

ORIGINAL

65903

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the use, operation
and safety of rubber and plastic
tanks for motor carriers.

Case No. 7013

(Appearances are listed in Appendix A)

O P I N I O N

This is an investigation on the Commission's own motion into the use, operation and safety of rubber and plastic tanks (hereinafter called collapsible containers) in transporting liquids or other products by motor carriers in California. The specifically enumerated purposes of the investigation are: (1) to determine whether the Commission should issue any order or regulation relating to safety in the use of collapsible containers by highway common carriers, petroleum irregular route carriers and petroleum contract carriers; (2) to determine the proper and lawful operating authority for the transportation of petroleum or petroleum products in collapsible containers; and (3) to determine whether the transportation by highway carriers of liquid or other products in collapsible containers constitutes the transportation of such commodities in tank motor vehicles, tank trucks, tank trailers or tank semitrailers within the meaning of those terms as used in the Public Utilities Code or in minimum rate tariffs issued by this Commission.

A duly noticed public hearing was held in this matter before Commissioner Grover and Examiner Jarvis at San Francisco on April 19 and 20 and May 12, 1961.

On April 19, 1961, various parties joined in a motion requesting that the investigation be discontinued with respect to the questions of operating rights and minimum rates and that it be limited to questions dealing with safety. The motion was referred to the full Commission and was denied, without prejudice, on April 25, 1961. On April 20, 1961, the Commission staff moved that applicable minimum rate cases should be opened for the purpose of permitting the Commission to promulgate appropriate orders in connection with collapsible containers. This motion was granted by the Commission on April 25, 1961. As yet, however, no minimum rate case has been opened for this purpose. In view of the foregoing rulings, the matter was submitted only on the issues of safety and operating rights.

The Commission directed that an Examiner's Proposed Report be filed in the matter. The Proposed Report of Examiner Jarvis was filed on July 9, 1962. The parties who so desired filed exceptions and replies thereto on or before September 4, 1962.

The California Trucking Associations filed exceptions to the Proposed Report. These exceptions contend that because the Commission does not have safety jurisdiction over all types of carriers, it should not adopt the safety regulations recommended by the Examiner in the Proposed Report. The California Trucking Associations argues that the "Public interest is not served by imposing safety regulations on the operator of one truck and not on the operator of another truck when the only difference is the legal status of the operator." It is further suggested that the "limited statutory grant of power authorizing the Commission to regulate the safety of certain types of carriers only is antiquated and

unrealistic." It is apparent that the real quarrel of the California Trucking Associations is not with the merits of the findings and conclusions in the Proposed Report but with the statutes which confer safety jurisdiction upon the Commission. These points were carefully considered in the Proposed Report and the Commission adopts the conclusions of the Examiner thereon, which are as follows:^{1/}

"It was argued at the hearing that the Commission not attempt to establish safety regulations for collapsible containers because this would impose a higher standard upon highway common carriers than upon permit carriers. The Legislature has seen fit to regulate the safety of operations of only certain types of carriers.^{3/} Nevertheless, this jurisdiction should be exercised where it is required by the public interest, even though it does not apply to all carriers. In addition, the promulgation of safety rules with respect to collapsible containers may have a persuasive effect on the segment of the industry over which the Commission does not have safety jurisdiction. It may be noted also that after the Commission promulgated General Order No. 99 in 1952, various sections of the General Order have been enacted into the California Vehicle Code and the Interstate

^{3/} The record discloses that there are approximately 14,000 for-hire carriers operating in California. Approximately 800 of them are subject to safety regulation by the Commission. However, these 800 carriers have approximately 50 percent of the vehicles owned by for-hire carriers."

^{1/} See also Decisions Nos. 46098 and 53004 in Case No. 5097.

Commerce Commission has incorporated two of the regulations into its safety regulations."

The Commission staff filed exceptions to the Proposed Report. The points raised by these exceptions are that Section 34005(a) of the Vehicle Code gives the State Fire Marshal jurisdiction over "the design, construction, and maintenance of cargo tanks and fire safety devices"; that the jurisdiction of the State Fire Marshal does not extend to other safety matters covered by General Order No. 99 (e.g., inspection and maintenance of braking, steering and other equipment on vehicles; physical condition of drivers; and hours of service); that some of the language in the Proposed Report could be construed as eliminating the Commission's jurisdiction in matters over which the State Fire Marshal has no jurisdiction; and that the language in the Proposed Report should be revised to properly reflect the jurisdiction of the Commission.

The Commission finds these exceptions to be well taken and that the criticized language should be reworded in accordance with the staff's suggestions.

The United States Rubber Company filed exceptions to the Proposed Report. These exceptions indicate that "No exceptions are here taken to the Proposed Report in connection with the safety regulations (Amendment to General Order 99) which are proposed." The United States Rubber Company objects to the following findings made by the Examiner in the Proposed Report:

"I find that only highway common carriers (if they have appropriate operating authority), petroleum irregular route carriers and petroleum contract carriers may transport petroleum or petroleum products

in a container or containers which, as an inherent part of the transportation, are, at the time, affixed, attached or secured to the vehicle transporting them. There will be occasions, therefore, when the transportation of petroleum or petroleum products in a collapsible container will be limited to carriers having the specified certification.

"The line of demarcation between regular equipment and 'tank truck' or 'tank trailer' equipment was relatively easy to ascertain before the advent of collapsible containers. A tank vehicle was one which had a rigid tank permanently mounted on a truck or trailer chassis. Such tanks were usually large for obvious economic reasons. On the other hand, flowable commodities were also transported in rigid small containers--generally 55-gallon drums. These drums were handled in the same manner as general freight, except for safety requirements applicable to any particular lading. There was no need that, as an inherent part of the transportation, such drums be affixed, attached or secured to the vehicle transporting them. A vehicle transporting one or more of the small drums was not considered to be a tank vehicle.

"Collapsible containers tend to obfuscate the old distinctions. Transportation in containers intermediate in size between small drums and large tanks is now economically feasible; in addition, it is no longer to

be expected that the larger containers will always be permanently attached to vehicles."

The gravamen of these exceptions is that the definition of "tank truck" and "tank trailer" proposed by the Examiner in the Proposed Report in order to delineate the various operating authorities for the purpose of establishing safety jurisdiction would substantially hinder the use of collapsible containers in California. It is argued that the certificates of public convenience and necessity held by many highway common carriers restrict them from transporting commodities in "tank truck" or "tank trailers", and that if the definition proposed by the Examiner be applied to this situation these highway common carriers would be precluded from utilizing collapsible containers to eliminate deadhead mileages--particularly in the hauling of flowable commodities which are not petroleum or petroleum products. It is also argued that radial highway common carriers and highway contract carriers are generally not restricted from transporting commodities in "tank trucks" and "tank trailers"; that, under the law, the recommendations in the Proposed Report would necessarily preclude these carriers from hauling petroleum or petroleum products in certain types of collapsible containers; that these carriers should not be so restricted; and that radial and contract carriers would have an advantage over the highway common carriers in the use of collapsible containers.

The Commission determines that it is not necessary at this time to pass upon the Examiner's findings dealing with operating authority and exceptions thereto. The State Fire Marshal has promulgated regulations dealing with the design, construction and

maintenance of cargo tanks and tank vehicles used in the transportation of flammables on the highways of California.

(Cal. Adm. Code, Title 19, Sections 1600 et seq.) These regulations became effective on August 23, 1962. They apply to the transportation of petroleum and petroleum products in most collapsible containers. In the circumstances, there is no compelling reason to determine the operating authority question in order to delineate the Commission's safety jurisdiction with respect to the transportation of these products. Radial highway common carriers and highway contract carriers hauling petroleum products in collapsible containers will be subject to the Fire Marshal's regulations whether or not such equipment is a tank truck or a tank trailer. Where a radial or contract carrier is not hauling petroleum or petroleum products, he would not be subject to the safety jurisdiction of the Commission in any event. The Commission expressly leaves open for future determination the question of whether a radial or contract carrier hauling petroleum or petroleum products in a collapsible container is operating a tank truck or tank trailer. Since it is unnecessary herein to define tank truck or tank trailer for safety purposes, our decision also leaves open the meaning of those terms in connection with certification problems and tariff interpretation. The evidence shows that there is not yet a substantial movement of goods in collapsible containers by for-hire carriers in California intrastate commerce, so that such certification and tariff questions may appropriately be considered at a later time. ✓

The foregoing discussion should not be construed, therefore, as an approval or disapproval of the Examiner's findings

concerning the meaning of tank truck or tank trailer, nor of the exceptions filed by the United States Rubber Company.

So far as regulations of the State Fire Marshal are themselves concerned, we agree with the Examiner that those regulations should be permitted to control the operation of collapsible containers used in the transportation of flammables. However, as pointed out in the exceptions of the Commission's staff, the Examiner did not limit his discussion of the applicability of the regulations to the design, construction, and maintenance of cargo tanks and fire safety devices, whereas the statutory authority of the State Fire Marshal is so limited. Accordingly, the discussion of the Examiner beginning at line 6 of page 6 of the Proposed Report and ending at line 7 of page 7 of the Proposed Report is modified to read as follows, and as so modified is hereby approved:

"Regulations adopted by the State Fire Marshal apply to the design, construction, and maintenance of cargo tanks and fire safety devices in the transportation of flammable liquids over the highways--whether by public or private carrier--in California. Although the Commission has authority to promulgate rules respecting the transportation of flammables for carriers over which it has jurisdiction (See 37 Ops. Cal. Atty. Gen. 31), in the circumstances I find that the design, construction, and maintenance and safety devices of collapsible containers used in the transportation of flammables over the highways shall be left to the State

Fire Marshal to insure uniformity of regulation in these respects.

"Since Petroleum Irregular Route and Petroleum Contract Carriers may transport only petroleum products, and the design, construction, and maintenance of cargo tanks and fire safety devices of collapsible containers will be regulated by the State Fire Marshal, as a practical matter, the remaining safety jurisdiction of the Commission with respect to the design, construction, and maintenance of cargo tanks and fire safety devices of collapsible containers applies to their use by highway common carriers for the transportation of non-flammable commodities."

The Commission has carefully considered all of the exceptions and replies thereto. The Commission adopts as its own the findings and conclusions made by the Examiner in the Proposed Report except as hereinafter indicated.

The Commission finds that:

1. The following language, which appears on pages 5 and 6 of the Proposed Report should be deleted:

"I find that only highway common carriers (if they have appropriate operating authority), petroleum irregular route carriers and petroleum contract carriers may transport petroleum or petroleum products in a container or containers which, as an inherent part of the transportation, are, at the time, affixed, attached or secured to the vehicle transporting them. There will be occasions, therefore, when the transportation of

petroleum or petroleum products in a collapsible container will be limited to carriers having the specified certification."

2. The second paragraph on page 6 of the Proposed Report should be modified to read as follows:

"Regulations adopted by the State Fire Marshal apply to the design, construction, and maintenance of cargo tanks and fire safety devices in the transportation of flammable liquids over the highways--whether by public or private carriers--in California. Although the Commission has authority to promulgate rules respecting the transportation of flammables for carriers over which it has jurisdiction (See 37 Ops. Cal. Atty. Gen. 31), in the circumstances I find that the design, construction and maintenance and safety devices of collapsible containers used in the transportation of flammables over the highways shall be left to the State Fire Marshal to insure uniformity of regulation in these respects."

3. The first paragraph on page 7 of the Proposed Report should be modified to read as follows:

"Since Petroleum Irregular Route and Petroleum Contract Carriers may transport only petroleum products, and the design, construction, and maintenance of cargo tanks and fire safety devices of collapsible containers will be regulated by the State Fire Marshal, as a practical matter, the remaining safety jurisdiction of the Commission with respect to the design, construction, and maintenance of cargo tanks and fire safety devices

of collapsible containers applies to their use by highway common carriers for the transportation of non-flammable commodities."

O R D E R

IT IS ORDERED that General Order No. 99 is hereby amended to provide for the regulation of transportation of property in collapsible containers as more particularly set forth in Appendix B attached hereto and by this reference made a part hereof.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 20th day of August, 1963.

Alexander Bennett
President
W. J. ...
W. J. ...
George L. ...
Fredrick B. ...
Commissioners

APPEARANCES

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Harold B. Uhlig, for Hiway Transpor- tation Committee of Western Oil & Gas Association	225 Bush Street San Francisco, California
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FOR THE COMMISSION STAFF:

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Appendix B
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1. There is added to Original Page 9 of General Order No. 99 the following items as part of the Table of Contents:

9.10.--Transportation of Property In Collapsible Containers.

9.11.--Collapsible Containers - Defined.

9.12.--Inspection and Retest of Collapsible Containers Required.

9.13.--Repair Standards for Collapsible Containers.

9.14.--Tie-Down of Collapsible Containers.

9.15.--Lading of Collapsible Containers To Be Identified.

9.16.--Transportation of Lading at Elevated Temperatures.

9.17.--Operating Pressure per Square Inch To Be Identified.

9.18.--Fire Extinguisher Required.

9.19.--Transportation of "Flammables" In Collapsible Containers.

9.20.--Alternate Mode of Compliance.

2. There is added to Original Page 34 of General Order No. 99 the following sections:

9.11. Collapsible Containers - Defined.

Collapsible containers employing rubber or plastic materials having a liquid capacity of 100 gallons or more used for the transportation of liquid property shall be subject to the provisions of this part.

9.12. Inspection and Retest of Collapsible Containers Required.

Every collapsible container used for the transportation of liquid property shall be inspected and retested at least once biennially and shall not be returned to service until it has successfully fulfilled the specification requirements of its manufacturer. Any leakage discovered shall be deemed evidence of failure to meet the requirements

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9.12. Inspection and Retest of Collapsible Containers Required. (Continued)

of this section. A collapsible container failing to pass this test shall be suitably repaired before it is placed into service. The date of the latest test shall be clearly indicated on the exterior of the collapsible container.

9.13. Repair Standards for Collapsible Containers.

All repairs to collapsible containers shall conform with repair standards established by the manufacturer of the container and such repairs shall be performed by a qualified person.

9.14. Tie-Down of Collapsible Containers.

In the tie-down of collapsible containers to the floor or deck of a vehicle, the means of attachment to the vehicle must provide equal or greater strength than that specified by the manufacturer for the restraining straps or other similar devices.

9.15. Lading of Collapsible Containers To Be Identified.

Each collapsible container shall, by manufacturer's code or plain writing, clearly indicate the liquid lading which it is intended to transport, and no carrier shall transport any other liquid lading therein without first ascertaining in writing from the manufacturer of the collapsible container, or other competent source, that the liquid lading other than that indicated on the collapsible container is compatible with the collapsible container.

9.16. Transportation of Lading at Elevated Temperatures.

Any collapsible container, designed for the transportation of property at liquid temperature above ambient temperature, shall be clearly and permanently labeled with a sign adjacent to the loading valve reading: "Maximum allowable cargo temperature is _____ ° F." Maximum allowable cargo temperature shall be specified by the manufacturer of the collapsible containers. In the absence of such marking, only ladings at ambient temperature may be transported therein.

9.17. Operating Pressure per Square Inch To Be Identified.

Each collapsible container shall clearly indicate the maximum operating pressure per square inch it is designed to accommodate, and no carrier

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9.17. Operating Pressure per Square Inch To Be Identified. (Continued)

shall transport liquid loadings at an operating pressure greater than the maximum indicated on the collapsible container.

9.18. Fire Extinguisher Required.

Notwithstanding the provisions of Section 3.04 of this Order, a fire extinguisher having at least 12 BC rating, approved by the Underwriters Laboratories, Inc., or Factory Mutual Laboratories, shall be provided on a vehicle transporting liquid property in a collapsible container. When more than one fire extinguisher is provided, each shall have at least a 6B rating. Fire extinguishers shall be maintained in good operating condition at all times, and they shall be located in an accessible location.

9.19. Transportation of "Flammables" In Collapsible Containers.

Unless authorized by a prior order of this Commission, or a prior authorization or permit by the State Fire Marshal, or under regulations adopted by the State Fire Marshal, pursuant to Section 34.005 of the Vehicle Code, the transportation of flammable liquids, with a flash point below 200° F (closed cup test) and a vapor pressure not exceeding 40 psi absolute at 100° F in collapsible containers is prohibited.

9.20. Alternate Mode of Compliance.

Whenever any provision of this part requires any carrier to comply with any operating, maintenance or repair standards, requirements or specifications of any manufacturer of a collapsible container, and any carrier is unable to locate or readily contact such manufacturer, or any carrier disagrees with any standard, requirement or specification of such manufacturer, such carrier may apply to the Commission in writing for permission to comply with this part by utilizing standards, requirements or specifications which the Commission may find to be reasonable and necessary to promote the health, safety and security of the public and the employees and customers of said carrier.