

**FUND FOR RAILWAY ACCIDENTS
INVOLVING DESIGNATED GOODS**



**The Administrator's
Annual Report
2022-2023**

Canada 

About the cover: Photo by Michael Berry, August 2014, Montréal, Québec.

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The Honourable Pablo Rodriguez, P.C., M.P.
Minister of Transport
Ottawa, Ontario
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Dear Minister:

Pursuant to section 155.93 of the *Canada Transportation Act*, I have the honour of presenting to you the Annual Report for the Fund for Railway Accidents Involving Designated Goods to be laid before each House of Parliament.

The report covers the fiscal year ending March 31, 2023.

Yours sincerely,



A handwritten signature in black ink, appearing to read 'Mark A.M. Gauthier', written in a cursive style with a long horizontal flourish extending to the right.

Mark A.M. Gauthier, B.A., LL.B
Administrator (appointed on April 3, 2023)
Fund for Railway Accidents Involving Designated Goods

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INTRODUCTION

The Fund for Railway Accidents Involving Designated Goods (the Fund) compensates victims of damages caused by a major crude-by-rail accident.

Compensation starts after federally regulated railway companies have paid damages up to the amount required by law. They must have insurance coverage, based on the risk, type, and volume of crude oil they transport. It ranges from \$100 million to \$1 billion.

The Fund is a specified purpose account in the accounts of Canada, established under the *Canada Transportation Act* (the Act).

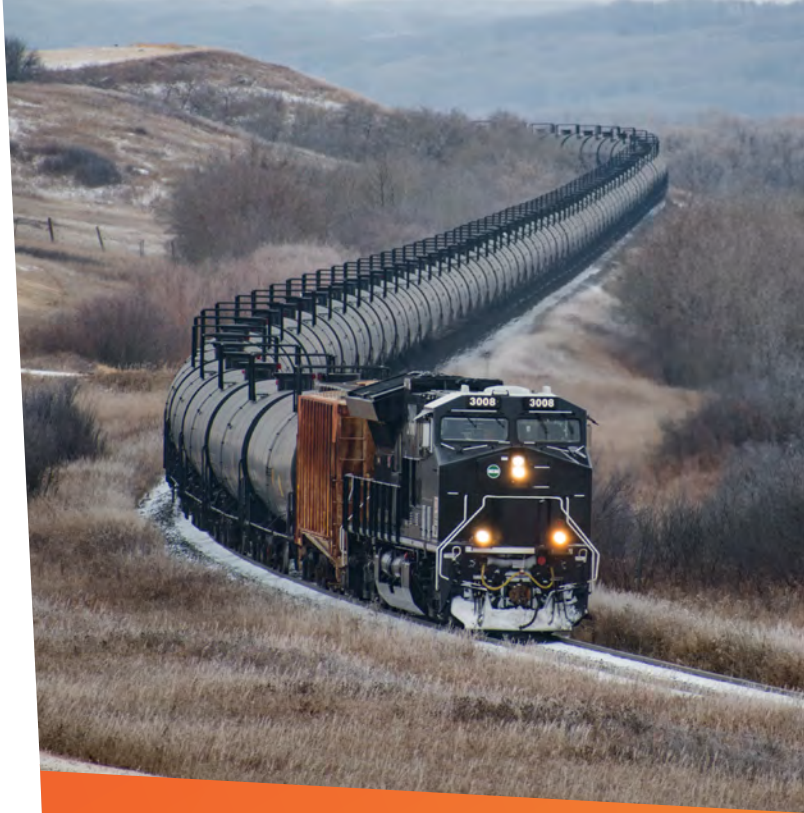
A railway company involved in a crude-by-rail accident is liable for damages. No fault or negligence has to be proven. If more than one railway company is liable, all railway companies involved are liable.

The Fund is financed through a levy, which is a per-tonne fee charged to shippers. The levy is collected and remitted by the first federally regulated railway company to carry the crude oil in Canada.

In the event of a disaster, the Fund has no limit to how much it can compensate. The Fund has access to additional federal money through the Consolidated Revenue Fund if needed.

This annual report covers the fiscal year from April 1, 2022, to March 31, 2023.

This is the 7th annual report concerning the Fund's activities.



In the rest of this report, when we use the term “accident” we mean:

- ▶ Crude-by-rail accident.

By “railway company” we mean:

- ▶ A federally regulated railway company. The list of these companies can be found on the Canadian Transportation Agency (CTA) website.

By “transition of claims” we mean:

- ▶ Following an accident, this is the moment when the railway company has paid the claims up to the limit of their liability amount and the claims will now to be managed by our team.



FOREWORD FROM THE OUTGOING ADMINISTRATOR

In 2016, I was appointed as the Administrator of the Fund. The Fund had just been created as a result of the Lac-Mégantic railway disaster. Everything had to be built from the ground up, including the corporate structure of the Fund.

In 2017, I quickly developed a draft claims manual and held the first round of consultations with key stakeholders. The proposed approach was to develop claims management and compensation preparedness through pre-planning and collaboration between the payers. We discussed it further at a workshop in November 2017. All were open to this approach, with some reservations.

Before 2018, I was appointed on an interim, short-term basis twice. This added challenges in building a comprehensive strategic plan.

I continued to fulfill my mandate after it expired in January 2018. At the end of March 2018, I was reappointed for five years. A Deputy Administrator, Mark Gauthier, was then appointed in April 2018 for a five-year mandate as well. His appointment has been a blessing and a game changer. We have been able to combine our respective strengths as an integrated, complementary team. Also, the new five-year horizon allowed us to develop and implement a strategic plan. We focused our efforts on preparedness for mass compensation, including building internal capacity and agility.

These years have been very stimulating. However, I did not seek further reappointment after April 2023.

After almost seven years as the Administrator, the Fund's situation is as follows:

Governance and resources

We share our office and infrastructure with the Ship-source Oil Pollution Fund (Ship Fund), on a cost-sharing basis. The Administrator and Deputy Administrator are cross appointed to both Funds.

- ▶ The Fund has its own corporate and visual identity, including its own:
 - website
 - email addresses
 - newsletter
 - social media accounts (LinkedIn, YouTube and Twitter).
- ▶ The Fund has its own compliance calendar and requirements.

We signed two Memoranda of Understanding (MOUs) in place to support our governance and operations, including with:

- ▶ Transport Canada (TC) to map out the relationship between the two organizations.
- ▶ Ship Fund for the cost-sharing of shared resources.

We are about to finalize a MOU with VIA Rail Canada for the transition of claims should an accident happen on their tracks.

We developed internal expertise and capacity. Our compensation preparedness program is now managed by a director and three employees (two lawyers and an analyst). They are also supported by:

- ▶ Corporate services shared with the Ship Fund. These services include:
 - finances
 - human resources and payroll
 - communications
 - information management and information technology
 - office management and compliance.
- ▶ Several external consultants, experts, and lawyers.
- ▶ Students hired through our Student Program.

We passed our first Special Examination in 2021. External auditors found that the Fund was being operated efficiently and in a cost-effective manner. They identified some opportunities and made recommendations, which are being implemented.

Finances

As of March 31, 2023, the Fund has accumulated over \$101 million in levies and interest (see Graph 2).

- ▶ We clarified with the relevant railway companies their crude oil transport tracking and reporting processes.
- ▶ TC will provide an attestation that levies are received on time and are complete.

Accidents

No accident activated the Fund since 2016.

- ▶ Six accidents have been monitored. None of these accidents reached the railway companies' limit of insurance coverage.
- ▶ The Administrator has not been involved as party by statute in lawsuits.
 - If lawsuits are started against a railway company for crude-by-rail damages, the Administrator must be named as party by statute.

Claims management and preparedness

We developed and carried out an outreach and engagement strategy to reach and engage with all the key stakeholders. This includes the key payers of the regime. For instance, we asked their input on the design of the compensation process.

We have selected an external firm for claims management and assessment services, hired on a standby basis. This was a significant step forward in our preparation to handle a high volume of claims. This required an extensive public procurement process (Request for Standing Offers).

We published a Claims Manual and updated it for a second edition.

We developed and tested the Fund's activation management protocols for:

- ▶ internal use;
- ▶ use with the railway(s) involved in an accident; and,
- ▶ coordination with other public authorities.

We are negotiating MOUs with railway companies for the transition of claims from them to the Fund.

We hosted three workshops and tabletop exercises with dozens of stakeholders.

We conducted research on:

- ▶ legal issues raised by our new statutory regime;
- ▶ compensation issues raised by catastrophic events, in Canada and abroad.

The challenges encountered during the last seven years include:

The Governor in Council appointment process, which provided me with a weak mandate for the first two fiscal years.

The COVID-19 pandemic, and the passing of the Fund's first Director in 2020, which slowed down our preparedness program.

The navigation through a peculiar governance structure of the Administrator's office:

- ▶ Although the Administrator is independent and is the private employer of his staff, he must comply with many obligations of federal departments and agencies. Managing the risks of the many grey areas of this governance regime requires time and resources on an ongoing basis.

Questions raised by the operationalization of the Act from an access to justice perspective.

The development of a three-pillar governance structure to manage separately the Fund and the Ship Fund, while using largely the same staff and joint resources. Although there are efficiency gains in sharing resources, there are still separate compliance requirements for each Fund which increase workload.

The retention of highly specialized staff in a very competitive work environment.

Challenges and opportunities for my successor and for the legislator include:

A leadership transition in 2023-2024. A Notice of Opportunity for the Deputy Administrator's position was published for a timely replacement. However, no Notice of Opportunity has been published for the Administrator's position. The outgoing Deputy Administrator, Mark Gauthier, will serve as Administrator for a one-year term. The top priority should be to keep staff engaged and motivated. This is critical considering the very specialized knowledge they possess, as well as the competitive job market.

Limits of the current governance model. The Administrator's Office governance model has been stretched to its limits and warrants a review, and possibly an upgrade by the legislator. A consolidated corporate structure could streamline governance and compliance issues. This is a shared issue with the Ship Fund, and it has already been brought to the attention of Transport Canada (TC).

Pushing for collaboration with the other key players to the extent possible.

After years of engaging with the other key players, we see various levels of commitment on their part. We need backup plans or legislative provisions to fulfill efficiently our mandate in the event a key player turns out to be non-cooperative.

To be or not to be an administrative tribunal. The Fund provides access to justice. It complements the existing liability regime by securing additional compensation. The amounts held in the Fund can be used only via the Administrator's decisions, within the parameters of the Act, to:

- ▶ receive, investigate and assess claims;
- ▶ compensate claimants;
- ▶ recover when possible;
- ▶ be involved in lawsuits as party by statute; and,
- ▶ self-finance our administrative and compliance functions.

Is the Office of the Administrator an administrative tribunal? I strongly believe it is, which has important governance and management implications (see Box 1).

Having the opportunity and the financial resources to bring to life a new administrative tribunal has been an exceptional chance in my legal career. I feel privileged to have been bestowed with this role.

I am especially grateful to the staff who have followed me in this adventure. I am also thankful to all consultants, lawyers and stakeholders who enriched us with their expertise. This almost seven-year journey has been extremely interesting from an intellectual perspective. Yet, what I will remember are the persons who have carried forward this undertaking.

My special thanks go to Mark Gauthier, who has teamed up with me for the past five years, bringing along his knowledge and wisdom. Furthermore, he has agreed to serve as Administrator for one year to ensure continuity and smooth onboarding of the future Deputy Administrator.

I am confident that, with his leadership and this team, the upcoming year will see ongoing progress.



Anne Legars
Outgoing Administrator

2022-2023 AT A GLANCE

We did not receive any claims for rail accidents. However, we continue to monitor six past accidents for any potential compensation-related ramifications (see map on page 9).

We made steady progress towards strong preparedness. It included:



Negotiating with railway companies for the transition of claims. We are about to secure a MOU with VIA Rail Canada.



Facilitating two tabletop exercises to test our readiness:

- ▶ the first was an internal exercise, and
- ▶ the second was with our government communication partners.



Improving our legal preparedness.



More than doubling our engagement levels from last year with regard to outreach activities. We resumed in-person meetings and events across the country.



Updating our MOU with TC to act on the recommendations from our special examination; and



Collaborating with TC's Transportation of Dangerous Goods Secretariat on the sharing of crude-by-rail data.

In 2022-2023, the levy was set at \$1.86 per tonne. We collected \$5.8 million in levies, representing 3.1 million tonnes of levied crude oil. As of March 31, 2023, the Fund had an accumulated balance of over \$101 million.

1. ACTIVITY REPORT

This activity report is structured along the core elements of the Administrator's mandate provided by the Act:

- ▶ Establishing and paying out claims (sections 154.6 and 155);
- ▶ Ensuring records and systems are properly maintained (section 155.92);
- ▶ Submitting an annual report to the Minister of Transport for tabling in Parliament (section 155.93).

1.1. PREPARING FOR THE ASSESSMENT AND PAYMENT OF CLAIMS



Receiving, investigating, assessing and paying claims in the case of an accident where damages exceed the railway's limit of liability, is at the heart of the Administrator's mandate.

In 2022, the TSB published a report on rail incidents involving dangerous goods on railways:

- ▶ On average, four rail incidents per year are involving dangerous goods since 2010:
 - Around 25% of these incidents involved crude oil.
 - Around 75% of these incidents involved other dangerous goods.

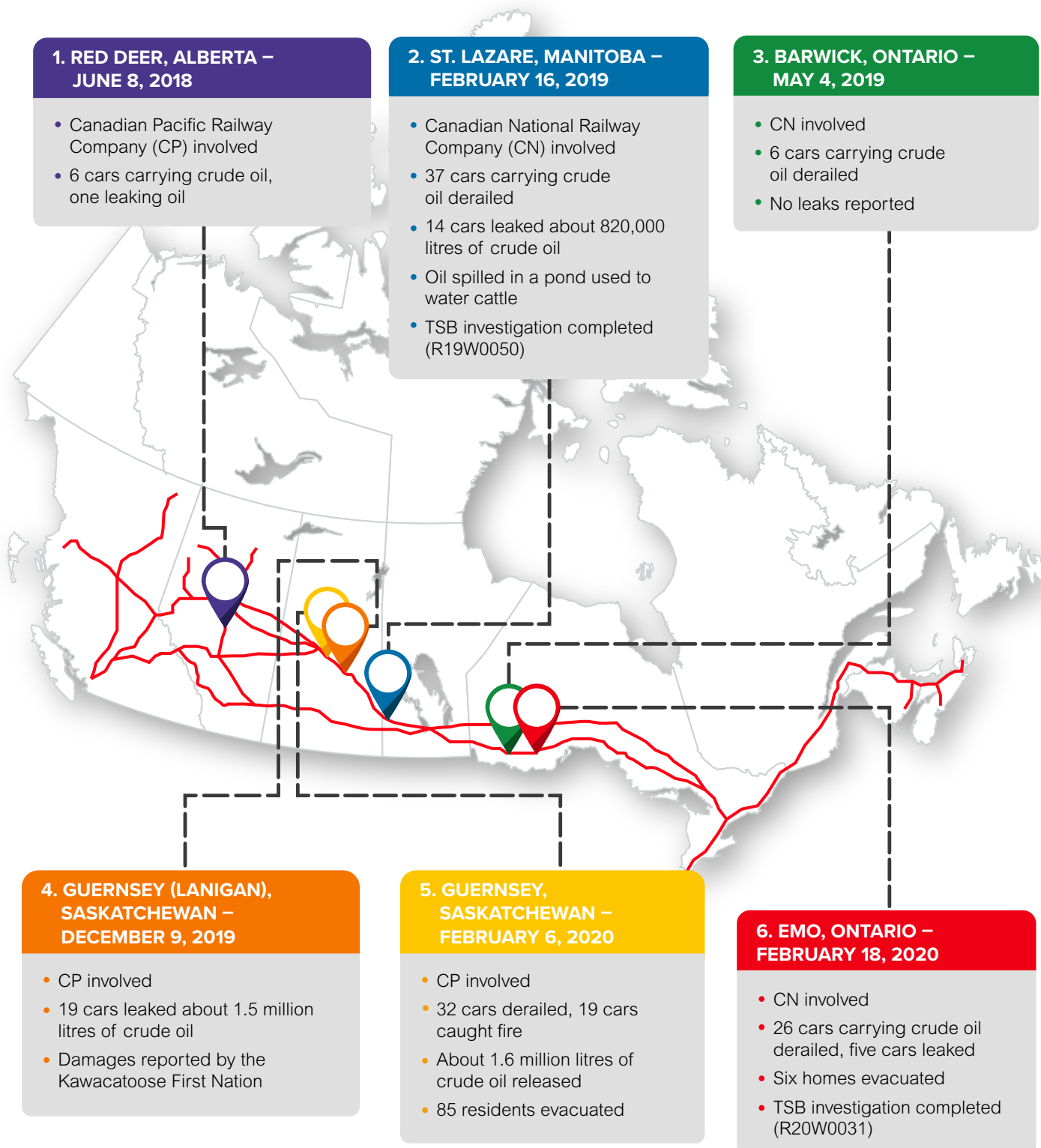
1.1.1. ACCIDENT MONITORING

Monitoring of accidents. We monitor these types of accidents by analyzing the incident notifications received from the Transportation Safety Board of Canada (TSB). No accidents of this type were reported in 2022-2023.

- ▶ If lawsuits are started against a railway company for damages, the Administrator shall be named as party by statute. This has not occurred since the Fund's creation.
- ▶ If we are contacted by potential claimants while the scope of the incident is within the railway's limit of liability, we will redirect them to the claims department of the relevant railway companies.

Only crude oil has been designated under the Fund. This means the Fund can only be activated in the case of a railway accident involving crude oil. The government, not the Fund, determines whether other goods are added to the list of designated goods.

MAP OF ACCIDENTS MONITORED IN 2022-2023



The full accident summaries are available on our website under “Accident monitoring”.

Graph 1: Crude-by-rail volumes per quarter since 2016

This graph below shows the volume of levied crude oil transported by rail in Canada. We have also included points showing the accidents that we currently monitor.



1 Red Deer, Alberta

2 St. Lazare, Manitoba

3 Barwick, Ontario

4 Guernsey (Lanigan), Saskatchewan

5 Guernsey, Saskatchewan

6 Emo, Ontario

Note: The data is an estimate. It was calculated using the total levy amount collected per quarter and divided by the levy rate of that quarter.

This year, we researched historical statistics on crude-by-rail transportation, including:

- ▶ the drastic increase of volumes in 2019, and
- ▶ the sharp decline in early 2020.

We examined both national and international factors that contributed to these trends. The volumes are consistent with our collection of levies on crude-by-rail.



Surveying all railway companies prior to any accident. In 2022, we sent out our annual voluntary survey, which allows us to obtain updated relevant information, including:

- ▶ the railway company's current crude-carrying capacity or intention;
- ▶ key contacts within each railway company;

Eighteen out of 26 railway companies responded, compared to 20 last year.

1.1.2 PREPAREDNESS

In the event of a disaster, we will have to deploy resources to receive, assess and pay claims, and to be represented in court as needed. We have developed an action plan which covers the various dimensions of our preparedness and we have been implementing it over the past five years.

Unlike a private insurance company, we are governed by a federal legislation. We must govern ourselves like an administrative tribunal. This has implications when developing our state of readiness for claims handling and assessment (see Box 1).

BOX 1: The Office of the Administrator as an administrative tribunal



The Fund, which is a specified purpose account in the accounts of Canada, can be used only through decisions of the Administrator.

In making decisions on the assessment and payment of claims, the Administrator acts the same way as the decision maker of an administrative tribunal.

Accordingly, the Administrator and his staff must implement key principles of administrative justice. These principles must also govern the work done preparing for mass compensation, including in working with key stakeholders (such as other payers or service providers).

This is a brief list of these key principles:

Independence and impartiality. The Administrators are not civil servants. They are appointed by the Governor in Council. They remain at arm's length from the Minister

of Transport and from other departments or agencies, as these may become claimants. While the Administrator is fully independent from government oversight, the Fund is still part of the Minister of Transport's portfolio of agencies. Therefore, we have a service agreement with TC for administrative matters. It allows, for example, to process the Fund's money in and out of the Consolidated Revenue Fund.

Decision-making responsibility. Although the Administrator may seek advice and support for fulfilling his role, he cannot abdicate his decision-making responsibility. Under the Act, the Administrator may assign matters to the Deputy Administrator, such as:

- ▶ signing compensation offer letters;
- ▶ signing letters of disallowance; or,
- ▶ requisitioning payment out of the Fund.

The advice received from lawyers and experts in the development of the Administrator's decisions is protected by deliberative privilege. However, the Administrator is not bound by any such advice.

Procedural fairness and natural justice principles. These principles govern the Administrator’s decision-making process when dealing with claims matters. For example:

- ▶ claimants must be advised of what is expected from them; and
- ▶ they must have the ability to comment when the Administrator takes into consideration additional evidence that would impact their claim.

Reasonableness of decisions. The decisions of the Administrator are written to demonstrate that they were reasonably made, logically coherent, based on evidence, and unbiased.

Open administrative justice principle. Decisions will be made publicly available, for transparency and access to justice purposes.

Statutory appeal of adjudicative decisions. Claimants dissatisfied with the Administrator’s decisions can appeal them to the Federal Court.

Belonging to an administrative justice community of practice. We have joined two administrative justice networks of expertise:

- ▶ the Council of Federal Tribunal Chairs
- ▶ the Council of Canadian Administrative Tribunals (CCAT)

There we discuss common issues, access relevant training and tools, and share best practices.

We also use the Access to Justice Index for Federal Administrative Bodies (the “Index”) as a self-assessment tool. This Index was designed by the Department of Justice Canada.

This year, we made progress on the following elements of our preparedness.



Mapping Indigenous communities near railway tracks. We have been working to increase our ability to engage with Indigenous communities following an accident on Indigenous traditional territories. In such events, we want to be able to quickly assess who might be impacted. We have been working with Indigenous Services Canada’s

(ISC) Geomatics team to create an interactive map. This is another tool added to help our preparedness and is accessible to us at no cost.



Improvement and practice of our Fund’s activation management protocols. We conducted internal tabletop exercises. We immersed our team in simulated situations similar to real events. We validated and improved the protocols by identifying areas of improvement.

These protocols include the preparation of key media lines ready to be communicated (Box 2). We want to expand these protocols to cover more potential accident scenarios.



Increased cooperation with the communications teams of railway companies.

We developed our network in the communication departments of some railway companies. We expressed to them the need to coordinate our key messages, so claimants and the public don't get confused about the compensation process. This collaboration will continue next year and may include participation in tabletop exercises.



Communications coordination with federal government institutions.

We initiated meetings with several federal institutions to operationalize with their communications experts the Fund's activation management protocols. We quickly noticed the need to bring all these key contacts together. As a result, we held our first tabletop exercise with emergency communications experts within federal government institutions. The exercise included:

- ▶ Transport Canada (TC)
- ▶ Public Safety Canada (PS)
- ▶ Canadian Transportation Agency (CTA)
- ▶ Environment and Climate Change Canada (ECCC)
- ▶ Indigenous Services Canada (ISC)

We reached our goal to better understand Canada's emergency management system, including each other's areas of responsibility (see Box 3). We were able to ask questions, validate communications plans and procedures, and troubleshoot problem areas.

BOX 2: Communications following an accident

A sizable portion of our response to an accident will be communications. Large accidents, such as that in Lac-Mégantic in 2013, result in local, national, and international media attention. People who have suffered damages and the families of victims often do not know where to turn for compensation, or receive conflicting messages about it. We also know that the question of who will pay for the damages is quickly asked.

Timely and simple communications, through an efficient readiness plan, can play an essential role in providing access to justice.



Source: TSB, Report R13D0054, Lac-Mégantic (Québec)

Next steps with respect to communications preparedness include:

- ▶ Preparing material ready to be published and share it with the network.
- ▶ Collaborating with the provinces and local governments.
- ▶ Planning a communication exercise with railway companies.
- ▶ Bringing awareness about the Fund to additional federal institutions, such as:
 - Intergovernmental Affairs Secretariat
 - Natural Resources Canada (NRCan)
 - Privy Council Office (PCO)



Discussions with railway companies on transition of claims. We hosted nine meetings with the Railway Association of Canada (RAC) and

its members who are carrying crude oil. We sought industry feedback on our approach to the transition of claims. We then moved toward meetings with individual railway companies. These direct conversations intend to address their concerns and tailor the transition process. We are about to sign an agreement with VIA Rail Canada in 2023 as they own railway tracks used by other companies. We expect similar agreements with other companies to follow.



Building easy-to-access tools for claimants. This year, we reviewed the Claims manual, renamed “Consolidated Claims Forms”.

This document is intended for individuals, communities and organizations who have suffered a variety of damages. It will be tailored following a specific accident. This new version will be available on our website in 2023 and will be reviewed regularly.



BOX 3: Summary of our communications' tabletop exercise with federal institutions

Here is the summary of the federal institutions' roles in communications following all railway accidents:

- ▶ TC will be the lead department for issues related to a railway accident.
- ▶ PS coordinates the whole-of-government communications response to emergencies and events of national interest. They also:
 - maintain a list of key emergency communications contacts;
 - convene federal emergency communication calls with their partners;
 - compile media lines and Q&As from all federal partners that support their portion of the response;
 - create a one-stop-shop information webpage about the federal resources available to the public.

- ▶ ECCC will be activated upon request. They can conduct sampling and create oil spill trajectory models or advise responders about hazards.
- ▶ ISC would support First Nations in their emergency management and recovery.

The exercise reaffirmed the need to:

- develop clear, accessible, and coordinated messaging before an accident happens;
- expand our network further than the federal sphere:
 - » most emergencies in Canada are local in nature and are managed by municipalities and communities, or at the provincial or territorial level.

While we found several gaps during the exercise, we received a commitment from the participants to build a formal community of practice and to meet periodically.



Legal preparedness: a key aspect of our preparedness. This includes:

- ▶ Undertaking legal research and statutory interpretation of the Act;
- ▶ Developing and maintaining a legal library; and
- ▶ Researching past derailment cases to capture the legal issues at stake that would

still be relevant in an accident covered by our regime, such as:

- monitoring of a civil class lawsuit in the Superior Court of Québec for the 2013 Lac-Mégantic railway accident (Box 4) as part of our preparedness.
- ▶ Fostering ties with legal communities such as the Canadian Transport Lawyers Association.

Legal research conducted this year included the:

- ▶ Scope of the Administrator’s rights and obligations when he becomes a party to litigation against a railway company under the Act.
- ▶ Impact on the Fund of a railway company’s bankruptcy following an accident.
- ▶ Impact on the Fund of a class action lawsuit against a railway company following an accident.
- ▶ Definitions of “non-use value”. The Act allows for the federal government or a provincial government to recover the loss of the non-use value of a public resource; however, the term is not defined. It can be described as value derived from the knowledge of the continued existence of a public, environmental resource, and a general desire to preserve such a resource for future generations.

Our research results will be used to develop guidelines and circulate them for feedback.

- ▶ 2015 train derailments near Gogama, Ontario. These derailments spilled over four million liters of crude oil, and caused fires and explosions. The province of Ontario was involved in the response to the oil spill. The territory of the Mattagami First Nation was contaminated. In 2017, they initiated a lawsuit against CN for infringement of their Aboriginal and treaty rights, and the destruction of traditional and cultural resources. The progress and outcome of this lawsuit are unknown.

BOX 4: Superior Court of Quebec’s judgment

In December 2022, the Superior Court of Quebec released its judgment in *Ouellet c. Compagnie de chemin de fer Canadien Pacifique* (CP). This class action lawsuit was brought against CP by Lac-Mégantic community members, the Quebec government, and insurers. The Court found CP not liable for the derailment and resulting damages. This decision has been appealed to the Quebec Court of Appeal.

We note that ten years after the derailment, the issue of a railway company’s liability hasn’t been conclusively settled in court. However, should a similar accident happen today, no fault or negligence has to be proven, saving years of costly litigation. Claimants have direct access to compensation from the railway company or by the Fund.

Although these incidents occurred before the creation of the Fund, this research allows us to better understand:

- the role of the Ontario Land Tribunal (formerly called the Environmental Review Tribunal) on the assessment of the damages claimed by the province of Ontario;
- the various damages First Nations could claim for;
- how a lawsuit between a First Nation and a railway company may unfold.

1.1.3. CHALLENGES AND OPPORTUNITIES

Stakeholder engagement as a means to deliver access to justice. We consider stakeholder engagement as the best way to ensure access to justice for claimants. We continued to make efforts to keep our key partners engaged in the development of the claims management process. We are also reaching out to new stakeholders to make them aware of our existence. To achieve this goal, we have carried out several outreach activities in 2022-2023. The list of our outreach activities is found on page 21. Other communications initiatives included:

- ▶ **Launch of a new animation video.** During the 2022 Rail Safety Week, we launched a new animation video. This video explains the complex nature of the Fund in simple language. We also included all the preparedness actions we have been doing since 2016. The video can be found on our website.



Source: TSB, Investigation R15H0021, Gogama, Ontario



► **New blog posts about our activities.** We published one new blog on our accidents monitoring. The blog provided an update on the 2019 St. Lazare Derailment following the release of the TSB investigation. The blog is available on our website. In 2023-2024, we want to regularly add new articles.

► **Building awareness and recognition with a new branding for the Fund.** The lack of awareness about the Fund would be an obstacle to access justice. In addition, our present legal name is long and difficult to understand and remember, especially in French. However, a brand name that can be easily recognized, understood, and retained by the public would improve recognition.

We are working with a specialized firm to upgrade the Fund's brand. This process is underway and will be essential for the launch of a new and more accessible website. It will also play a key role in building new awareness campaigns.

► **Our increased outreach efforts led to new or renewed relationships.** This year, our team has been successful in achieving our goal to get back to pre-pandemic engagement levels. We have more than doubled our outreach results from last year. We also engaged a greater variety of stakeholders by reconnecting with:

- local governments, municipalities and related associations;
- provincial and territorial governments; and,
- the Canadian Transport Lawyers Association.

While most meetings were held virtually, we resumed in-person events. They allowed us to network, gain immediate feedback and receive recognition from participants across the country. This included:

- A booth at two well-attended municipal and local governments trade shows.
 - » As part of a joint initiative with the Ship Fund.



- Participation at two conferences on catastrophe management and one on transportation law.
- Participation at a Railway Association of Canada (RAC) event.

► **Limits to collaboration and engagement.**

The Act is not prescriptive on how it can be operationalized. There is a lot of room for the key payers to get organized and make it work for the public in the best way possible. This requires collaboration and planning. Despite these efforts and the results obtained so far, it remains possible that a key payer turns out to be non-cooperative at the time of an accident. This could potentially block or delay the compensation process. Back-up plans or legislative provisions would then be needed so that we can efficiently fulfill our mandate.

- ▶ **Starting conversation with the Federal Court of Canada.** We plan to engage with them to improve joint preparedness. We expect an increase of appeals to the Court in a mass compensation situation. This will be a joint initiative with the Ship Fund.

1.2. ASSURANCE THAT RECORDS AND SYSTEMS ARE PROPERLY MAINTAINED

Many corporate changes and improvements were made during the year, including:

- ▶ Migration of the records information management system to a fully web-based system to improve reliability, security and remote access.
- ▶ Renewal of Information Technology (IT) equipment and implementation of a security training plan for all employees to improve security and flexibility of cloud computing and remote work arrangements.
- ▶ Working with Shared Services Canada to explore ways to increase the IT security and access to services of the Government of Canada National Capital Region (NCR) network.

- ▶ Development of enhanced budgeting and reporting options to address observations contained in audit reports.

Further to the 2022-2024 Human Resources (HR) Plan, we implemented modernizations, including:

- ▶ A new human resource management information system (HRMIS) to improve access to electronic personnel records, management reporting, staffing information and the performance assessment processes.
- ▶ Approval of a new Corporate Training Plan to ensure employees' training requirements are better identified and supported.
- ▶ Completion of a compensation and benefits review to ensure we have a modern, responsive pay and benefits regime for employees and that is *Pay Equity Act* compliant.
- ▶ A 2022 employee survey was conducted, for which results compared favourably with the previous survey.



- ▶ For the first time since the COVID-19 pandemic, all employees participated at an in-person retreat.



Note: Some staff members are missing from this photo.

All these IT and HR initiatives apply to both Funds, and most are follow-ups on recommendations from special examinations.

The Fund's student program's most active year to date. This year, we employed six students who worked on legal, policy and communication files. Students completed tasks such as:

- ▶ research on crude-by-rail accidents;
- ▶ preparation of summaries on the transportation of dangerous goods;
- ▶ preparation of publications, such as social media and newsletters;
- ▶ participation in conferences with key stakeholders.

1.3. REPORTING, COMMUNICATIONS AND TRANSPARENCY

The Act provides that the Administrator shall submit an annual report for the activities in that year to the Minister of Transport, including financial matters. The financial report is submitted under Part 2 of this annual report. We also have reporting obligations under the *Access to Information Act* (ATI):

- ▶ This year, we received the second ATI request in our history. The request is about the 2015 Gogama derailments. We allocated the necessary resources to respond to this request, which will be completed in 2023.

In addition to our reporting obligations under these acts, we consider transparency, communications and outreach as integrally linked to our core mandate.

OUTREACH ACTIVITIES IN 2022-2023

HIGHLIGHTS:

31 meetings with key stakeholders

Launch of one animation video on YouTube and on our website

2 exhibitions at municipal trade shows with high foot traffic

1 tabletop exercise with federal institutions on emergency communications

12 discussion sessions on the transition of claims with railway companies

Participation and networking during 5 national conferences

The Fund continues to do joint outreach with the Ship Fund.

Legend for the type of participant:



Railway companies and related associations



Federal Government



Emergency response organizations



Provincial and territorial governments



Legal communities



Local governments, municipalities and related associations



Claims and insurance specialists



Indigenous governments and Indigenous groups

*Recurring meetings about the transition of claims initiative (12) and TC (5) are not listed below.

2022

APRIL



Meeting with the Railway Association of Canada (RAC) and the Federation of Canadian Municipalities (FCM) proximity initiative



Meeting with Public Safety Canada (PS)

JUNE



Participation at the 2nd annual Canadian Women in Rail Conference from the RAC



Participation at the 2022 Conference Catastrophes in Canada – The Big Picture hosted by CatIQ Connect



2 meetings with Indigenous Services Canada (ISC)

AUGUST



Participation as exhibitor at the trade show of the 2022 Association of Municipalities of Ontario (AMO) Conference

SEPTEMBER



Meeting with ISC



Participation as exhibitor at the trade show of the 2022 Conference of the Fédération québécoise des municipalités (FQM)

OCTOBER



Participation at the 2022 Canadian Transport Lawyers Association (CTLA) Conference



Meeting with Canadian Pacific Railway (CP)



Meeting with ISC, Geomatics Team

NOVEMBER



Participation at the RAC Annual Rail Safety Awards Ceremony



Meeting with the Canadian Transportation Agency (CTA)

DECEMBER



Meeting with PS



Meeting with a member of the CP communications team



Meeting with a member of the Canadian National Railway Company (CN) communications team

2023

JANUARY



Tabletop exercise with a network of representatives from federal government institutions responsible for communications



Meeting with a member of the CP communications team

FEBRUARY



Participation at the CatIQ Connect 2023 Conference



Field visit to VIA Rail Canada's Simulator Training Program and Facilities



Meeting with the Government of British Columbia, Ministry of Indigenous Relations and Reconciliation



Meeting with the First Nations Emergency Services Society of British Columbia (FNESS)



2. FINANCIAL REPORT

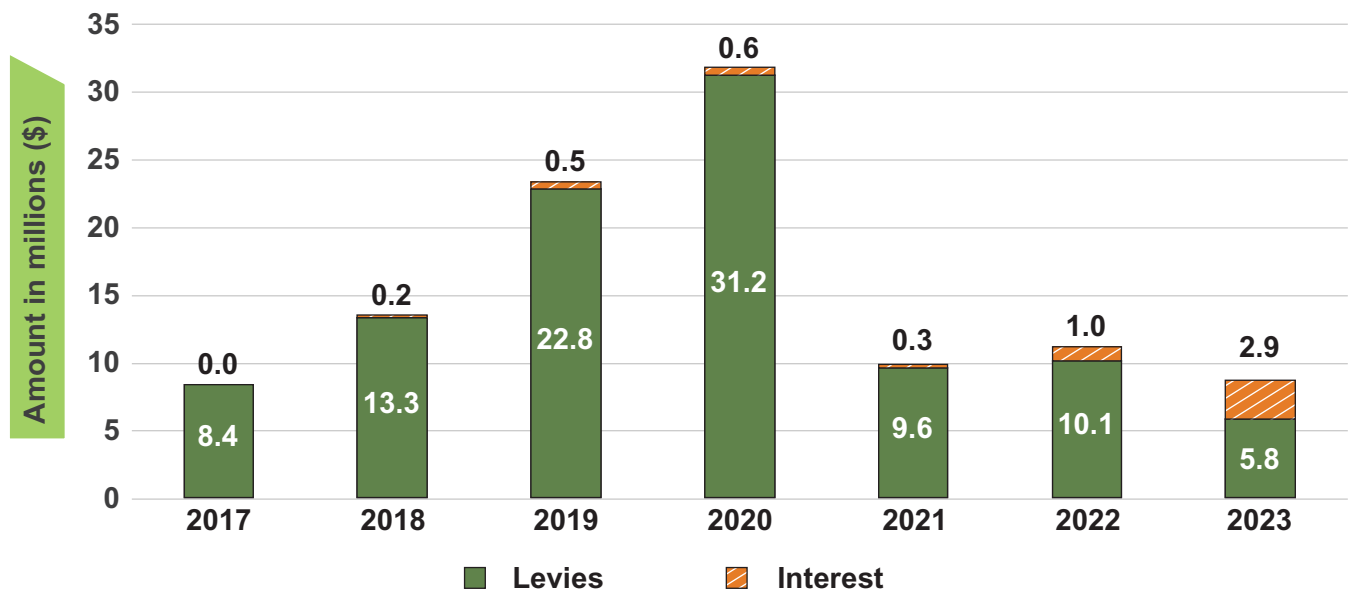
In 2022-2023, we collected \$5,798,944 in levies (compared to \$10,127,730 in 2021-2022). We also earned \$2,867,865 in interest in 2022-2023 (compared to \$1,039,040 in 2021-2022).

Our revenues decreased by \$2,499,961 in 2022-2023 compared to the previous year:

- ▶ A 45% decrease in the volume of levied crude oil shipped by rail was offset by a 3.3% increase in the 2022 levy. The levy increased by \$0.06, for a total of \$1.86 per tonne).

Our interest revenues increased by \$1,828,825 in 2022-2023. This is because of an increase in average interest rates, which were 3.1% (ranged from 2.6% to 3.54%) in 2022-2023 (compared to 1.31% in 2021-2022).

Graph 2: Amount collected from the levy and interest since 2017



*Note: the 2016-2017 fiscal year was not a full year.

Revenues accumulated from interests have started to become more significant in the past two fiscal years.

Our operating expenses amounted to \$1,108,193 in 2022-2023 (compared to \$1,373,284 the previous year). This includes the fees of \$66,242 paid to the Administrator and Deputy Administrator (compared to \$65,895 in 2021-2022).

Our operating expenses decreased by \$265,091 due to:

- ▶ A decrease of \$263,598 in consulting fees for legal and professional advisory costs;
- ▶ A net decrease of \$10,219 in administrative services, salaries and office expenses; reflecting a combination of salary adjustments and employees on unpaid leave;
- ▶ A net increase of \$8,726 in other operating expenses.

The portion of administrative costs which is allocated from a common cost base (shared with the Ship Fund), averaged 33% in 2022-2023 compared to 37% in 2021-2022 due to changes in common cost allocation factors.

At the end of the fiscal year, the Fund had an accumulated surplus of \$101,605,301 (compared to \$94,046,685 on March 31, 2022).

The Auditor's Report is included in the attached Financial Statements.

2016-2023: OVERVIEW OF THE FUND FINANCIAL TREND

Over its first seven fiscal years of existence, the Fund has collected over \$106M from which:

- ▶ 95% consists of levies (\$101M); and
- ▶ 5% consists of interest (\$5M).

This represents an average of almost \$15M collected every year.

Since 2016, the Fund spent \$5M (or \$700k per year on average) split between these segments:

- ▶ 52% for administrative services costs, salaries and office expenses (\$2.6M or \$368K per year on average);
- ▶ 31% for consulting fees (\$1.6M or \$221K per year on average);
- ▶ 8% for governance fees (Administrators and audit) (\$405K or \$58K per year on average);
- ▶ 1% for travel expenses (\$34K or less than \$5K per year on average).

**FUND FOR RAILWAY ACCIDENTS INVOLVING
DESIGNATED GOODS**

FINANCIAL STATEMENTS

MARCH 31, 2023

**FUND FOR RAILWAY ACCIDENTS INVOLVING
DESIGNATED GOODS**

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INDEPENDENT AUDITOR'S REPORT

To the Administrator of
The Fund for Railway Accidents involving Designated Goods

Opinion

We have audited the financial statements of the Fund for Railway Accidents involving Designated Goods ("the Fund"), which comprise the statement of financial position as at March 31, 2023, and the statements of operations, change in net financial assets and cash flow for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Fund as at March 31, 2023, and the results of its operations and its cashflows for the year then ended, in accordance with Public Sector Accounting Standards.

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the "Auditor's Responsibilities for the Audit of the Financial Statements" section of our report. We are independent of the Fund in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Emphasis of Matter – Budget figures

As explained in Note 7 to the financial statements, budget figures are not disclosed in the financial statements, although it is required according to Public Sector Accounting Standards. Our opinion is not modified in respect of this matter.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Public Sector Accounting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Fund's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Fund or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Fund's financial reporting process.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

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Chartered Professional Accountants

Cabinet indépendant affilié à
Independent firm affiliated to



As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Fund to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.



Chartered Professional Accountants, Licensed Public Accountants

Ottawa, Ontario
June 9, 2023

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF FINANCIAL POSITION

MARCH 31, 2023

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	2023	2022
FINANCIAL ASSETS		
Balance of the account with Receiver General for Canada (Note 3)	\$ 100,682,096	\$ 92,478,668
Accounts receivable	849,979	1,546,616
Accrued interest receivable	243,516	175,459
TOTAL FINANCIAL ASSETS	101,775,591	94,200,743
LIABILITIES		
Accounts payable and accrued liabilities	9,965	29,993
Due to Ship-Source Oil Pollution Fund	202,872	174,612
	212,837	204,605
NET FINANCIAL ASSETS	101,562,754	93,996,138
NON-FINANCIAL ASSETS		
Capital assets (Note 4)	42,547	50,547
ACCUMULATED SURPLUS	\$ 101,605,301	\$ 94,046,685

ORIGINAL SIGNED BY:

Mark A.M. Gauthier _____, Administrator

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF OPERATIONS

FOR THE YEAR ENDED MARCH 31, 2023

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	2023	2022
REVENUES		
Levy	\$ 5,798,944	\$ 10,127,730
Interest	2,867,865	1,039,040
	8,666,809	11,166,770
OPERATING EXPENSES		
Administrative services, salaries and office expenses	810,852	821,071
Consulting fees	120,666	384,264
Administrator and deputy administrator's fees	66,242	65,895
Rent	61,934	68,130
Travel	8,620	-
Audit fees	9,887	9,549
Amortization of capital assets	29,992	24,375
	1,108,193	1,373,284
EXCESS OF REVENUES OVER EXPENSES	7,558,616	9,793,486
ACCUMULATED SURPLUS, BEGINNING OF YEAR	94,046,685	84,253,199
ACCUMULATED SURPLUS, END OF YEAR	\$ 101,605,301	\$ 94,046,685

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF CHANGE IN NET FINANCIAL ASSETS FOR THE YEAR ENDED MARCH 31, 2023

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	2023	2022
EXCESS OF REVENUES OVER EXPENSES	\$ 7,558,616	\$ 9,793,486
Acquisition of capital assets	(21,992)	-
Amortization of capital assets	29,992	24,375
	8,000	24,375
INCREASE IN NET FINANCIAL ASSETS	7,566,616	9,817,861
NET FINANCIAL ASSETS, BEGINNING OF YEAR	93,996,138	84,178,277
NET FINANCIAL ASSETS, END OF YEAR	\$ 101,562,754	\$ 93,996,138

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED MARCH 31, 2023

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	2023	2022
OPERATING ACTIVITIES		
Excess of revenues over expenses	\$ 7,558,616	\$ 9,793,486
Adjustment for:		
Amortization of capital assets	29,992	24,375
	7,588,608	9,817,861
Net change in non-cash items related to operating activities:		
Accounts receivable	696,637	1,764,149
Accrued interest receivable	(68,057)	(117,510)
Accounts payable and accrued liabilities	(20,028)	(189)
Due to Ship-Source Oil Pollution Fund	28,260	10,327
	636,812	1,656,777
INVESTING ACTIVITIES		
Acquisition of capital assets	(21,992)	-
INCREASE IN THE BALANCE OF ACCOUNT WITH THE RECEIVER GENERAL FOR CANADA	8,203,428	11,474,638
BALANCE, BEGINNING OF YEAR	92,478,668	81,004,030
BALANCE, END OF YEAR	\$ 100,682,096	\$ 92,478,668

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2023

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1. GOVERNING STATUTES AND PURPOSE OF THE ORGANIZATION

The Fund for Railway Accidents involving Designated Goods (the Fund) was created on June 18, 2016 under the *Safe and Accountable Rail Act* (the Act). The Act amends the *Canada Transportation Act*.

2. SIGNIFICANT ACCOUNTING POLICIES

Basis of accounting

The financial statements are prepared in accordance with Treasury Board accounting policies which are consistent with Public Sector Accounting Standards.

Use of estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the reported amounts of revenues and expenses for the periods covered. Actual results may differ from these estimates. The primary estimate relates to the valuation of provision for claims under review when such claims are received.

Revenue recognition

The levy income is recognized when earned as per the volume of crude oil carried in Canada declared by railway companies.

The interest income is recognized as revenue when it is earned.

Capital assets

Capital assets are recorded at cost. Capital assets are amortized over their estimated useful lives according to the straight-line method over the following periods:

Computer equipment	3 years
Furniture and equipment	10 years
Leasehold improvements	Remaining term of lease

Financial instruments

Financial instruments are initially classified either as a financial instrument measured at cost or at amortized cost or as a financial instrument measured at fair value. Transactions that are non-contractual in their origin do not generate items considered to be financial instruments.

Financial assets measured at amortized cost include balance of the account with Receiver General for Canada, accounts receivable and accrued interest receivable.

Liabilities measured at amortized cost include accounts payable and accrued liabilities and due to Ship-Source Oil Pollution Fund.

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2023

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2. SIGNIFICANT ACCOUNTING POLICIES (continued)

Financial instruments (continued)

Transaction costs

Transaction costs attributable to financial instruments measured at fair value are recognized in operations in the period in which they are incurred. Transaction costs related to financial instruments measured at cost or amortized cost are recognized in the original cost of the instrument. When the instrument is measured at amortized cost, transaction costs are then recognized in operation over the life of the instrument using the effective interest rate method.

3. BALANCE OF THE ACCOUNT WITH RECEIVER GENERAL FOR CANADA

The cash balance of the Fund is held within the Consolidated Specified Purpose Accounts of the Government of Canada. Public Works and Government Services Canada acts as the custodian of this cash balance and Transport Canada records the various transactions on behalf of the Fund. Interest is credited to the account in accordance with the provisions of the agreement signed on April 20, 2018 between Transport Canada and the Department of Finance at a rate based on a 5-year Government of Canada bond interest rate, calculated monthly. The interest rates varied between 2.60% and 3.54% during the year (2022: 0.78% and 2.42%). The average interest rate for the year ended March 31, 2023 was 3.10% (2022: 1.31%).

4. CAPITAL ASSETS

	Cost	Accumulated amortization	2023	2022
Computer equipment	\$ 27,134	\$ 12,472	\$ 14,662	\$ -
Furniture and equipment	10,448	4,179	6,269	7,314
Leasehold improvements	108,083	86,467	21,616	43,233
	\$ 145,665	\$ 103,118	\$ 42,547	\$ 50,547

5. RELATED PARTY TRANSACTIONS

The Fund is related, as a component of the accounting framework of the Government of Canada, to all Government of Canada departments, agencies and Crown Corporations.

Accounting services

During the year, the Fund paid \$14,527 to Transport Canada for accounting services. Previously, accounting services were billed to the Ship-Source Oil Pollution Fund and included as part of administrative services paid by the Fund.

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2023

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5. RELATED PARTY TRANSACTIONS

Other

During the year, the Fund paid to the Ship-Source Oil Pollution Fund an amount of \$826,111 (2022: \$821,466) for its share of the following operating expenses:

	2023	2022
Administrative services, salaries and office expenses	\$ 764,177	\$ 753,336
Rent	61,934	68,130
	\$ 826,111	\$ 821,466

6. CONTINGENCIES

In the normal course of its operations, the Fund may receive information about incidents that have occurred but for which no claims have been received. It is not possible for the Fund to determine the likelihood of a claim for any of these reported incidents, if any. The Fund is also not able to assess the financial value of any such claims should they materialize. No provision related to such incidents is recognized in the financial statements. A provision is recognized when a claim is effectively received.

As of April 1, 2023, the Minister of Transport has the statutory power to impose a levy of \$1.99 (2022: \$1.86) per metric tonne of crude oil carried by a federally regulated railway in Canada. The levy is indexed annually based on the Inflation and Consumer Price Index.

7. BUDGET

The Fund for Railway Accidents involving Designated Goods does not prepare an annual budget due to the nature of its operations.