

TRANSPORTATION OF DANGEROUS GOODS ACT, 1992

"BEHIND THE WORDS"

An informal guide to the 1992 Act for inspectors.

Version 1, November, 1992

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INTRODUCTION

This guide has been prepared for the use of inspectors appointed under the Transportation of Dangerous Goods Act, 1992. Its purpose is to provide, for each section of the Act, comments on the meaning of the section, and where relevant, comments on policy relating to the application of the section.

The page number in the lower right corner consists of two numbers separated by a decimal point. The first number is the same as the section number being described. The second number is used to number the pages for a given section in sequence.

It is anticipated that the guide will be updated on an annual basis. It is recognized that some interpretations or policies will change if there is a court decision requiring this. When appropriate, relevant court decisions will be added.

Each page is dated on the upper right corner and amendments will be dated when they are issued.

Inspectors are reminded that the word province includes the Yukon and the Northwest Territories.

DISCLAIMER

Users of this guide are reminded that it is prepared for the convenience of reference only and that, as such, it has no official sanction. In particular all comments contained under the headings "Behind the Words" or "Court Decisions of Interest" are solely for discussion purposes.

Any comments on this guide would be most welcome, and can be directed to:

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Transport Dangerous Goods Directorate (ASD)
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SECTION 1

Short Title

1. This Act may be cited as the *Transportation of Dangerous Goods Act, 1992*.

BEHIND THE WORDS

The Short Title has been changed to distinguish it from the previous Act by adding the date 1992. When referenced the date must appear. For example: *Transportation of Dangerous Goods Act, 1992*; *TDG Act, 1992*; or *TDGA, 1992*.

SECTION 2 -"Accidental Release"

"accidental release" means, in relation to dangerous goods, an unplanned or accidental

(a) discharge, emission, explosion, outgassing or other escape of dangerous goods, or any component or compound evolving from dangerous goods, or

(b) emission of ionizing radiation that exceeds a level established under the Atomic Energy Control Act;

BEHIND THE WORDS

The Act was established to promote public safety in the transportation of dangerous goods by ensuring there is no situation in which the potential danger inherent in dangerous goods is accidentally realized. Although the definition of accidental release as it appears includes accidental releases of dangerous goods not involved in transportation the defined phrase is only used in Sections 18, 19 and 21, in the phrase "accidental release of dangerous goods from a means of containment being used to handle or transport dangerous goods."

There is also the provision in the Act to distinguish between accidental releases above or below prescribed amounts as appropriate (Section 18).

An unloading of dangerous goods as intended is not an accidental release.

An accidental release is not an offence under the *TDGA, 1992*. However if it is a result of, for example, improper containment or handling the improper containment or handling could be an offence. Observe also that whereas a means of containment may have been in compliance prior to an accident, if it has been damaged it may be in a state of non-compliance following the accident

RELATED SECTIONS

Section 18

Section 19

Section 21

COURT DECISIONS OF INTEREST

"Please refer to the disclaimer on page 0.1"

SECTION 2 - "Dangerous Goods"

"dangerous goods" means a product, substance or organism included by its nature or by the regulations in any of the classes listed in the schedule;

BEHIND THE WORDS

The TDG Regulations provide a series of criteria and tests against which products to be shipped can be assessed to determine whether or not they are dangerous goods according to the Regulations. Dangerous goods are those products, substances or organisms which by their nature satisfy one or more of the test conditions or are specifically designated as a dangerous good by the Regulations notwithstanding any tests.

Some extra comments should be added with respect to waste dangerous goods. The TDG Regulations deal with three types of waste as dangerous goods. The first is those dangerous goods that have "served their purpose" and are now a waste, but retain sufficient danger that they are dangerous goods. These are referred to as waste dangerous goods and, in general, their shipping name is as it was before, with the word waste placed in front. Thus "nitric acid" becomes "waste nitric acid".

The second category of wastes that are treated as dangerous goods are those waste "streams" which can reasonably be expected to be dangerous, although the danger may vary from day to day. For example, biomedical waste from a hospital operating room may be infectious on some days and not on others. Indeed, on some days it may be difficult to know. Thus, some goods are identified as waste dangerous goods because of their origin. Examples are: Waste Type 7 (*waste water treatment sludges from the chemical conversion coating of aluminum*); and Waste Type 97 (*decanter tank tar sludge from coking operations*).

The third category of regulated wastes is referred to in the regulations as "dangerous waste" and is composed of those wastes whose test values (using lechate toxic tests) exceed established safe limits. These wastes are identified during transport as they do require special care if released in an accident due to their potential for detrimental impact on the environment.

There are other wastes regulated by Environment Canada, and further wastes regulated by some Provincial Ministries of Environment. With respect to acute hazards in a transportation accident, in Ontario, the general hierarchy of acute danger is: dangerous goods, waste dangerous goods, waste streams designated as dangerous goods, waste identified as dangerous as a result of a lechate toxic test, other Environment Canada designated waste, and still other Provincial Ministry of the Environment designated waste.

"Please refer to the disclaimer on page 0.1"

COURT DECISIONS OF INTEREST

"Please refer to the disclaimer on page 0.1"

SECTION 2 - "Handling"

"handling" means loading, unloading, packing or unpacking dangerous goods in a means of containment or transport for the purposes of, in the course of or following transportation and includes storing them in the course of transportation;

BEHIND THE WORDS

This definition uses the word "in" (in a means of containment) to include words such as "in", "into", "onto", and "from". Loading provides the concept of into a means of containment or onto a means of transport, unloading provides the concept of from a means of containment or transport and packing or unpacking allows for all concepts.

The definition includes the phrase "includes storing them in the course of transportation". Clearly included would be the parking of a trailer unit overnight awaiting a new tractor unit where the cargo is not disturbed in any fashion. In a situation where material is taken off one truck and placed in a warehouse to be picked up later by several delivery vans it begins to become more difficult to determine if this is storage in the course of transportation, or storage as a warehousing function. Reference to documentation might help, e.g., has it arrived at consignee location or is it still en route? An extreme example is the containers of PCB contaminated material at St-Basile-le-Grand which, at the time of writing, have sat in those containers for three years. The material is packed and ready for transport. Is this storage in the course of transportation? What of those containers which left St-Basile-le-Grand, travelled to England, and are now in Baie Comeau awaiting their next move?

The department recognizes that with an estimated 27 million shipments annually of dangerous goods a determination of "storage in the course of transportation" must at times be made on a case-by-case basis.

COURT DECISIONS OF INTEREST

SECTION 2 - "Import"

"import" means import into Canada, and includes transporting goods that originate from outside Canada and pass through Canada to a destination outside Canada, except when the goods are being transported on a ship or aircraft not registered in Canada;

BEHIND THE WORDS

The Transportation of Dangerous Goods Program is founded on the activities of the consignor who is the person who must determine if goods being shipped are dangerous or not. As well as other activities the consignor must correctly classify, mark and package the dangerous goods before allowing them to be transported. The program depends upon the consignor (most often the manufacturer) carrying out his/her activities correctly.

This raises the concern of how to deal with a shipment which originates outside of Canada. There must be some mechanism of ensuring that the initial activities of classification, documentation, marking and packaging have been carried out correctly before the goods are transported within Canada. In the 1980 *TDG Act* the attempt was made to deal with this by requiring that anyone shipping dangerous goods into Canada must have in Canada an agent to represent them. Unfortunately the only involvement of such an agent in Canada was to receive documents on behalf of the shipper. In practical terms there was no-one responsible under Canadian law for consignor activities and no-one who could be prosecuted to ensure compliance occurred.

To correct this, the *TDGA, 1992* places responsibility on a person subject to Canadian law to ensure that at the time of import into Canada the dangerous goods or means of containment satisfy Canadian law.

Questions can be raised as to who the actual importer into Canada may be e.g. the consignee, the carrier,... No cases have yet been heard in court but it is anticipated that the determination of who is the actual importer into Canada is possible.

The definition excludes goods transported in a ship or aircraft that is not registered in Canada and that are not to be unloaded in Canada. This recognizes that traditionally these means of transport are regulated by their country of registration just as the *TDG Act, 1992* regulates, in subsection 3(2), dangerous goods outside Canada that are carried on a ship or aircraft registered in Canada.

Included under the definition of import are those goods transported in a truck or train that transits Canada, e.g., by train from Maine through New Brunswick and back into Maine or by truck from Washington to Alaska through Alberta and the Yukon.

It is noted that subsection 3(3) provides that the Act does not apply to the extent that its application is excluded by a regulation or a permit. Currently, there is a regulation setting aside certain emergency response assistance planning requirements for transits of less than 70 km.

RELATED SECTIONS

Section 3 - Exclusions

COURT DECISIONS OF INTEREST

SECTION 2 - "Inspector"

"inspector" means a person designated as an inspector under subsection 10(1);

BEHIND THE WORDS

The Act provides for the establishment of inspectors whose duties are to conduct inspections to determine if compliance is being achieved. This extends to the gathering of evidence in cases in which non-compliance is observed or suspected, possibly leading to enforcement action. There are other duties and authorities assigned to inspectors throughout the Act such as those directed toward ensuring safety in the case of an actual or imminent accidental release of dangerous goods from a means of containment being used to handle or transport dangerous goods.

An inspector is not automatically designated according to his/her function, position, or how the inspector was hired. A person is only designated as an inspector once the Minister (through his/her designate) is convinced that the person can properly carry out the duties of an inspector. Any person may be appointed as an inspector although, in practice, this is restricted to federal and provincial civil servants.

RELATED SECTIONS

Section 10 - Designation of an inspector; use of an inspector's designation card

COURT DECISIONS OF INTEREST

SECTION 2 - "Means of Containment"

"means of containment" means a container or packaging, or any part of a means of transport that is or may be used to contain goods;

BEHIND THE WORDS

In the 1980 Act there were definitions for container and packaging. These have been removed from the TDGA, 1992 as no distinction is needed to be made between the two within the Act. The current definition includes all means used to contain goods and includes those parts of a means of transport which serve this function.

There is a distinction between that part of a means of transport used to contain goods (e.g., the tank forming part of a tank truck) and the means of transport (e.g., truck) itself. This distinction is made as the Act and Regulations are intended to deal extensively with certain means of containment (e.g., prescribe design and performance standards for tanks mounted on a truck chassis or rail car frame) and to a much lesser extent with respect to means of transport (e.g., there are safety marks which must in certain circumstances be affixed to means of transport to indicate danger due to what is being transported).

COURT DECISIONS OF INTEREST

SECTION 2 - "Means of transport"

"means of transport" means a road or railway vehicle, aircraft, ship, pipeline or any other contrivance that is or may be used to transport persons or goods;

BEHIND THE WORDS

This definition is intended to encompass all contrivances used to transport persons or goods.

The primary reason for including a definition for means of transport is that in some circumstances these are to be marked with placards to provide information. The Explosives Vehicle Certificate program also requires that means of transport be defined.

COURT DECISIONS OF INTEREST

SECTION 2 - "Minister"

"Minister" means the Minister of Transport;

BEHIND THE WORDS

Although the definition is very straight forward, less straight forward could be a determination of who can carry out the duties and responsibilities of the Minister. For example, section 25 provides that the Minister may conduct research alone or in cooperation with others. In this case one or several of the Minister's officials would act on his/her behalf. The same is true of section 23. This can be referred to as administrative delegation.

It was decided to place a limit in several sections on who could act for the Minister and this was done by using a phrase such as "The Minister or a person designated for the purposes of this section..."

COURT DECISIONS OF INTEREST

SECTION 2 - "Prescribed"

"prescribed" means prescribed by regulations of the Governor in Council;

BEHIND THE WORDS

Although prescribed means prescribed by Regulations of the Governor in Council, Section 27 provides that the Regulations may refer to any document as it exists when the Regulations are made and to certain specifically named documents as these are amended from time to time. Thus, the regulations incorporate into themselves other documents. Some of these, in turn, incorporate other documents. Currently, about 100 standards are referenced directly.

RELATED SECTIONS

Subsection 27(2) - Referencing documents

COURT DECISIONS OF INTEREST

SECTION 2 - "Public Safety"

"public safety" means the safety of human life and health and of property and the environment;

BEHIND THE WORDS

The word "public" in public safety has two meanings. The first is to emphasize that the Act includes third party safety, going beyond the business undertaking to apply to the general public. The second sense is not as readily apparent and is why the definition is given. It is that public safety includes the safety of not only people but also of property and the environment. This latter, the environment, is treated as a concept of its own in the Act.

RELATED SECTIONS

Paragraph 34(1)(i) - Referencing environmental problems in their own right

COURT DECISIONS OF INTEREST

SECTION 2 - "Safety Mark"

"safety mark" includes a design, symbol, device, sign, label, placard, letter, word, number or abbreviation, or any combination of these things, that is to be displayed

(a) on dangerous goods, on means of containment or transport used in handling, offering for transport or transporting dangerous goods, or at facilities used in those activities, and

(b) to show the nature of the danger or to indicate compliance with the safety standards prescribed for the means of containment or transport or the facilities;

BEHIND THE WORDS

The definition of safety mark provides that safety marks can be divided into one of two categories. The first category is those safety marks that are used to show compliance with safety standards prescribed for a means of containment, transport or facilities. The second category is those safety marks that are used to show the nature of danger existing due to the presence of dangerous goods.

Examples of the first type would be the United Nations mark placed on fiberboard boxes to show the boxes conform with the UN Performance Standards, and TC or CTC marks placed on cylinders. Note that no dangerous goods need be present.

Examples of the second type are placards and labels.

COURT DECISIONS OF INTEREST

SECTION 2 - "Safety Requirements"

"safety requirements" means requirements for handling, offering for transport or transporting dangerous goods, for reporting those activities and for training persons engaged in those activities;

BEHIND THE WORDS

This definition is used when establishing that regulations can be developed with respect to handling, offering for transport or transporting dangerous goods, for reporting those activities and for training persons engaged in those activities. Taken in isolation, the definition would appear to allow for a wide variety of requirements with respect to transporting dangerous goods. However, the preamble to the Act (An Act to Promote Public Safety in the Transportation of Dangerous Goods), and the general nature of the remaining sections of the Act ensure that safety requirements must actually relate to safety. Section 12 of the *Interpretation Act* provides that the preamble of an enactment shall be read as a part thereof intended to assist in explaining its purport and object.

For example, included within safety requirements are CSA and CGSB standards for the selection of packagings for use with specific dangerous goods. These are different from safety standards which address the design, construction or performance of packagings without regard to their application. Please note that when the words "safety" and "standards" are used together in this document in the phrase "safety standards" they become a defined phrase.

COURT DECISIONS OF INTEREST

"Please refer to the disclaimer on page 0.1"

SECTION 2 - "Safety Standards"

"safety standards" means standards regulating the design, construction, equipping, functioning or performance of means of containment or facilities used or intended to be used in handling, offering for transport or transporting dangerous goods;

BEHIND THE WORDS

As with the definition of safety requirements this definition is limited to the concept of public safety. Observe that not every standard followed in manufacturing a means of containment is automatically a "safety standard". Only those standards relating to the activities or performances noted in the definition and which are required to be followed by regulation (see paragraph 27(1)(j)), are "safety standards". Please note that when the words "standards" and "safety" are used together in this document in the phrase "safety standards" they become a defined phrase.

Safety standards may be, but are not limited to, documents published by a standards writing organization, a government or an industry organization and which are identified by regulations under this Act.

COURT DECISIONS OF INTEREST

SECTION 2 - "Ship"

"ship" includes any description of vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation, without regard to method or lack of propulsion;

BEHIND THE WORDS

The definition of ship used is taken from the *Canada Shipping Act*. As dangerous goods moved in bulk by ship are covered by the *Canada Shipping Act*, and as the *Transportation of Dangerous Goods Act, 1992* is intended to cover all other movements of dangerous goods by ship, the definition of ship used in the two Acts must be the same in order to ensure that no activities intended to be regulated are left unregulated because of a gap created by two different definitions of the word ship.

COURT DECISIONS OF INTEREST

SECTION 2 - "Shipping Record"

"shipping record" means a record that relates to dangerous goods being handled, offered for transport or transported and that describes or contains information relating to the goods, and includes electronic records of information;

BEHIND THE WORDS

This definition expands the definition of shipping document used in the *TDGA* of 1980 to include electronic records of information. The phrase shipping document will continue to be used extensively in the regulations to refer to a document which must accompany a shipment.

When used within the Act the meaning of shipping record is restricted to information necessary for the administration and enforcement of the Act.

RELATED SECTIONS

Section 15 - Inspecting electronic records of information

COURT DECISIONS OF INTEREST

SECTION 2 - "Standardized Means of Containment"

"standardized means of containment" means a means of containment in relation to which a safety standard has been prescribed.

BEHIND THE WORDS

To answer the question of whether or not a specific means of containment is a standardized means of containment one must determine if a safety standard has been prescribed for that particular means of containment. If a safety standard has been prescribed, then the definition is satisfied.

To be a safety standard prescribed for a particular means of containment it must at least be, following from the definition of safety standard, that the means of containment is used or intended to be used in handling, offering for transport or transporting dangerous goods. Although adding the words "and which is used or intended to be used in handling, offering for transport or transporting dangerous goods" to the end of the definition of standardized means of containment may have made the definition clearer these words already apply due to the definition of safety standards.

It is important to note that any means of containment "passed off" by a manufacturer, importer, distributor, etc., as meeting a standard must be treated by an inspector as a standardized means of containment. The words "passed off" are taken from the Criminal Code and can be viewed as doing anything to cause a potential customer, user, etc., to believe that the means of containment is a standardized means of containment. For example, a means of containment marked with a safety mark indicating compliance with a standard must be viewed as a standardized means of containment.

It is possible for a standardized means of containment (e.g., marked) to fail to meet the prescribed standard. Such containers continue to be subject to the TDGA, 1992 and, in fact, are in non-compliance.

RELATED SECTIONS

- | | | |
|-----------|---|--|
| Section 6 | - | Means of containment must satisfy claims made |
| Section 8 | - | Standardized means of containment must be marked |

COURT DECISIONS OF INTEREST

"Please refer to the disclaimer on page 0.1"