the companies.

Later on in the article, we read that retired Justice Virgil Moshansky believes that a penchant for secrecy concerning transport regulations documents continues. “Not disclosing”—a safety management plan—“is really an excuse to get around from disclosing faulty management systems or operations within the industry to the public.”

Can you comment on the fact that the public cannot access SMS plans and we really have no way of knowing whether the plans meet community needs and whether I need to be worried about a train rolling through my municipality?

In fact, in this article, contrary to what I think Monsieur Roussel said, the union raised questions about their lack of access to SMS plans in companies that they worked for.

Can you comment on that, Mr. McDonald?

Mr. Gerard McDonald: Certainly.

Obviously when we're dealing with company information, we have to be cognizant of commercial confidentiality of information that we receive. We are subject to the access laws, like anyone else in government.

Anything we would be able to release would have to go through the appropriate assessment on access to information. If it is third party information, we're not at liberty to release it ourselves without going to that third party to assess whether there may be commercial confidentiality aspects to it that might be breached should we do so.

Ms. Jean Crowder: You'll forgive me if the public would have serious concerns about that response, although we're talking about an SMS rather than transportation of dangerous goods. I want to refer to the report of the Commissioner of the Environment and Sustainable Development. That report raised some serious concerns about Transport Canada's oversight of the transportation of dangerous goods. Given the track record from the Commissioner of the Environment and Sustainable Development, what mechanisms do you have in place that can provide assurance to the public around your oversight of SMS plans, your ability to follow up, and your ability to ensure compliance?

Mr. Gerard McDonald: Yes. The report you talk about was published in 2009, and since then the department—

Ms. Jean Crowder: It was actually 2011.

Mr. Gerard McDonald: Sorry, 2011.

Since that time we've done a great deal of work to address the recommendations of the Commissioner of the Environment and Sustainable Development. With respect to assuring the public, we are totally open in what our inspection process comprises. We inform them of what inspections we may have done. We can educate anyone who wishes to know what the system is made up of and the quality assurance in the system. All of these elements would hopefully add to the degree of trust the public has in our program.

Ms. Jean Crowder: That's the process; that's actually not the results of the inspection. That's not the result of whether or not you're working with a company in terms of compliance. Telling me what the process looks like doesn't mean that you actually do it.

Mr. Eley indicated in his presentation—actually it was a note on page six of the document when Mr. Eley was talking about moving ahead on SMS—that in part there's a slowdown on moving ahead on SMS because of the fact that you're reviewing the capability of the department in order to do that. How can we have confidence that the review, the necessary corrective action, and the follow-up review around compliance is happening when all you tell us about is a process? We don't have any results of the actual SMS process.

• (1610)

Mr. Gerard McDonald: As I said, we are somewhat restricted in what information we can release on individual SMS audits. That is not of our own doing; those are the laws that we have to live within and respond to. We also, as I said, have to be cognizant of commercial confidentiality and ensure that organizations are not using information that may be made available to them to gain commercial advantage.

I'm not sure what I can add to that.

Ms. Jean Crowder: My understanding is that part of your role as Transport Canada is to ensure public safety, and the public needs to have confidence that is actually happening. When things are clouded by secrecy and lack of transparency, it's very difficult for the public to have confidence on that matter.

I want to follow up on a recent announcement that was made with regard to transportation of dangerous goods. I know that you indicated earlier that transportation of dangerous goods does not have an SMS in place, that there are other regulations, but—

Mr. Gerard McDonald: To clarify, transportation of dangerous goods is a somewhat different program in that we regulate the shippers and the product being shipped, so it doesn't lend itself to the SMS process. That being said, any transportation company that is transporting dangerous goods is subject to an SMS and they have a transportation of danger goods component to their SMS system.

The Chair: Your time has expired. We'll be back to you.

Mr. McGuinty, you have seven minutes.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair.

Witnesses, thank you very much for being here today. Thanks for your testimony so far.

I want to go back and recap something I brought up with the minister when she appeared recently, just to remind Canadians of what has been happening at Transport Canada.

Using fiscal years 2011-12 and 2012-13, aviation safety has been cut 11%, from \$222 million to \$198.6 million. Marine safety has been cut 25%, from \$75.6 million to \$56.5 million. Road safety has been cut 5.5%, from \$23.8 million to \$22.5 million. I acknowledge that there has been a paltry and nominal increase of \$1.5 million a year for rail safety.

I think that's important for us to remember as we continue our discussion about SMS writ large.

It's also important for Canadians to remember that at the very least, the conservative estimates—the small *c* conservative estimates—for the costs for the cleanup and decontamination around Lac-Mégantic are a minimum of probably \$250 million.

On top of that, we're seeing massive increases in the shipping of oil by rail, longer trains, more cars, heavier weight, and more risk. We're seeing our railway companies invest heavily in this regard, of course, because by 2025, even if every pipeline project in this country is approved, we're still going to see a million barrels a day of surplus oil that's going to have to be shipped somehow.

When I looked at these SMS plans, picking up on what my colleague from the NDP asked about public access to the information inherent in an SMS, I wanted to find out more about who is consulted. In your briefing you say, "We are working closely with employees, industry, labour unions and key interested parties..." so let me ask you this. When you come to ground on an SMS that is being implemented, are urban governments, municipal governments, which are most at risk, according to Mayor Nenshi.... He doesn't even agree with the government's recent announcement about releasing "yearly aggregate information, presented by quarter, on the nature and volume of dangerous goods" that the company is transporting through municipalities.

I can't for the life of me figure out why we're not revealing this prospectively, as opposed to retrospectively. I don't know why fire and first responders don't want to know in advance what's coming through their city, as opposed to six months ago.

I want to find out who's consulted. Are municipal governments consulted? Are environmental NGOs consulted? For the river in play in Lac-Mégantic, we have no idea of what that's going to cost in terms of its cleanup, and we have no idea of what the long-term cost will be.

Who in fact is called in to help craft these SMS?

• (1615)

Mr. Gerard McDonald: Anyone who wishes to participate, we're more than happy to hear from.

As a general matter, of course, as I indicated, when we're developing regulations, we'll consult with the railways, with the short-line railways, and with their associations, such as the Railway Association of Canada. We'll consult with the municipalities, either individually or through their representative organization, the Federation of Canadian Municipalities. We consult with the unions: the Teamsters, the Brotherhood of Locomotive Engineers and Trainmen, and what have you. We make the proposals well known enough such that if there's anyone else who wishes to come forward, we're more than happy to listen to what they have to say and to take their considerations into account when developing a new SMS regulation.

Mr. David McGuinty: Forty years ago, the Belgians, the Germans, and the Dutch realized that the Rhine was dying, so they actually figured out a new way of doing business. They started negotiating and implementing, and rendering fully public, eco-covenants.

Shippers of chemical products, chemical factories, chemical companies, environmental NGOs, labour groups, and governments all sit down together at one table in one process. They don't get what I describe as flash-card consultation: now you see it, now you don't. They actually sit down and negotiate. Apparently, German chemical companies have no problem with revealing some of their so-called trade secrets, because these eco-covenants are signed off on by environmental groups. They're made public. They're five-year plans.

Any citizen can find out exactly what's going to happen on the Rhine with respect to the transport of chemical products and risky products. They can find out about pollution levels. They can find out about spills, etc. It's all negotiated in advance. Why can't we work towards something like that in Canada, or can we?

Mr. Gerard McDonald: Certainly, we have consultative mechanisms that perform much in the same manner. Each of our modes have well-established mechanisms for consulting all of the groups that I mentioned.

On the rail side, we have the Advisory Council on Railway Safety that was formed after the Railway Safety Act review. On the transportation of dangerous goods, TDG, side, we have the Transportation of Dangerous Goods General Policy Advisory Council, which met just last week with well over 100 participants, I would think, who were there to give the minister their views on what should be done to improve rail safety.

On the marine side, we have the Canadian Marine Advisory Council which meets twice a year and welcomes all participants. I believe they had about 300 or 400 participants at the last meeting.

On the civil aviation side, we have the Canadian Aviation Regulation Advisory Council, which meets on a regular basis as well.

Mr. David McGuinty: I understand exactly what you're saying. It's the old traditional North American approach. The regulator holds meetings; all kinds of voices are brought to a table; it's all taken under advisement; the doors are closed; and the regulator does what the regulator does. Usually it's with instructions from the political master. That's how it's been working forever in this country.

What I'm asking is, can we graduate and take steps into a new kind of decision-making, where governments are actually prepared to cede a certain amount of their authority? For example, if an SMS is being crafted with a particular company, a major rail company, why can't that SMS be signed off by a major consortium of environmental NGOs who understand the plan and legitimize the plan by actually participating in it? Why can't the labour groups that are actually being consulted sign off? I'm not talking about bringing people into a room, hearing them, closing the doors, and then deciding what's going to happen.

The Chair: Okay. Could you let them answer that, Mr. McGuinty?

Mr. David McGuinty: Can that be done?

Mr. Gerard McDonald: First of all, I take exception to the characterization that we invite people in, then we close the doors and we don't tell them what we're doing. Our consultation is a continual process. We try to keep stakeholders as informed as we possibly can on where we are going and try to come up with a solution that all can agree on.

In terms of doing business a different way, certainly we're always open to looking at ways to improve our fora. In fact, we have revamped both the Canadian Marine Advisory Council and the CARAC, Canadian Aviation Regulation Advisory Council, process on the civil aviation side, just recently, to look at new ways of consulting. We're certainly open to doing things in a different manner.

• (1620)

The Chair: Okay. Thank you.

I'll move to Mr. Watson for seven minutes.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for appearing today.

On safety management systems, let me address it in general terms first. It is not deregulation; that is, it doesn't remove regulations from the books.

Is that correct, Mr. McDonald?

Mr. Gerard McDonald: That's absolutely correct.

One of the biggest problems we have is that people characterize it as deregulation. With the implementation of safety management systems, not one Transport Canada regulation has been removed from the rule book. In fact, we see safety management systems as an umbrella regulation on top of all the others to make sure that they're working properly.

Mr. Jeff Watson: Neither is it self-regulation. Is that correct? That is, the industry simply writes its own rule and the government accepts the way that industry has written it.

Mr. Gerard McDonald: That is correct as well, sir.

Mr. Jeff Watson: It's the minister, in fact, at the end of the process. Though the companies may draw up a rule, it's the minister who has to approve a rule at the end of a process. Is that correct?

Mr. Gerard McDonald: That's correct. Are you referring specifically to the rail side where there's—

Mr. Jeff Watson: That's correct. I think a lot of my questions will be relating to rail today.

Mr. Gerard McDonald: —a different regulatory construct?

Mr. Jeff Watson: Right, and it will carry the force of law once approved. Is that correct?

Mr. Gerard McDonald: That's true.

Mr. Jeff Watson: In fact, all of those elements were contained in the 2007 independent rail advisory panel report, "Stronger Ties".

I would add, by the way, it doesn't replace Transport Canada's right to regulate, in addition. Is that correct?

Mr. Gerard McDonald: That is correct as well.

Mr. Jeff Watson: Concerning safety management systems, the 2007 report—and I'm going to start there, because I want to focus my comments on rail today—called for effectively a shift in culture within the railway companies and within Transport Canada itself as a regulator. In fact, they used what I think they referred to as the "ICAO continuum" for evaluation, as contained in pages 73 and 74 of the report.

I'm going to refer to that at the moment. This is in "An Evaluation Tool for 'Safety Culture'".

On the one end is "a company that complies with minimum safety standards and views compliance as a cost of doing business." They take "a short-term perspective", and the regulator "must engage in significant surveillance and enforcement activities". The report at that time said CN was at that particular stage.

Next in the continuum is "a company that views safety solely as compliance with current safety standards". They may have an "internal inspection and audit" process and "a system of reward and punishment", but "intervention is still required from the regulator, though the approach may be more educational in nature". They identified CP as at that stage.

The third stage along the continuum is "a company that sees safety as risk management and recognizes that compliance alone cannot guarantee safety. This company is anticipatory and identifies the potential for hazards before they occur. The regulatory approach

must evolve from compliance inspections to system audits." At the time, they said that Transport Canada effectively was at that stage.

The fourth stage is "a company that views safety as an opportunity". They leverage "safety management capability to... economic benefit" and have "a longer-term outlook". The regulator's role "is primarily one of monitoring the company's safety performance." They had VIA Rail at stage four in terms of its progress in the implementation of SMS.

Then, "at the advanced end of the continuum", which is stage five, is "a company that has fully integrated safety into its business practices. Safety is reflected in core values and built into the business model", and "the regulator's role is one of monitoring".

That was the 2007 report. Again, they had Transport Canada at level three. We are now six years down the road with the implementation of safety management systems.

Mr. McDonald, where would you say Transport Canada is today?

Mr. Gerard McDonald: Certainly we've progressed from where we were in 2007, and to talk to the specific rail experience on how we have progressed and to what measure, I'll turn to Monsieur Bourdon to answer the question.

Mr. Luc Bourdon: I think we progressed by adopting many of the recommendations that were generated by the report Mr. Watson is talking about. I mentioned earlier that now we have guidelines that were developed to assist the railway. We have best practices that were gathered in two documents to assist the larger railways as well as the smaller operators. We developed a safety culture checklist, as well as other documents, to support SMS.

On a scale of one to five, I'd be very careful about saying where we stand, but we have definitely progressed; there's no doubt about that.

• (1625)

Mr. Jeff Watson: Both the report as well as Transport Canada's own publication "Moving Forward", which preceded the report in its publication by a few months, talked about the requirement of a culture shift not just within railway companies, but within Transport Canada itself.

I want to probe three areas, if I may, in that regard. One is with respect to personnel.

On page 10, "Moving Forward" says that Transport Canada "will maintain the capability to apply its traditional compliance inspection and audit activity — while augmenting its capability to perform system audits and assessments."

What did that mean in 2007 with respect to personnel? Is it that in addition to the inspectorate they would be looking to add new auditors for system audit, or that they would cross-train the existing inspectorate to do the additional function of audit and evaluation? What was the philosophy or the decision by Transport Canada?

Mr. Luc Bourdon: I think it was both. Whereas we did take some of our inspectors and train them to be auditors, we also hired people who had the auditing skills to lead some of these audits.

For example, in Ottawa at headquarters we hired people who had an auditor's background in order to assist the region, and in the region we trained our inspectors. There is still some training that needs to be conducted, but we trained our inspectors to be auditors as well.

Mr. Jeff Watson: Let me move to the audits themselves.

In terms of traditional inspections, which would be for compliance with regulations, approximately how many do Transport Canada inspectors across the country and the five regions conduct on an annual basis?

Mr. Luc Bourdon: Last year we did close to 32,000.

Mr. Jeff Watson: Thirty-two thousand.

Mr. Luc Bourdon: I think it's 31,625 or something like that.

The Chair: You can finish that thought, Mr. Bourdon, before I move on.

Mr. Luc Bourdon: That's the number of inspections we conducted.

The Chair: Okay.

You're out of time, Mr. Watson, but I understand you're taking the next seven minutes. Go ahead.

Mr. Jeff Watson: Thank you very much.

Is that 30,000 a rough average over, let's say, the last few years?

Mr. Luc Bourdon: I think we've increased from year to year.

Mr. Jeff Watson: Okay.

Moving to system audits, the next phase on top of traditional inspection, how many audits would you conduct in a typical year?

Mr. Luc Bourdon: It varies from year to year, depending on how many components of the SMS regulation we want to verify. We may not do a full-blown audit of the 12 components. We may just be risk-based and do only a certain amount of these components.

It could vary, nine or twelve; I could bring to the committee the exact number.

Mr. Jeff Watson: Okay.

In terms of a safety management system, just for a visual, perhaps, there are obviously a number of components in a safety management system. It wouldn't fit neatly into a binder, right?

How large would a safety management system be, just for the public's understanding here?

Mr. Luc Bourdon: For a company the size of our class 1 railway, if you tried to gather all the information and all the documentation, it could fill a room.

Mr. Jeff Watson: It could fill a room. That would require a number of auditors and a considerable amount of time.

How many federal railway companies have been audited for SMS?

Mr. Luc Bourdon: Since the beginning? I would say pretty much all of them, several times.

Mr. Jeff Watson: Would that be for components of SMS, or for a full understanding of their safety management system?

Mr. Luc Bourdon: I think at the onset we started with full-blown audits with the 12 components, but after a while we tried to be more risk-based and focus on the key components.

Mr. Jeff Watson: How does Transport Canada plan its audits, what risks to focus on, which companies to do? Is there a planning exercise related to that? Is that done annually? How does Transport Canada tackle that issue?

Mr. Luc Bourdon: Annually we gather our employees from the region. We get together, and we do what we call a risk-based business planning session. We look at the results of our inspection, the complaints we may have received, and TSB's report, and try to focus on where we see the risks are greater.

We can focus on an individual railway or on a component throughout all the railways. If we feel there may be some issues with training, let's say, then we'll look at training across different railways.

• (1630)

Mr. Jeff Watson: The rail advisory panel review recommended, if I understood it correctly, that Transport Canada have the understanding of how components of an individual company's SMS interact with each other.

Does Transport Canada have that understanding for railway companies, that is, a full overall understanding of how their SMS systems work, or do they simply have an understanding of whether they have fulfilled the requirements of different components of an SMS?

Mr. Luc Bourdon: I think with the amount of time we spend on the ground with each railway, we have a good understanding of how their SMS works.

Mr. Jeff Watson: Every company is required to submit their performance objectives. Do they do that annually?

Mr. Luc Bourdon: Yes, annually.

Mr. Jeff Watson: How do we know they've achieved them?

Mr. Luc Bourdon: Usually when they file their update to their SMS, let's say for 2014, they will tell us what they achieved in 2013.

Mr. Jeff Watson: You'll know that, but we won't know that.

Mr. Luc Bourdon: We'll know that because we know exactly what they told us at the end of 2012 what they were hoping to achieve in 2013.

Mr. Jeff Watson: Will you have verified that at some point?

Mr. Luc Bourdon: We'll verify it, yes.

Mr. Jeff Watson: Do CN, CP, or any of the rail companies do their own system-wide audits on their safety management systems?

Mr. Luc Bourdon: Yes, they do. They do internal audits.

Mr. Jeff Watson: Do you verify and audit those as well?

Mr. Luc Bourdon: Yes, it's one of the components of the SMS regulations.

Mr. Jeff Watson: As to safety performance objectives, I heard you talk about proprietary information. I think it was Mr. McDonald who talked about the information that is submitted.

I understand that questions pertaining to their on-time performance or other elements like that are very proprietary, but why are safety performance objectives proprietary information? Why doesn't the public get to know, for example, that CN intends to improve the number of main-track derailments by 25% over the next year? Why is that proprietary, and for that matter, why shouldn't CP know that?

Mr. Luc Bourdon: I think sometimes in their annual reports the railways say globally what they have achieved in performance. They may not provide all the details, but usually people pretty much know their performance with respect to train derailments.

Mr. Jeff Watson: They know it as a fact, but they don't know what their objectives are on the front end.

Mr. Luc Bourdon: No, I don't think so.

Mr. Jeff Watson: They don't know whether they are meeting their objectives.

Mr. Luc Bourdon: I don't think that's—

Mr. Jeff Watson: Doesn't that mean that Transport Canada rather than the railway company, contrary to the idea of safety management systems, becomes primarily responsible for railway safety or the evaluation of it?

Mr. Luc Bourdon: No, the act is clear under section 3 that it's the railway that is responsible for the safety of their operation.

Mr. Jeff Watson: I appreciate that, but it leaves Transport Canada in the position of being the only one that knows whether they are meeting their obligations.

I want to get to allocations here. In 2009 there was in the budget \$44 million allocated to improvements to the regulatory framework, as well as \$27 million to grade crossing improvement.

Can you give us a sense of what those framework improvements were for? Was that for organizational changes within Transport Canada to begin the shift toward the audit and evaluation function as opposed to the traditional inspectorate? Can you give us a sense of what those investments were for?

• (1635)

Mr. Luc Bourdon: You already mentioned the \$27 million for grade crossing improvement. There was also about \$44 million for oversight, and that means more inspectors to conduct inspection and audit. We also had money for R and D to handle some projects. We had enforcement officers in order to meet the amendment to the act. We also had people in order to assist with data analysis. That's about the split for the major categories we were provided money for.

The Chair: Thank you.

We now move to Mr. Genest-Jourdain.

[Translation]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Ms. Dagenais, gentlemen, I have to admit that I was quite shocked when I read about the extent to which the government has delegated the responsibility of implementing transportation safety measures to the private sector. Of course, because I am a lawyer, my reflex was to look at the liability policies required when very compromising circumstances have environmental consequences.

What is the role of the state in terms of follow-up and verification in order to make sure that private businesses have sufficient liability policies in order to cover costs and resolve extensive environmental disasters? I am thinking for example of the oil spill that took place in my birthplace, Sept-Îles. Rehabilitating that site cost several million dollars.

[English]

Mr. Gerard McDonald: That is something, Mr. Chair, that is governed by the Canadian Transportation Agency. The Canadian Transportation Agency, and I'm talking specifically on the rail side here right now, must ensure a company has adequate insurance before issuing a certificate of fitness.

The levels of insurance are something the agency has said they are going to look at. In addition, in the Speech from the Throne, the government indicated it would be reviewing the liability and compensation regime.

[Translation]

Mr. Jonathan Genest-Jourdain: Has Transport Canada examined the emergency response plans of regulated businesses under the dangerous goods transport regulations?

Mr. Gerard McDonald: In what way? Are you referring to insurance?

Mr. Jonathan Genest-Jourdain: It is in another area. I'm jumping from one topic to another.

Has Transport Canada examined the emergency response plans of all regulated businesses under the dangerous goods transport regulations? If so, how often have they been examined? If not, why hasn't this been done?

Mr. Gerard McDonald: I'll ask Ms. Dagenais to answer that question.

Ms. Marie-France Dagenais (Director General, Transportation of Dangerous Goods, Department of Transport): Transport Canada must approve the plan before it comes into force. We must approve all proposed plans. We have roughly 900 plans. We review the plans according to risk. The plans are reviewed every two to five years by Transport Canada specialists who undergo training and simulations at our CANUTEC emergency centre to verify the implementation of the plans and to ensure that they conform to what was initially authorized and approved.

Mr. Jonathan Genest-Jourdain: Let's return to insurance. Your colleague spoke to us about rail transport, but I am particularly concerned with the marine transport of hydrocarbons. Does marine transport have the same requirements concerning the purchase of third-party liability insurance policies? Are there the same kind of requirements for marine transport as there are for rail transport?

[English]

Mr. Gerard McDonald: Mr. Chairman, it's a bit of a different construct on the marine side, in that in addition to carrying their proper insurance, there is a fund to compensate for oil spills. I'll ask Mr. Roussel to give a bit more detail in that regard.

• (1640)

[Translation]

Mr. Donald Roussel: Thank you.

In marine transport, we have what is called ship-source oil pollution. This is pollution caused by a cargo, as would be the case with an oil tanker, or by the fuel used to power a cargo ship. There are two different plans, and two funds available in Canada.

The first of these funds is called the Ship-Source Oil Pollution Fund. This is a national fund worth roughly \$400 million. This fund is available for two kinds of pollution: pollution caused by a ship's fuel and pollution caused by the transport of bulk oil.

At the international level, we have access to the International Oil Pollution Compensation Fund, which contains roughly \$1.3 billion. In fact, Canada contributes to this fund.

In summary, Canada has access to triple coverage when it comes to pollution: ship owners' insurance, the national fund and the international fund.

[English]

The Chair: Okay. Your time has expired.

We'll now move to Mr. Braid for five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair.

Thank you to the officials for being here this afternoon.

I have some high-level questions on safety management systems. I'll come to you, Mr. McDonald, and you can direct accordingly, if needed.

How many safety management systems in Canada does Transport Canada oversee or monitor?

Mr. Gerard McDonald: I'm afraid, Mr. Chair, I don't have that information.

Mr. Peter Braid: Can you even give me a ballpark figure?

Mr. Gerard McDonald: It's probably in the order of hundreds, I would think. Every entity that is regulated under the system would have to have a safety management system. It's probably in the twenties on the aviation side, thirty-some on the rail side, but between fifty and one hundred.

Mr. Peter Braid: Okay. Is each safety management system specific to a particular company?

Mr. Gerard McDonald: Yes.

Mr. Peter Braid: Do they vary?

Mr. Gerard McDonald: They would vary.

There are certain elements in a safety management system, which my colleagues talked of. We verify that the company has all of those elements, but we don't give them, say, a form to fill out. They have to tell us how it has been designed, and we assess whether it meets the requirements of the regulations.

Mr. Peter Braid: If company X does not currently have a safety management system and Transport Canada wants it to, how do you compel it to implement one?

Mr. Gerard McDonald: Through regulation.

Mr. Peter Braid: Specific to that company?

Mr. Gerard McDonald: Specific to that sector.

Mr. Peter Braid: Once the safety management system is in place, how does Transport Canada ensure that the company is complying? Is it through audits and in monitoring?

Mr. Gerard McDonald: Yes. First of all, we would, as we introduce a regulation....

Many companies, out of good management practice, have safety management systems on their own.

When we introduce a regulation, we require all operators subject to that regulation to submit to us their safety management plan. The first one they develop we review with them and ensure that all the required elements are there. Depending on the regulation, that would be a requirement for their getting an operating certificate as a transportation company. Once we approve it, we regularly audit it.

Mr. Peter Braid: Through that audit process, if you determine that a company has not met the safety management system requirements, what are the consequences and how do those work?

Mr. Gerard McDonald: It's a complex process.

Generally, if we find non-compliance, we ask the organization for a corrective action plan. If we found something wrong with their plan, they would have to come back to us and tell us how they're going to fix it. We also want them to look at the root cause of that failure; not only what the solution is, but also why they ended up with that situation in the first place, and what they are doing to improve their plan to make sure it doesn't happen again.

If we see continued non-compliance, or if the corrective action plan doesn't yield the results we hoped, we can then move to, as Mr. Eley pointed out, such things as enhanced monitoring, or to other enforcement actions, such as administrative monetary penalties.

• (1645)

Mr. Peter Braid: Okay, so there are administrative monetary penalties in place.

Mr. Gerard McDonald: There are for some of the modes. For others, we're in the process of implementing them.

Mr. Peter Braid: Do you think there should be administrative monetary penalties, AMPs, for all modes?

Mr. Gerard McDonald: We'd like, as much as possible, to move to a consistent safety management construct for all our modes. While modes are different and they operate differently, we feel the overall construct of the enforcement regime should be similar from mode to mode.

Mr. Peter Braid: How many administrative monetary penalties have been imposed in the last two years?

Mr. Gerard McDonald: I'm sorry, I don't have that figure at hand.

Mr. Peter Braid: When a penalty is imposed, where do the funds go?

Mr. Gerard McDonald: Back to the consolidated revenue fund, I believe.

Mr. Peter Braid: Is this whole notion of administrative monetary penalties also an area of continuous improvement? Do you see potential opportunities to enhance and improve this particular consequence?

Mr. Gerard McDonald: Certainly. Anytime we bring in a regulation, we look for ways to improve it.

The concept of administrative monetary penalties is something fairly recently introduced to our various statutes in the transportation industry, and by recent, I mean probably within the last 10 to 15 years.

It gives us more flexibility in enforcement and allows us to deal with the operators more efficiently. In the past, we always had to take them to court to get some resolution to the issue, which could be quite lengthy. This way allows us, through our inspectors and our enforcement people, to get to the nub of an issue in a more efficient and swifter manner, and hopefully get the desired result, which is a safer operation at the end of the day.

Mr. Peter Braid: Great.

The Chair: Your time has expired.

I will move to Ms. Boutin-Sweet, for five minutes.

Mr. Stoffer, you're going to take the five minutes.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): I'm honoured to be at the committee with you, sir. Thank you very much.

Thank you all very much for coming. On a cursory view, it looks like SMS appears to be more aligned toward the company's vision and the business vision, and not necessarily for the public and the environmental considerations. You even said in your remarks that regulations are more or less to adhere to the businesses, but you didn't mention people or the environment.

I can appreciate that, because a few years ago, I had a run-in with an airline on the east coast. They removed the life jackets from the aircraft and said that the seat cushions on the plane should be good enough. Somebody at Transport Canada had to authorize that. I just wonder how an airline could actually remove a safety factor and get approval from the federal government for that.

What I'd like to do, if it's at all possible, is for you to send to this committee all the notes and regulations and minutes regarding that action of how a regional line, Jazz, at that time, was able to get permission to remove the life jackets from the aircraft and somehow convince Transport Canada that the seat cushions were enough. I would remind you that they didn't remove the life jackets for the crew, just for the passengers. I'd like to know how that worked out.

If you wouldn't mind forwarding this committee that information in the future, it would be very interesting to see the comments on how that transaction worked. My concern is that I looked at these audits that were done on a variety of issues, and if I were a person in the general public, I'd be kind of nervous about what my government and transportation department are doing.

I worked for eighteen and a half years in the airline industry, and I have to say that the airline industry here in Canada is one of the safest industries in the world. Kudos go to Transport Canada. Kudos go to the airline industry, and to all of the people who work in it. However, when I start seeing little things chip away at what I thought were safety factors, I get a bit nervous about what may transpire in the future.

I'm going to ask you a particular question. When the government announced the closure of the B.C. oil spill response centre and the shutting down of the Kitsilano coast guard station, did the department in any way conduct an analysis of what these decisions would do in the monitoring of the safety in marine shipment of dangerous goods? In any way were you asked at all to—

• (1650)

The Chair: Point of order, Mr. Watson.

Mr. Jeff Watson: On a point of order, Mr. Chair, I appreciate the nature of the questions, but today's meeting is about safety management systems and the government's ability to monitor safety management and fully implement safety management systems. It's not about other regulatory policy or other government budgetary policy, for example.

The Chair: I think you're straying a bit, but continue.

Mr. Peter Stoffer: Thank you.

Would you be able to answer that question?

Mr. Gerard McDonald: Mr. Chair, with regard to the two programs that the member cites, neither reside within the Department of Transport or our responsibilities at this particular table.

The Kitsilano base obviously is a Coast Guard issue, which is not an arm of the Department of Transport. The oil spill response organization, I believe is with the Department of Environment. I'm not 100% sure where that organization resides, but it's not within Transport Canada.

Mr. Peter Stoffer: As a courtesy, you weren't asked in any way to comment on those particular aspects, were you?

Mr. Gerard McDonald: I'm not aware that we were, but since they're both marine matters, perhaps Monsieur Roussel can provide —

Mr. Donald Roussel: On the Kitsilano base, we have no comment on that.

However, on the other element you are raising, if I recall, it's related to the risk assessments. The Department of Environment is in charge of that, and they have informed us that the capacity to do an analysis in the case of an oil spill will be maintained. It will be delivered from Montreal.

Mr. Peter Stoffer: My last question for you before I give it up is that my colleague from the Liberal Party inquired about the municipalities, first responders, having the information they need to understand what is being shipped to their communities well in advance.

Will we be assured in the future that those communities will know well in advance—any shipments going through any community in this country—what is coming through their community, and what type of containers they're coming in? Will they know when it will be there and what first response capabilities are there in the unlikely event that something may happen?

Mr. Gerard McDonald: The current protective direction calls for railways to consult with those communities about what is travelling through their respective communities. We worked very closely with both the Railway Association of Canada and the Federation of Canadian Municipalities in developing that directive. We've been assured by all railways that they will comply with what we have asked them to do.

The Chair: You have a few seconds.

Mr. Peter Stoffer: You say the railways certainly do that. Will you be monitoring them to ensure that they do that, or will you just take their word for it?

Mr. Gerard McDonald: No, we will be monitoring them, sir.

Mr. Peter Stoffer: Thank you.

The Chair: Thank you.

We'll now move to Ms. Young for five minutes.

Ms. Wai Young (Vancouver South, CPC): Thank you very much for being here today.

Moving to the B.C. coast, then, and because I'm from Vancouver, I have a question around the SMS for marine traffic. It's my understanding that it has been 15 years since the implementation of SMS for marine traffic. Can you explain the delay in rolling out the regulations of compliance for this industry?

Mr. Gerard McDonald: I'll ask Monsieur Roussel. He can give the detail, but there's a bit of a nuance there in that a certain section of the industry, i.e., those ships that are responsible or answerable to international convention already have SMS, and what we had talked about was moving the system further down to further cover portions of the domestic industry. I'll ask Mr. Roussel to give some more detail in that regard.

Ms. Wai Young: That was going to be my follow-up question, actually, how it interrelates with international marine safety. If you could cover both, that would be great.

Mr. Gerard McDonald: Yes.

Donald.

Mr. Donald Roussel: On the marine side, we did follow the coming into force of SMS at the international level, so we were not late at having the regulations. You can read, for example, SOLAS 98, but usually member states have about 18 months to implement a new set of regulations adopted by the International Maritime Organization. We've been following that and it has been in place for the past 15 years, at least.

There are challenges that we face internally for the domestic fleet. I must mention that many of our operators have adopted the safety management systems and they're using the services of recognized organizations to do the work, and we do audit them. We are fully informed when they're doing what we call the document of compliance, which is at the company level, and the certificate of compliance, which is at the vessel level. The challenge that we're facing at this juncture domestically is right down to the smaller operators, for example, fishing vessels and small passenger operations. How much of a large international system can they actually adopt?

We've done some preliminary work with many of the smaller operators. We've done some pilot projects. We have learned from those pilot projects and what I present in my presentation is we think we can go further at this juncture.

We also look at SMS in a holistic way. We do not think that it's just the federal regulator who is responsible for SMS. We think that, for example, the provincial workers' compensation boards have an interest in this as they are covering for accidents, liabilities, and for workers. We have seen some very interesting projects with WorkSafeBC, which is the equivalent of a workers' compensation board in British Columbia. They are helping operators with reductions in premiums when they adopt SMS on a voluntary basis. We think that there is major progress there. We're also working with the underwriters, asking them to help us implement SMS with smaller operators, and of course the provinces are authorizing commercial operations in their areas. Before they allow a commercial operation, they request that the company adopt a SMS.

Federal regulations, of course, need to have a pan-Canadian application, and the more broadly we look at it and the deeper we go, the more complex it gets.

• (1655)

Ms. Wai Young: I'm not sure if I understand exactly where it goes from Canadian to international. Can you clarify that for the record?

Mr. Donald Roussel: Shipping and navigations are global in nature outside Canada. For example, a Canadian vessel that is certified to make international voyages will have to meet the ISM Code. For a vessel leaving Montreal on a trip to Europe, when that vessel arrives in Europe, the Europeans will want to inspect the Canadian vessel to see that it has met international standards. It's the same for us when foreign vessels visit our country.

We have two programs for verification of foreign vessels, one on the eastern part of the country with what we call the Paris MOU on port state control, and on the Pacific side we have the Tokyo MOU. Both of those regimes give us safety, protection of the environment, and a security verification regime with 42 international partners altogether.

Ms. Wai Young: You did say that there are the larger vessels, of course, the shipping vessels, that meet the international code, but what about the smaller vessels?

I think in your reply you said that WorkSafeBC is responsible for the smaller vessels and that you think they're in compliance, but are you sure? What do we have in place for that?

Mr. Donald Roussel: WorkSafeBC is not in charge of smaller vessels. WorkSafeBC is in charge of workers' compensation for all workers in the province of British Columbia.

To give you a concrete example of where we're working with them, the tug and barge operations in B.C. make up a very large group. We're working with them to ensure that if a company does adapt a safety management system—we want to be able to guide them on how to do this, which is why we're producing manuals and guidelines and so forth—they will help them financially at reducing some of their premiums, because they become a company less at risk.

We leave that portion to the workers' compensation boards of the province, but we think they have a very large leverage with smaller operators.

The Chair: Your time has expired, Ms. Young.

We now move to Ms. Boutin-Sweet for five minutes.

[*Translation*]

Ms. Marjolaine Boutin-Sweet (Hochelaga, NDP): Thank you, Mr. Chair.

I would like to start by talking about rail safety. In the United States and in Europe, rules have existed for some time. Meanwhile, the Transportation Safety Board is looking at a number of rules, particularly concerning braking systems. In the United States, this system has been in place for category-1 companies since 2008, and it is now being implemented for commuter trains.

• (1700)

[*English*]

The Chair: Mr. Watson.

Mr. Jeff Watson: On a point of order, Mr. Chair, I don't want to make too fine a point of this once again, but today is about safety management systems, both Transport Canada's understanding of safety management systems and its ability to implement safety management systems, not the broader regulatory framework.

If we're going to have a year-long study, we'll have ample opportunity to explore other aspects of the regulatory environment for rail or any other mode, including other aspects, whether there are any gaps in the regulatory environment. Safety management systems are not in and of themselves regulation, but we're examining that today.

The Chair: Yes.

Perhaps you could stick to the topic.

[*Translation*]

Ms. Marjolaine Boutin-Sweet: In that case, I will move to another subject. I will talk about marine safety.

Funding for this area has been going down. This despite the fact that, between 2005 and 2010, oil tanker traffic has tripled, and this number will probably triple again by 2016. As for oil transport by rail, traffic has increased 280 times over since 2009. Despite this, budgets are being cut.

So on the one hand, more inspections are needed because more boats and trains are transporting oil. On the other hand, we have fewer inspectors and fewer inspections, because of budget cuts. How can this be reconciled?

[*English*]

Mr. Gerard McDonald: Maybe I could start off, Mr. Chair, by clarifying that while indeed some of the budgets at Transport Canada have reduced over recent years, when we undertook the deficit reduction plans at Transport Canada, we made a specific effort not to touch any of the inspection resources that were available within the department.

I think you will find that our level of inspection within the department has not decreased. In fact in some areas, rail safety in particular, the number of inspections has actually increased.

[Translation]

Ms. Marjolaine Boutin-Sweet: However, the funds allocated to marine safety have dropped dramatically. We have the budgets, but could you provide us with figures on the number of inspections and inspectors as compared to 2009?

[English]

Mr. Gerard McDonald: Certainly, Mr. Chair. If that's the wish of the committee, we'd be happy to provide that information.

[Translation]

Ms. Marjolaine Boutin-Sweet: Thank you.

[English]

Did you want to finish what you were saying earlier, Madam Crowder?

The Chair: You have two minutes left, if somebody—

Ms. Jean Crowder: Yes, I have a follow-up.

Our understanding with regard to notification to municipalities on goods going through the municipality is that the data is going to be aggregated and reported in three months, but I understood you to say that municipalities will know in advance.

Mr. Gerard McDonald: No, I did not say that, Mr. Chair. I—

Ms. Jean Crowder: Oh, okay, so let's clarify: municipalities will not know in advance.

Mr. Gerard McDonald: What I said is that the protective direction was developed in consultation both with the Federation of Canadian Municipalities and with the Railway Association of Canada, and that all railways have indicated that they will follow the directive as it has been written.

Ms. Jean Crowder: My understanding of the directive—at least what's in the public domain—is that aggregated data will be reported every three months, so in fact, goods will be going through communities without their knowledge beforehand. They'll know after the fact.

Mr. Gerard McDonald: Perhaps Madam Dagenais can clarify.

Ms. Marie-France Dagenais: This protective direction was actually agreed to by both parties: the Federation of Canadian Municipalities and the Railway Association of Canada. It is understood that trends in rail transport do not really change that much in terms of the costs on railways.

When you look at the smaller railways, there is a section in the protective direction indicating that if there is a significant change in what they see as a trend, the railways need to immediately notify the municipality that they see a trend and that there is a movement of an increase in certain types of transport of dangerous goods. Petroleum crude was one of the increases that was identified as something the municipalities should have been made aware of in terms of an increase.

The protective direction helps first responders in being fully equipped and fully trained. If you look at the transport per se of the different types of dangerous goods, if the train trend doesn't change, the firefighters and the first responders in each municipality are already or will be prepared and trained to answer any incident when the train actually goes through their municipality.

● (1705)

The Chair: Your time has expired.

I'll move to Mr. Albrecht for five minutes.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

Thanks to you and your team, Mr. McDonald, for being with us today and for giving us what I consider a very comprehensive and also complex overview of the safety management systems.

I thank you for confirming again today that it is not a deregulation or a self-regulation concept that we're dealing with here. In fact, page 3 of your presentation summarized very well the whole area of how the SMS are developed. In going through the points there—consultation, examination, licensing, and so on, and I'll come back to some of those later—I'd like to spend a few minutes on consultation.

You indicated at various points throughout your presentation today that you incorporate the involvement of multiple stakeholders, including unions and employees of the company, in developing and implementing the SMS plans, including providing guidance by Transport Canada in developing these plans and including examples of best practices. The results, we would hope, would be fewer accidents and reduced costs.

Also, it would seem to me that there would be an increase in customer confidence. To me, there would seem to be a self-preservation motivation on the part of any company, such that they would want to implement an SMS plan regardless of whether or not there are regulatory systems in place to do that. In fact, there are many other non-transportation sectors, such as the health sector, food processing, and chemical processing, that would automatically have SM systems in place. The whole idea of improving customer confidence in the product I think is key to understanding the difference between simply regulation or having a system in place for self-governance and including the regulatory part in that.

The other points on your page 3 include the examination, licensing, certification, the initial approval of the SM system, and then the ongoing oversight and monitoring, and the authorization of third parties to check on pilot proficiency, and those sorts of things.

On the last point, deterrence, we've talked a little about the monetary penalties, but I haven't heard anything on the suspensions, cancellations, or refusals to renew. I'm wondering if you could just give us some examples of the length of time for a cancellation or a suspension, and how those things would come into play.

Mr. Gerard McDonald: As I indicated earlier, I believe it's a graduated process that we would follow with an operator. If we see a problem with their safety management system, the first thing we would like to do is talk to them about it, ask them for a corrective action plan. They would submit the plan. We would analyze it and see whether it's going to achieve the desired result. If we think it is, we give them time to implement it.

If that doesn't work, we step up the amount of surveillance we may do with that particular company. We may get to a point where we do administrative monetary penalties. Then as we move on we can go up to pulling the operating certificate of a particular company if they don't appear to be compliant. Or, at any point in time if we find the situation is so grave, we can and we have pulled operating certificates of companies that we feel just aren't up to snuff, and we don't hesitate to do so.

It's probably most mature in the aviation sector that we have these business practices, so I'll let Mr. Eley provide some colour in that regard.

Mr. Martin Eley: The main point is on suspensions. For example, we would often identify the conditions under which the suspension would be removed. It's quite often dependent on the companies as to how long it takes them to meet those conditions. It's not so much a penalty of a fixed period, but these are things you have to fix before you can go back into business.

Mr. Harold Albrecht: Is there generally a length of time set to the graduated approach for monetary penalties, and so on? Is there a length that you would allow a company to get up to speed, or is that on a case-by-case basis?

• (1710)

Mr. Martin Eley: Certainly, when we find an issue and we look at the corrective action plan, the length of time they get to actually resolve the problem depends on the severity of the problem. If it's an administrative issue, there's more tolerance than if it's a safety issue, clearly. That's built into the process.

Mr. Harold Albrecht: Thank you.

In terms of how the U.S. manages their safety in terms of the air, marine, and land transport, does the U.S. use an SMS as well, and if so, for what sectors and how is it applied?

Mr. Gerard McDonald: It depends on the mode, really. I'll let Mr. Eley talk about the air mode, and then Monsieur Roussel and Monsieur Bourdon can talk about the other modes.

Mr. Martin Eley: The FAA is moving in gradually in a number of areas. In some cases it's still voluntary. The rule is there; it's not necessarily required at this point, but they are moving towards that. We've been doing a lot of sharing of experiences with them. They are committed and they are en route, but I wouldn't say it was mature yet.

Mr. Donald Roussel: Yes, south of the border any U.S.-flagged vessels that are doing international trips will be facing the same rule, the ISM Code, so we are in sync with their regulations. Domestically, it varies a lot. They are still working on many fronts with smaller operators, ferry operators. They also have the same type of initiative. There are some ferry operators, for example, who are adopting the ISM Code for their purposes, but it varies a lot depending on the area of operations.

Mr. Luc Bourdon: For rail, the FRA does not require the U.S. carriers to develop an SMS. They are working towards something called a risk reduction program that they are trying to develop. Just to clarify it, in the rail mode, before the amendments in the Railway Safety Act came into force on May 1, we had no authority to impose AMPs or to require rail operating certificates. Now we've had that authority since May 1, and we're currently developing a regulation that hopefully will come into force by the end of the summer.

The Chair: Okay, thank you.

I'll move to Mr. Toet for five minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

Thank you, Mr. McDonald and your team. It's good to have you here. This has been very helpful.

I want to start with a question in regard to your oversight and monitoring. You talk about SMS audits and assessments on page 3 of your slide deck. I would assume that also includes your approval process of operation manuals, etc. I'm wondering if you could walk us through, very briefly, the process you would actually go through for making sure that an operations manual is following the SMS procedure, and also what your follow-up is on that to make sure there is implementation. It's great to have a manual, but what's the implementation process? How do you verify that the actual implementation of the manual is occurring?

Mr. Gerard McDonald: It varies from mode to mode, so I'll let Mr. Eley start, and then I'll ask Luc to follow up so you get the two.

Mr. Martin Eley: The way I'd like to characterize it is, generally speaking, if a company is moving into a different field of operation, extending their routes or changing their aircraft fleet, for example, under SMS we would expect them to do an assessment of all the risks to the company. From their point of view that would include the business risk, from our point of view the safety risk. At the point where they came in to change their operational procedures they would have actually identified the risks and the mitigations they put in place. These would then be reflected in their manual. I would suggest that the SMS philosophy drives how well the manual would be prepared when we receive it, as a first—

Mr. Lawrence Toet: Given that you verify the update has been done.

Mr. Martin Eley: Yes. We would look to see whether they've thought of all the aspects, and their analysis would be where they would do that and identify the risk. In some cases companies who have decided not to do something have done an assessment and decided the mitigation is just too much and it's not a worthwhile piece, so we may not even see it.

Mr. Gerard McDonald: Do you want to talk about the rail side?

Mr. Luc Bourdon: Yes. We do not approve operation manuals in rail.

For train operation, they have to follow the Canadian rail operating rules. All these rules have been approved by the minister, so they have to follow them. In terms of internal procedure that the railway may develop, usually they're being developed in order to support our rules and regulations that are in place.

We will measure compliance with these rules and regulations, but per se will not approve an internal operating manual.

• (1715)

Mr. Lawrence Toet: I guess that leads me to my other question.

Mr. McDonald, you said you don't give a form for safety management systems. I understand that; it makes perfect sense that there's not a form where one checks boxes, etc., but coming back to what Mr. Bourdon was just saying, there's obviously a need for consistency within that. How do you, without having the form aspect of it, follow up and make sure there is consistency from one company to another, that they are doing the same things within that safety management system and we're having the same outcomes?

Mr. Gerard McDonald: Essentially in safety management what our regulations require is a framework for a safety management system. It will outline the various elements that your safety management has to have. Who's your lead safety officer? You have to have a QA program. You have to have environmental aspects to it. There are a number of elements to the safety management plan. What we would do is go in and look at those various elements, what's required in the regulation, and make sure the organization meets all of the elements that are required as set out in the regulations.

Mr. Lawrence Toet: Getting back to Mr. McGuinty's question, it comes back to the international aspect of this. We had a bit of an answer on the marine side on whether there has been a move to SMS internationally. Is that also true for rail and also for civil aviation? Are we seeing that being a direction our international and major trading partners are going in, and that we're working along the same lines as they are so there is a kind of international collaboration on this?

Mr. Gerard McDonald: Certainly on the air side the international civil aviation organizations have recognized SMS and are putting it in their construct.

On the rail side, rail doesn't work in, I would say, as international a manner as the other two modes, because the railways are obviously landlocked and you don't have the same degree of international interaction. We see the use of safety management systems more prevalent in places like Europe where you have a high degree of passenger traffic. Other areas are looking at it as well, but there's not the same degree of international cooperation.

Mr. Lawrence Toet: I have one last question, and if you don't have time to completely answer it, you can table it with us. On page 13 you talk about the 12 components of a safety management system. You list about seven of them and then you go to et cetera. I'm just wondering if you can give us the last five. If you can't give them today, you could actually table them through our chair.

Mr. Luc Bourdon: We can provide you with the regulations if you want. It's only three and a half pages and you'll have all 12 components of SMS.

Mr. Lawrence Toet: That would be very helpful.

Mr. Gerard McDonald: That's with respect to the rail side.

Mr. Lawrence Toet: The rail side, okay.

The Chair: Your time has expired, Mr. Toet.

Just to make the best use of our time, we're going to have each party ask another question, but you're going to get about three minutes each.

Ms. Crowder, you have three minutes, and then I'll move to Mr. McGuinty.

Ms. Jean Crowder: Thank you.

A number of times I've heard people talk about risk assessment. The 2011 report of the Commissioner of the Environment and Sustainable Development indicated that "there is no national risk-based compliance inspection plan", and the same report indicated they "found that Transport Canada does not have a national risk-based process for determining the sites that should be the highest priority for inspection", and "information necessary for inspectors to effectively plan or conduct their work is missing or incomplete".

Since 2011, what specific steps have you put in place to ensure that Transport Canada could do an adequate risk assessment?

Mr. Gerard McDonald: I'll ask Madam Dagenais to respond to that.

There's been a lot of work done in that regard.

Ms. Marie-France Dagenais: Yes.

The recommendation was to have a national plan. What is indicated in the report is that they were regional plans and they were drafted a bit differently. What we have decided to do, and it's part of an implementation plan, part of the recommendation, is to have a national risk-based approach.

Ms. Jean Crowder: Okay, but we had two regions that didn't have one. The prairie region and northern region had no documentation to provide on the inspection plan, so not all regions did have a plan.

Ms. Marie-France Dagenais: They have a plan. It may not have been properly documented.

What we have done in the past two years is to develop a national risk-based approach. We are doing our inspections on a risk-based approach. We have developed a risk tool that identifies criteria for where our inspection should be targeted. These are identified as being the higher risk, and this is where we do most of our inspections. It can be dependent on the type of goods that are transported, the means of containment that is used, and whether it's an ERAPable product, because emergency response plan products are usually highly dangerous.

Depending on the criteria we identify the risk, and this is how we plan our inspection.

• (1720)

Ms. Jean Crowder: Is that available publicly?

Ms. Marie-France Dagenais: No, it's not available publicly.

Ms. Jean Crowder: Am I out of time?

The Chair: You have just under a minute.

Ms. Jean Crowder: When you said that's not available publicly, the public has no way of knowing what kind of risk assessment is used depending on which transportation sector it is. Is that correct?

Ms. Marie-France Dagenais: Basically our criteria are identified. They are public. They are on our website. We do have identification of the different criteria.

What we don't put in there is what we have done on the specific inspection and the specific site.

Ms. Jean Crowder: Okay, so the public could understand the process, but they won't have access to the actual risk assessment that's done on any particular sector or particular type of good.

Ms. Marie-France Dagenais: Yes, that's correct.

Ms. Jean Crowder: With regard to the compliance piece of it, I've heard a lot about audits.

I assume there's some sort of a grid that the highest risk gets the audit or the compliance.

Ms. Marie-France Dagenais: The highest risk gets the inspection.

Under the TDG program, we do targeted inspections of high-risk sites. We concentrate our inspection on shippers, needs and containment facilities, manufacturers, and producers.

Ms. Jean Crowder: Do you know how many audits are conducted on the highest risk sites?

Ms. Marie-France Dagenais: About 3,000 per year.

Ms. Jean Crowder: About 3,000 inspections annually?

Ms. Marie-France Dagenais: Yes.

Ms. Jean Crowder: Out of those 3,000 inspections, how many would you say are in compliance?

Ms. Marie-France Dagenais: According to our compliance performance, about 60% of our sites are compliant.

Ms. Jean Crowder: They are compliant.

The Chair: Okay. I let you go over time quite a bit.

Mr. McGuinty, for three minutes.

Mr. David McGuinty: Thank you, sir.

Mr. McDonald, I'd like to go back to a comment you made in response to an NDP colleague.

If I understood, you said that given the budgetary cuts at Transport Canada over the last several years, you assured this committee that there are no effects on safety.

In your deck, you put forward that there are 2,900 safety employees across Canada. You give them responsibilities. Then you said there are 1,512 inspectors that are monitoring and enforcing legal requirements, and you break it down by sector.

Can you prepare for this committee, from 2006 forward, a detailed breakdown, with numbers, of the safety employees, inspectors, across Canada, and on a year-by-year basis show this committee, backstop your assertion, in other words, that there will be no effects on security and safety?

Can you provide that for the committee?

Mr. Gerard McDonald: Certainly, Mr. Chair.

If that's the wish of the committee, we can provide that information.

Mr. David McGuinty: That would be year by year, from 2006 forward, sector by sector, the numbers, up, down, the same, etc. That would be very much appreciated.

I also referred earlier to a trend towards carrying much more oil by rail. This has a direct bearing on the question of SMS and capacity.

Rail shipments of oil in Canada have gone from about 6,000 train carloads in 2009, to an estimated 14,500 this year.

I want to read from a main story that was published on the front page of Saturday's *Globe and Mail*:

...The *Globe and Mail* has uncovered evidence that oil shippers are exploiting the wording of a recent federal order by Transport Canada and sending most of their crude over the rails without checking first how explosive it is, and whether it is suitable for transporting on trains.

They then go on to say that "industry insiders in North Dakota", in the Bakken oil field, from whence that oil which was ignited and blew up in Lac-Mégantic came, are saying that "very little oil is being tested, and that operating procedures remain mostly unchanged...".

The Chair: Mr. McGuinty, we have a point of order.

Mr. Watson.

Mr. Jeff Watson: Again, those are other aspects of the regulatory environment. That's not the safety management system itself.

The Chair: He's right, Mr. McGuinty, with respect to that.

Mr. David McGuinty: Well, Mr. Chair, this has a direct bearing on the SMS for this particular company.

The Chair: Well, if you can show me how it has, keep going.

Mr. David McGuinty: Absolutely. Given the SMS that is in place between the regulator and the company that's carrying this oil right now, and the fact that there has been a protective direction issued by Ottawa, this should have been caught. This should have been enforced. What we're finding out is that, in fact, it is not enforced. This has a direct bearing on the SMS.

Mr. Jeff Watson: There is some protective direction.

The Chair: I read the very same article, Mr. McGuinty. What that article says is that it is up to interpretation, to a degree. At the companies that are shipping the oil, nobody is lying; they're putting it in class 1. I guess it's all in how you want to read it, but I have read the same thing.

• (1725)

Mr. Jeff Watson: Mr. Chair, that relates to the new protective order, not necessarily to safety management systems. Whether or not this will be captured in future safety management systems may be a particular issue, but he's asking about the interpretation of a new regulatory measure.

The Chair: Yes, I think Mr. Watson is right on that. You're not really on SMS. It is related to rail safety, which you will get to talk to in depth, but—

Mr. David McGuinty: Well, let me ask the witness, Mr. Chair, if I may, is the new protective direction around this question of identifying oil part of the safety management systems that are in place?

Mr. Gerard McDonald: It relates to the transportation of dangerous goods, but obviously any company, within their SMS, if there is a regulatory requirement, must have a methodology for ensuring that the regulatory requirement is met. Protective directions carry the same weight of law as any regulation, so a transportation company that has an SMS would have to ensure that those are being complied with, yes.

The Chair: We'll now move to Mr. Watson for the last three minutes.

Mr. Jeff Watson: Thank you.

Transport Canada inspectors can look at that issue.

I want to quote very briefly from page 67 of the rail advisory panel report before passing to Mr. Komarnicki.

Under "Implementation of Safety Management Systems", the panel said:

It has been nearly seven years since railways have been required to implement SMS. While progress has certainly been made, in the Panel's opinion, the implementation of SMS across the rail transportation system and by the regulator

—that is, Transport Canada— has been inconsistent. The Panel expected that, after so many years, both the regulator and the industry would have made more progress.

Forget the opinion of the committee, whether they be government members or opposition members. Would any other credible independent third party give a similar assessment today of the railway companies with respect to the implementation of SMS, now that we're six years down the road from this report, or for that matter of Transport Canada? Would they hold the same opinion, that here we are again, six years down the road, and the implementation has been inconsistent?

Mr. Gerard McDonald: I guess it's in the eye of the person you're talking about, Mr. Chair. I'm sure there are some who would think we haven't gone far enough on safety management systems and that we haven't implemented them as thoroughly as we should.

We note that progress is incremental and we're constantly trying to improve our systems on a day-by-day basis, but we're more than willing to listen to criticisms of our system and improve the system as we find problems with it.

The Chair: The last question goes to Mr. Komarnicki, one question.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): All right, then maybe I'll offer a comment.

It has certainly been interesting to listen to you.

The SMS is not like a regulation addressing a specific thing. It's more of a living type of document that expands and goes forward, but within that SMS, you have some consistency throughout by having the 12 elements you spoke of, and those stand as a threshold or a bar that everyone has to meet.

Mr. Gerard McDonald: That's correct.

Mr. Ed Komarnicki: Within those 12 elements, are there safety issues embedded as well, or not?

Mr. Gerard McDonald: Well, there's the regulatory construct within it. An SMS is in essence a way for us to measure that the company on a day-to-day basis is monitoring their performance against the required operating regulations that we have.

Mr. Ed Komarnicki: Rather than being a deregulation of safety, it actually builds on the safety regulation and adds more to it, ensuring that they're dealing with it on an ongoing basis.

Mr. Gerard McDonald: Yes. Instead of our coming to a company on a periodic basis, be it one year, two years, or six months, and kicking the tires, say, to see whether or not things are working properly, it institutes a system whereby the company has an obligation on a day-to-day basis to ask whether they are meeting these regulatory requirements and what system they have in place to ensure that they are meeting them.

Mr. Ed Komarnicki: It builds a culture of safety within the enterprise.

• (1730)

Mr. Gerard McDonald: Exactly, yes.

Mr. Ed Komarnicki: There you go, Mr. Chair. I got three for one.

The Chair: It's not often that the chair reserves his chance to ask a question or make a comment, but something which I think the committee needs to remember, and the officials as well, is that it's quite obvious that oil and other dangerous products have to be moved.

Mr. McDonald, would you and your officials agree that it's Transport Canada's job, in consultation with this committee, hopefully, to work better to not stop the flow of these products but to see that it's done safely? Would you agree with that principle?

Mr. Gerard McDonald: Absolutely. In fact, that's embedded in law in the rail industry. It's a common carrier obligation that they have to carry the products that are presented to them.

The Chair: Thank you very much.

Mr. McGuinty.

Mr. David McGuinty: Mr. Chair, are we going to be meeting again as an executive committee to come up with a work plan?

The Chair: I was going to briefly do that.

On Wednesday we have officials here on the transportation of dangerous goods, and next Tuesday I'm going to call a meeting—it will have to be in camera—to discuss committee business and the direction of this committee on this study as we go forward. It will be next Monday; I'm sorry.

Thanks again to our officials for being here.

The meeting is adjourned.

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