

ENVIRONMENT

Misplaced priorities

Corporate power, deregulation and the threat to public safety

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CANADIANS EXPECT THEIR governments to take the necessary regulatory measures to protect their health, safety and environment. They do not trust corporations, focused as they are on making profits for their shareholders, to regulate themselves.

Probably few people are aware of the extent that self-regulation has taken hold in Canada. We only discover it when the process breaks down, as it did on July 6, 2013 in the Quebec town of Lac-Mégantic. The train derailment and explosion that early morning left 47 dead, revealing a deeply flawed rail safety regime in which a series of regulatory failures multiplied the chances of a catastrophe.

Though corporations often say they like regulatory certainty, most have a knee-jerk aversion to rules that cut into profits and interfere with business. They will push governments to deregulate their activities, and have had varying levels of success in that regard in Canada.

Deregulation is the process of reducing or eliminating existing regulations, preventing the development of new regulations, and diminishing the capacity of government agencies to develop, administer and enforce regulatory programs. Conservative ideology asserts (without much evidence) that by lowering costs to business deregulation increases profits, which leads to more investment, which in turn leads to faster economic growth and job creation.

True to form, the Harper government has aggressively deregulated over its mandate, with an emphasis on helping the oil patch get projects and pipelines built faster (see Kinney chapter). It has simultaneously outsourced its primary responsibility to regulate in the public interest, devolving ever more power to companies to make their own judgments about risks to public safety.

To help advance its deregulation agenda the Harper government severed the traditional independence of the public service as a dispassionate source of evidence-based policy advice. The new role of civil servants was to implement, without question, decisions already made on the basis of ideological preconceptions and industry demands.

In 2011, the government set up the Red Tape Reduction Commission, modelled on former Ontario premier Mike Harris's similarly named commission in the 1990s. The federal commission's conclusions were incorporated into regulatory policy, the Cabinet Directive on Regulatory Management (CDRM), which took effect in the spring of 2012.

While lip service is paid to health, safety and the environment, short-term costs to business (red tape) were, in practice, the sole test for determining whether a proposed regulation would be accepted. The Prime Minister's Office is the ultimate gatekeeper, determining which proposed regulations go forward and which do not.

The CDRM broke new ground with its so-called one-for-one rule, mandating departments to repeal at least one existing regulation for every new rule proposed to Treasury Board. The one-for-one rule progressively lowered the ceiling on the number of regulations without properly considering the safety implications. Treasury Board President Tony Clement boasted that Canada was the first industrialized country to legislate such a rule.

How did the confluence of corporate power and ideologically driven deregulation play out in the lead-up to the Lac-Mégantic disaster?

The oil industry is unquestionably the most influential business lobby in Ottawa. In light of rapidly expanding bitumen and shale oil production, but long pipeline approval delays, its people furiously pressed the flesh to ensure the flow of oil-by-rail was not disrupted (or costs increased) by more and tougher regulations.

The rail industry is also no slouch on Parliament Hill. In 2008, lobbyists rewrote the rail operating rules with Transport Canada's blessing, paving the way for companies to run their freight trains with just a single operator. Several years later, despite union objections and resistance within Transport Canada, the industry exerted its influence to make sure the Montreal, Maine and Atlantic Railway (MMA), a company with an atrocious safety record, could run its unit oil trains, through Lac-Mégantic and other communities, with a single operator.

In the months leading up to the accident, the rail lobbyists repeatedly petitioned politicians and bureaucrats, arguing that strengthened regulations for the transportation of oil were unnecessary. As internal government documents show, the Harper government appeared willfully blind to the growing danger posed by the monster surge in oil-by-rail, fixated instead on its goal to make Canada an “energy superpower.”

The government failed to heed repeated warnings about unsafe tank cars and the volatility of the oil inside them. It ignored cautions by the National Research Council regarding single-person train operations, and starved Transport Canada of the regulatory resources needed to cope with the oil-by-rail boom. Reports from the auditor general of flaws in the rail regulatory regime — in practice, companies were largely free to regulate themselves — fell on deaf ears.

In the aftermath of Lac-Mégantic, the federal government has taken measures to try to restore public confidence in the regulatory regime. It has also sought to obscure the full extent of regulatory failure — a failure that originates in the collusion between powerful corporate interests and an ideological fixation on deregulation as the pathway to a strong economy.

As the distance grows between us and the accident, as media attention and memories fade, and as its fundamental causes remain hidden there is a danger the myth of the “good corporate citizen” will be resurrected as a justification for letting company shareholders determine the balance between safety and profit.

Without a reversal of these priorities — public safety before private profits — another tragedy is just a matter of time.

Endnotes

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