

DANGEROUS GOODS PANEL

Frankfurt, 16 to 20 September 2002

Agenda Item 3: Resolution, where possible, of the non-recurrent work items identified by the ANC or the panel

3.5: Miscellaneous

RESPONSIBILITIES OF CARRIERS IN IDENTIFYING UNDECLARED CARGO-CONSTRUCTIVE KNOWLEDGE

(Presented by R. Richard)

1. In relation to the ongoing issue of undeclared dangerous goods, the Eighteenth Meeting of the Dangerous Goods Panel (DGP) was advised that the United States was attempting to develop criteria and guidelines for establishing the responsibilities of carriers in identifying undeclared or non-compliant dangerous goods shipments. Panel members were invited to exchange information on their experiences dealing with undeclared dangerous goods (see DGP/18-WP/56 paragraph 2.14). It was agreed that the sharing of knowledge and information between States was vital in this area.
2. Members of the air carrier industry in the US requested that a public meeting be held to discuss “What constitutes constructive knowledge of the presence of dangerous goods with respect to civil penalty action liability”. The public meeting was held on June 19, 2002 in Washington DC. The purpose of this paper is to inform working group members of the outcome of the public meeting, to comment on the topics discussed at the public meeting, and to discuss indicia that should be included as lists that would indicate or preclude the application of constructive knowledge.
3. In the US, the Federal Hazardous Materials Transportation Law provides that a civil penalty may be assessed against a person who “knowingly violates” the law or the Hazardous Materials Regulations (HMR). The law also states that a person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or if a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. This legal definition of “knowingly” was added to the law to “cover violations that are committed *negligently*” and to “negate any inference that the term only encompasses actions based on actual knowledge or reckless actions.
4. When an undeclared or hidden dangerous goods shipment is discovered and an enforcement action initiated, all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials. In a formal interpretation, it was stated that a carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been packaged, marked, labelled, and described on a shipping paper as required by the HMR. This means that a carrier may not ignore readily apparent facts that indicate that either:

- A shipment declared to contain a hazardous material is not properly packaged, marked, labelled, placarded, or described on a shipping paper, or
- A shipment actually contains a hazardous material governed by the HMR despite the fact that it is not marked, labelled, placarded, or described on a shipping paper as containing a hazardous material.

4.1 Furthermore, a carrier's employees who accept packages for transport must be trained to recognize a "suspicious package," as part of their function-specific training.

5. PROPOSAL

5.1 Four major topics were discussed at the public meeting with formal comments presented by industry representatives of both the shipper and carrier communities. Over 85 members of all facets of the transportation industry attended with many offering observations, best practices, and other issues. A transcript of the meeting and all appropriate documents are currently being reviewed. The Panel is invited to comment on the topics discussed at the public meeting that included:

- The responsibilities of an offeror of a hazardous material to properly classify and package the material; package, mark, and label packagings, outside containers, and overpacks; describe the material on a shipping paper; and provide placards to a carrier;
- The responsibilities of a carrier when it accepts any shipment to review documentation that accompanies the shipment and inspect the packagings, outside containers, or overpacks to determine whether a hazardous material is present, and if so, that it is properly packaged, marked, labelled, described on a shipping paper, and placarded;
- When a reasonable person should have constructive knowledge of the potential presence of a hazardous material based on information that is readily apparent from documentation, markings, labels, placards, outside containers, overpacks, and the condition of the packagings, outside containers, or overpacks themselves; and
- Methods used to train personnel who prepare or accept shipments for transportation to recognize the potential presence of a hazardous material based on information that is readily apparent, including the use of checklists such as those required by Section 7;1.3 of the Technical Instructions for the Transport of Dangerous Goods of the International Civil Aviation Organization (ICAO).

6. The Panel is also invited to discuss indicia that should be included as lists that would indicate or preclude a State from applying constructive knowledge:

- **Positive**, "should investigate" indicia, where the information observed or presented would be sufficient for a carrier or handler to then have constructive knowledge; and
- **Negative**, "not stand alone" indicia, where a carrier or handler would not be expected to investigate further based solely on that indicia.

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