



Loy H-561D

National Transportation Safety Board

Washington, D.C. 20594
Safety Recommendation

Date: October 15, 1991

In reply refer to: H-91-37

To the States, the District of Columbia,
the Commonwealth of Puerto Rico, the Virgin Islands,
and U.S. Territories
(See mailing list attached)

About 3 a.m. Pacific standard time on February 13, 1991, a tractor-semitrailer (cargo tank) overturned as the vehicle was traveling on a main urban roadway in Carmichael, California.¹ At the time of the accident, the cargo tank contained about 8,800 gallons of automotive gasoline that was being transported by intrastate delivery to a service station. Gasoline from the cargo tank spilled into a nearby drainage ditch and entered the underground drainage system. Gasoline vapors ignited from an undetermined ignition source, and the fire flashed back and engulfed the overturned cargo tank. In addition to the total loss of the tank truck, its cargo, and two parked cars, four homes and their contents were destroyed or heavily damaged by fire, and the residents within a 2-mile-square area were evacuated. Total property damage and cleanup costs were estimated at nearly \$1 million. There were three minor injuries.

When California Highway Patrol officers arrived on the accident scene, they did not request the driver to submit a urine specimen for toxicological tests. According to the officers, they did not have reasonable cause to require the driver to provide a specimen because he appeared coherent, alert, and did not smell of alcohol. When the driver was taken to the hospital for treatment of minor injuries, no blood or urine specimens were taken by hospital staff to perform any diagnostic tests.

Because the driver had only made intrastate trips within California, he was not subject to the Federal regulations in Title 49 Code of Federal Regulations (CFR) Part 391, Subpart H (issued by the Federal Highway Administration, FHWA), relating to postaccident testing for controlled substances. However, at the time of the accident, a court injunction against the Federal drug testing program was in effect. Under the terms of the injunction, postaccident testing was permitted only when there was a reasonable suspicion of drug usage, or reasonable cause to believe a driver had been operating a vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug

¹ The accident report contains more detailed information: "Overturn of a Tractor-Semitrailer (Cargo Tank) With the Release of Automotive Gasoline and Fire, Carmichael, California, February 13, 1991," Hazardous Materials Accident Report NTSB/HZM-91/01.

usage may have been a factor. The Safety Board believes that even though a driver may not exhibit visible indications of drug or alcohol impairment after an accident, the absence of alcohol and drug use cannot be conclusively determined without testing.

In April 1991, after the accident, the court ruled that the FHWA's postaccident, random, biennial, and pre-employment drug testing regulations were constitutional. On August 16, 1991, the FHWA published a notice² to reestablish the requirements for postaccident toxicological testing in reportable interstate accidents. Interstate carriers that employed 50 or more drivers as of December 1989, who were subject to testing, must implement programs for random and postaccident testing by November 14, 1991. All other interstate carriers must implement their programs by January 1, 1992.

Title 49 CFR 391, Subpart H, prescribes minimum standards to detect and deter the use of specified drugs but does not include alcohol. This subpart applies to "motor carriers and persons" who operate a commercial motor vehicle in interstate commerce and who are subject to the driver qualification requirements of 49 CFR Part 391. Subpart H was last amended in 1988; interpretations and clarifications were issued in 1990.³ In the 1990 clarifications, the FHWA stated that the drug testing program applied to drivers who operate a commercial vehicle in "interstate commerce, i.e., the driver operates the vehicle across a state line, or in some cases, a single-state movement which is the continuation of a through interstate movement." The FHWA further stated in the notice of proposed rulemaking that intrastate drivers were not required to be tested under Subpart H. The FHWA also stated, however, that it would investigate the inclusion of intrastate drivers in a separate rulemaking.

Because intrastate transportation of hazardous materials may often involve short trips and local deliveries through residential or congested commercial areas, the risk to public safety may be greater than the interstate movement of these materials along interstate or major highways. Because of the unique and high risks to the public posed by a release of hazardous materials, the Safety Board believes that drivers of all vehicles transporting hazardous materials, particularly in bulk shipments, have an added responsibility to operate these vehicles in a safe manner. The Safety Board concludes that drivers of such vehicles should, therefore, be subject to mandatory postaccident testing for alcohol or drug impairment regardless of whether the shipment is being made by intrastate or interstate transportation.

Most States have criminal laws prohibiting any driver from operating a motor vehicle while impaired by alcohol, other drugs, or a combination of alcohol and other drugs. Although these laws generally apply to all drivers,

² Federal Register, Vol. 56, No. 159, dated August 16, 1991, page 40806.

³ Federal Register, Vol. 53, No. 224, dated November 21, 1988, page 47134; and Federal Register, Vol. 55, No. 22, dated February 1, 1990, page 3546.

these laws may not include special provisions for those drivers who have a greater burden of care, such as commercial drivers operating vehicles transporting hazardous materials in bulk. Reportedly, many States have adopted into State law or regulation employer drug testing programs that are similar, in varying degrees, to FHWA's program. The Safety Board is not aware of any readily available published source that identifies these alcohol and drug testing programs for each State. Therefore, the Board would appreciate information about your State's application of criminal and non-criminal laws, and about administrative regulations that apply to postaccident testing of truck drivers for alcohol and drugs. You may provide such information, and a copy of the laws or regulations, if possible, in your reply to the safety recommendation that follows.

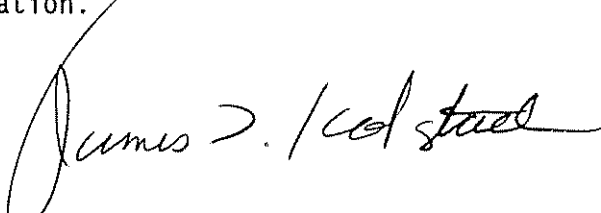
As a result of its investigation, the National Transportation Safety Board recommends that the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and U.S. Territories:

Require postaccident toxicological testing for alcohol and drug impairment of commercial vehicle operators involved with the intrastate transportation of hazardous materials in bulk. (Class II, Priority Action) (H-91-37)

Also as a result of its investigation, the Safety Board issued recommendations to the Federal Highway Administration, the Research and Special Programs Administration, and the National Highway Traffic Safety Administration of the U.S. Department of Transportation; and to Calzona Tankways, Inc.

The National Transportation Safety Board is an independent Federal agency with the statutory responsibility "...to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations" (Public Law 93-633). The Safety Board is vitally interested in any actions taken as a result of its safety recommendations and would appreciate a response from you regarding action taken or contemplated with respect to the recommendation in this letter. Please refer to Safety Recommendation H-91-37 in your reply.

Chairman KOLSTAD, Vice Chairman COUGHLIN, and Members LAUBER, HART, and HAMMERSCHMIDT concurred in this recommendation.


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