



**CountryMark.**

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**RECEIVED SEP 10 2010**

September 9, 2010

Mr. David A. Barrett  
Director, Central Region  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462  
Kansas City, MO 64106-2014

RE: CPF 3-2010-5009 - Notice of Probable Violation and Proposed Civil Penalty  
Countrymark Cooperative, LLP Statement of Issues and Request for Hearing

Dear Mr. Barrett:

The above-referenced Notice of Probable Violation and Proposed Civil Penalty ("NOPV"), dated August 12, 2010, was received by Countrymark Cooperative, LLP ("Countrymark") on August 16, 2010. The NOPV relates to an accident that occurred on Countrymark's 8-inch refined products pipeline on November 6, 2009. The accident occurred when tiling equipment operated by a third party struck the pipeline. As a result of the accident approximately 200 barrels of diesel fuel were spilled. Because of immediate actions taken by Countrymark and the third-party contractor, all but eight (8) barrels of the product were recovered. The majority of the eight unrecovered barrels were contained in dirt that was removed from the field.

PHMSA has charged Countrymark with three probable violations, including (1) the alleged failure to carry out Countrymark's written program to prevent damage to its 8-inch pipe; (2) the failure to perform post-accident drug tests of two employees, as soon as possible but no later than 32 hours after an accident; and (3) the failure to perform post-accident alcohol tests as soon as practicable following the accident. Countrymark respectfully contests the allegations regarding the failure to test two of its employees. Although Countrymark will not contest the probable violation 1, Countrymark respectfully submits that no Countrymark employee authorized the third-party to begin excavation activities.

In the event that the parties cannot resolve the issues informally, Countrymark requests a hearing on the following issues, pursuant to 49 C.F.R. Part 190.211.

1. With regard to the allegation that Countrymark was required to test Derek Almon ("Almon") for drugs, Countrymark disputes the allegation that Almon's activities and performance "contributed to the accident." Based on a review of Almon's extremely limited activities and responsibilities regarding the attempt to locate and mark the buried pipeline, Countrymark contends that the allegation that his performance contributed to the accident is unreasonable, arbitrary, capricious and unsupported by any evidence.
2. With regard to the allegation that Countrymark was required to test Almon for alcohol, Countrymark disputes the allegation that Almon's activities and performance "contributed to the accident." Based on a review of Almon's extremely limited activities and responsibilities regarding the attempt to locate the buried pipeline, Countrymark contends that the allegation that his performance contributed to the accident is unreasonable, arbitrary, capricious and unsupported by any evidence.
3. With regard to the allegation in probable violation 3 that Countrymark was required to test Almon and Donald Ray Goodson ("Goodson") for alcohol "as soon as possible after the accident," Countrymark further contends that the allegation does not track the requirements of §199.225. Equally important, given the need to engage in immediate remedial activities in which Almon played a significant role for more than 12 hours following the accident while being observed by various supervisory personnel, coupled with its awareness of Almon's limited role in attempting to locate the pipe prior to the accident, Countrymark acted in a reasonable manner when it did not require alcohol testing to be performed as soon as it was practicable.
4. With regard to the allegations in probable violations 2 and 3 that "Countrymark did not have sufficient information to decide that employee performance could not have contributed to the accident," Countrymark contends that it had sufficient contemporaneous information on the day of the accident to decide that Almon's performance of his duties could not have contributed to the accident.
5. With regard to the preliminary civil penalties assessed by the Compliance Officer, Countrymark respectfully submits that the preliminary assessment of \$40,400 of civil penalties for probable violation 2 is based on the unsupported allegation that Countrymark did not have sufficient information to decide that performance of two employees, Derek Almon and Donald Ray Goodson, could not have contributed to the accident. Countrymark contends that it had sufficient information on the day of the accident that Almon's performance of his duties could not have contributed to the accident and that it should not be penalized for failing to have him tested for drugs within 32 hours after the accident occurred.
6. With regard to the preliminary civil penalties assessed by the Compliance Officer, Countrymark respectfully submits that the preliminary assessment of \$40,400 of civil penalties for probable violation 3 is based on the unsupported allegation that Countrymark did not have sufficient information to decide that the performance of two

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employees, Derek Almon and Donald Ray Goodson, could not have contributed to the accident. Countrymark contends that it had sufficient information on the day of the accident that Almon's performance of his duties could not have contributed to the accident and that it should not be penalized for failing to have him tested for alcohol.

Countrymark respectfully requests an in-person hearing in the event that it is not possible to resolve the issues without a hearing based on the response that is being filed under separate cover on this date. Should a hearing be necessary, Countrymark will be represented by counsel. We also request that a court reporter be allowed to attend and transcribe such Hearing.

If you have any questions or need additional information, please feel free to contact me at 812-838-8154 or by e-mail at [Randy.Carr@Countrymark.com](mailto:Randy.Carr@Countrymark.com). If I am not available, please contact John Deaton, Senior Vice-President, at 812-838-8125. Thank you for your consideration in this matter.

Very truly yours,



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Randy Carr  
Crude Gathering & Transportation Manager

RC/rs

CC: John Deaton  
Don March