



Canadian Fertilizer Institute (“CFI”)

Submission to

Canadian Transportation Agency

Regarding

Review of Railway Third Party Liability Insurance Coverage

Regulations

Ottawa Ontario

January 20, 2014

**Roger Larson, President
350 Sparks St. Suite 907
Ottawa, ON K1R 7S8**

Background

The Canadian Fertilizer Institute (CFI) has reviewed the Discussion Paper issued by the Canadian Transportation Agency (Agency), entitled “*Review of Railway Third Party Liability Insurance Coverage Regulations*.” This document is in response to the questions posed by the Discussion Paper.

CFI represents manufacturers of nitrogen, phosphate, potash and sulphur fertilizers, as well as major wholesale and retail distributors in Canada. Our members produce over 25 million metric tonnes of fertilizers annually, 80 per cent of which is exported. Fertilizer is a resource-based industry, dependent on rail and truck to move product to domestic, U.S., and offshore markets. Our members’ customers are farmers; delivering fertilizers to them in a timely and effective manner is critical to helping them feed our country and the world.

Safety is at the core of the fertilizer industry’s operations, from production to loading and unloading of transportation containers. Through an effective combination of world-leading industry codes of practice and government regulation, the fertilizer industry endeavours to:

- Strictly adhere to regulations governing the transportation of dangerous goods (TDG)
- Work closely with the first responder community
- Provide suitable and safe rail cars to railways

The fertilizer industry has established codes of practice which have been written in partnership with the government and the first responder community. These codes are specific to two TDG-designated fertilizer products, anhydrous ammonia and ammonium nitrate. The codes are subscribed to by all members of CFI, are continuously reviewed to incorporate new technologies and procedures, and involve independent third party audits of all facilities which handle and store these types of fertilizer.

Liability = Care and Control

CFI members operate within a framework which places liability with the party that has care and control of a product, regardless of the commodity. Transferring that liability from those with care and control to others may remove some of the incentive for safe operations. As an example, a recent action by CP through the application of Tariff 8, Item 54, inappropriately transfers legal responsibility for Toxic Inhalation Hazard (TIH) shipments to shippers, creating significant potential moral hazard, whereby the railway has less incentive to maintain a safe operation.

CFI members devote significant resources each year to ensure the safe handling of the fertilizer products in their care and control, including manufacturing, loading, unloading and maintaining the rail equipment which they own and/or lease for the safe movement of their products.

As you are aware, all railways regulated by the Agency are subject to a “common carrier obligation” to transport all cargo offered, including dangerous goods. CFI members pay substantially higher rates to transport ammonia – one of the industry’s primary products - in order to compensate railways for any perceived risk or additional costs of carrying this product, including liability insurance.

Railways should bear the legal and financial responsibility to meet their common carrier obligations, and CFI submits that they should obtain the amount of insurance necessary to cover all claims which might be reasonably expected based on level of risk and historical potential for claims. The focus of insurance adequacy determinations should be on the likelihood that possible claims will be satisfied. Differentiating insurance requirements for dangerous goods will support railway efforts to evade their common carrier obligations, and unreasonably transfer responsibility for risk – and its costs – to shippers.

Assessment of Financial Capacity

CFI submits that the Agency should continue to assess the financial strength of any insurance company involved in the transportation system. If an insurance company cannot pay out the contractual level of insurance required by the railway, then the insurance policy is not sufficient.

Conclusion

To summarize CFI's views:

- All railways should bear the legal and financial responsibility to meet their common carrier obligations.
- Railways should obtain the amount of insurance that will be sufficient to cover all claims that would be reasonably expected based on the level of risk and the historical potential for claims, regardless of the size of railway.
- Differentiating insurance requirements for dangerous goods will support railway efforts to evade their common carrier obligations and inappropriately transfer responsibility for risk – and its costs – to shippers.
- The Agency should continue to assess the financial strength of insurance companies in question.
- CFI members currently assume responsibility (and commensurate insurance) for actions in their control, including the manufacturing/handling of product, as well as the provision and loading of suitable tank cars for transport.

The fertilizer industry supports the Agency's efforts to ensure the continued safe transport of important goods across Canada, and stands ready to assist in any way possible.

Signed,

A handwritten signature in cursive script, appearing to read "Roger Larson".