

SP-20

NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Log H-464A

ISSUED: February 6, 1986

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Forwarded to:

Honorable Ray Barnhart  
Administrator  
Federal Highway Administration  
400 7th Street, S.W.  
Washington, D.C. 20590

SAFETY RECOMMENDATION(S)

H-85-52

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About 3:14 p.m. on April 29, 1985, a Bell Creek, Inc. tractor-semitrailer transporting 99 head of cattle and traveling about 59 mph struck the rear of a 1977 Tuba City Unified School District schoolbus on eastbound U.S. 160 about 16 miles north of Tuba City, Arizona. The schoolbus was stopped with its warning lights flashing in the eastbound lane of the two-lane highway to discharge passengers. The weather was clear, the pavement was dry, and there were no visibility obstructions for about 1.4 miles to the rear of the schoolbus. Of the 32 schoolbus passengers (ages 5 to 21 years), 2 were fatally injured, 4 sustained serious injuries, 4 received moderate injuries, 18 sustained minor injuries, and 4 were not injured. The truckdriver and the schoolbus driver received minor injuries. 1/

On October 28, 1976, the Nebraska Motor Carrier Safety Office of the Department of Transportation's Federal Highway Administration (FHWA) completed a safety management audit to determine Bell Creek's compliance with the requirements of the Federal Motor Carrier Safety Regulation. This safety audit disclosed that, in addition to recordkeeping violations relating to the driver qualification files, Bell Creek had on more than 80 occasions required or permitted its drivers to remain on duty more than 70 hours in 8 consecutive days during the 3 months prior to completion of the audit.

As a result of the 1976 audit the FHWA in 1977 sent a civil forfeiture claim letter to Bell Creek claiming \$5,000 for the recordkeeping violations pertaining to the driver qualification files. At the time of the 1977 enforcement action the Federal statute which authorized the assessment of civil penalties for violations of the FMCSR (49 U.S.C. 320 h) applied only to those violations pertaining to preparation, forwarding, and/or retention of required records, such as the required retention of Bell Creek's driver qualification files. The statute did not provide for the assessment of civil penalties for so-called "operational" violations, such as excessive drivers' hours of service. At that

1/ For more detailed information, see Highway Accident Report--"Collision of Tuba City Unified School District Schoolbus and Bell Creek, Inc., Tractor-Semitrailer, on U.S. 160, near Tuba City, Arizona, April 29, 1985" (NTSB/HAR-85/06).

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time, in order to have prosecuted violations of the hours of service regulations disclosed by the 1976 audit, the Department of Transportation would have had to forward evidence documenting the hours of service violations to the U.S. Department of Justice, which, in turn, would have had to institute criminal proceedings in the U.S. Courts. This procedure was not pursued, and Bell Creek was not assessed any penalty for the hours of service violations disclosed by the 1976 audit.

On June 13, 1985, a safety management audit of Bell Creek operations during the preceding 2 months by the Nebraska FHWA Motor Carrier Safety Office disclosed 1 instance of using a physically unqualified (colorblind) driver, 5 instances of failing to report an accident, 5 instances of requiring or permitting a driver to drive more than 10 hours, 5 instances of requiring or permitting a driver to remain on duty more than 70 hours in 8 consecutive days, and 51 instances of requiring or permitting a driver to make false entry on a record of duty status (daily log). On September 3, 1985, the FHWA sent a civil forfeiture claim letter to Bell Creek citing the carrier for 15 instances of requiring or permitting a driver to make false entry on a record of duty status, and claiming \$6,000 for the violations. Bell Creek paid the \$6,000 on September 20, 1985.

There was no followup audit of Bell Creek's operations after the 1976 audit and the 1977 enforcement action by the FHWA Motor Carrier Safety Office field staff. It is therefore unknown whether the violations noted during the 1976 audit went uncorrected, or if they were corrected and then over time the carrier's compliance with Federal safety regulations again deteriorated. The audit selection criteria used by the Bureau of Motor Carrier Safety thus far in the past several fiscal years have not included a criterion requiring a followup audit of carriers who have been the subject of an enforcement action, and at the present time there is no nationwide policy requiring that motor carriers against whom an enforcement action has been taken be systematically re-audited after the conclusion of an enforcement action. The Safety Board believes that the BMCS should institute such a policy, and include this criterion as one of those to be used in selecting carriers for audit, in order to ensure the effectiveness of enforcement actions taken.

Therefore, as a result of this accident, the National Transportation Safety Board recommends that the Federal Highway Administration:

Institute a nationwide policy which requires a re-audit of a motor carrier or hazardous materials shipper within 1 year after the completion of an enforcement action. (Class II, Priority Action) (H-85-52)

BURNETT, Chairman, GOLDMAN, Vice Chairman, and LAUBER, Member, concurred in this recommendation.

By:  Jim Burnett  
Chairman