

# **2016 Dangerous Goods Symposium**



**PROBLEMS IN SEARCH OF  
SOLUTIONS;  
SOLUTIONS IN SEARCH OF  
PROBLEMS**

**SEPTEMBER 8, 2016  
CHICAGO, ILLINOIS**

# PART I



## REAL Hazardous Materials Problems

# REAL Problems



- **Deadly train derailments**
  - + Oil-by-rail (Lac Mégantic, Lynchburg)
  - + Deadly chemicals (Graniteville, SC)
- **Deadly pipeline leaks, fires and explosions**
  - + San Bruno, CA, gas pipeline
  - + Crude oil leaks
- **“Industrial accidents”**
  - + West, Texas
  - + Tianjin, China

# Lac Mégantic, Quebec (2013)



# Lac Mégantic Statistics



- 4,701-foot long train w/one engineer
- 72 DOT-111s w/30,000 gals. of crude oil EACH
- “Runaway train;” derailed downtown
- 47 killed
- 36 buildings destroyed
- Insufficient insurance, so railroad bankrupt
- Victims’ compensation fund, \$450 million (4,000 claimants)

# Lessons of Lac Mégantic



- Causes: (1) defective locomotive; (2) poor maintenance; (3) driver error; (4) flawed operating procedures; (5) weak regulatory oversight; & (6) lack of safety redundancy
- In other words, parked on a main line on a hill w/o setting the brakes properly
- No tank car design could survive such a crash
- Main lesson: You can't cure **stupid!**

# Lynchburg, VA (2014)



# Lynchburg Statistics



- Train carrying crude oil going 24 mph in a 25 mph
- Derailment & explosion, but just happened to fall into the river instead of downtown
- Broken rail discovered day before; repair scheduled 3 weeks later
- Took CSX more than 2 hours to arrive & provide useful information to emergency responders
- Civil penalty: \$361,000



# Knee-Jerk Regulatory Reactions



- **Emergency orders.**
- **New sampling & testing requirement**
- **Eventual demise of the DOT-111 tank car**

# San Bruno, CA (2013)



# San Bruno Statistics



- Natural gas pipeline subject to federal regulations but supposedly enforced by state regulators
- DOT OIG: PHMSA/OPS State Pipeline Safety Management Program is essentially useless; safety regulations were NOT enforced
- 8 dead; 58 others horribly burned; 38 homes destroyed
- Almost 4,000 violations of state & federal laws
- State penalties: \$2.2 billion
- Convicted of criminal violations (8-9-16)

# West, TX, “Accident”? (2013)



# West, TX, Explosion Statistics



- 15 killed (incl. 12 first responders); 200 injured
- 500 homes destroyed
- 93-foot crater
- Ammonium nitrate & anhydrous ammonia
- PHMSA inspected & fined the company in 2012
- \$1 million insurance coverage, but TX required \$0
- Arson?
- Loading/unloading?
- Explosives transported there.

# Tianjin, China (2015)



# Tianjin Statistics



- 173 dead
- 304 buildings damaged
- 12,428 cars destroyed
- \$1,100,000,000 economic losses

# **KILLER HAZMAT**



**GASOLINE & DIESEL FUEL**

**CHLORINE**

**PROPYLENE/PROPANE**

**FIREWORKS**

**LIQUEFIED PETROLEUM GAS**

**SULFURIC/HYDROCHLORIC ACID**

**ANHYDROUS AMMONIA**

**CARBON DIOXIDE (LIQUEFIED)**

**SODIUM HYDROXIDE**



# PART II



## **Solutions in Search of Problems**

# PHONY PROBLEMS



- **Sampling & testing for crude oil by truck**
- **UN certification of non-bulk industrial packaging**
- **Fitness determinations for special permits & approvals**
- **Penny-ante, “gotcha” enforcement actions**

# **“Fitness Determinations”**



- Screened out exactly zero “unfit” applicants
- Never intended to be a requirement
- Adopted without rulemaking or industry input

# Enforcement Procedures



- **Agency-by-agency procedures & terminology**
  - + Notice of Probable Violation
  - + Notice of Proposed Civil Penalty
  - + FAA Rules of Practice
  - + Federal Rules of Civil Procedure & Federal Rules of Evidence
- **Administrative Procedure Act & Generic Statutes**
- **Administrative Law Judge (hearing examiner) procedures**
- **Appeals**

# Enforcement Abuses



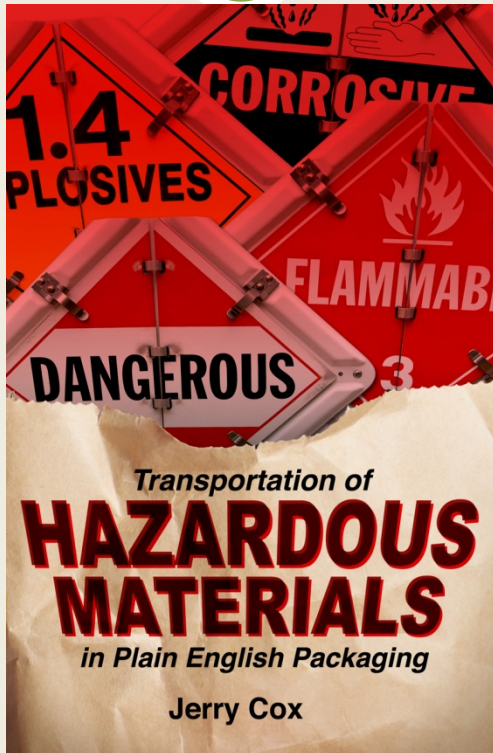
- Abusive, unannounced inspections
- Exit briefing reports as “confessions”
- Other, new “standard” forms as “confessions”
- Refusal to explain allegations in exit reports
- Agency attorneys rubber-stamp investigators’ reports - allege violations of non-existent regulations involving non-existent products by investigators who were never present
- False enforcement action reports
- Industry needs to plan ahead!

# The Big Issue: Strict Liability vs. Negligence



- **Opposing arguments**
- **Statutory Language**
  - + Civil penalties
  - + Criminal penalties
- **Legislative History**
- **FAA Position**

# More Details



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# Jerry Cox Bio



## **Jerry W. Cox, Esq.**

- Jerry Cox practices law and provides public affairs services in Washington, DC. His practice focuses on consumer protection, energy & transportation safety & security. He defends companies in litigation involving the Department of Energy, the NTSB & all Department of Transportation modal administrations. Cox also handles accident investigations.
- As Legislative Counsel to U.S. Sen. John C. Danforth (R-MO), Jerry developed expertise in aerospace, transportation safety & consumer protection. He later co-authored the brief for the independent insurers in the case that led to the installation of airbags in automobiles. He is the author of *Transportation of Hazardous Materials in Plain English Packaging*, the first practical guide to the regulations governing the shipment of hazardous materials. His commentaries on transportation safety & defense policy have appeared in several global publications.
- Jerry graduated *cum laude* from the Woodrow Wilson School of Public & International Affairs at Princeton & earned his law degree at the University of Virginia. Has been admitted to practice before the U.S. Supreme Court & in several states.

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