

**NOTICE OF PROBABLE VIOLATION  
and  
PROPOSED CIVIL PENALTY**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

August 12, 2010

Mr. Joe Sudholt  
Vice President  
Countrymark Cooperative, LLP.  
1200 Refinery Road  
Mt. Vernon, IN 47620

**CPF 3-2010-5009**

Dear Mr. Sudholt:

Beginning on November 7, 2010, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) with the assistance of the Indiana Utilities Regulatory Commission (IURC) pursuant to Chapter 601 of 49 United States Code investigated an accident that occurred on your 8-inch refined products pipeline on November 6, 2009 downstream of your refinery near Mt. Vernon, Indiana. The accident occurred when tiling equipment operated by a third party struck Countrymark's 8-inch pipeline. As a result of the accident approximately 200 barrels of diesel fuel was spilled.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The probable violations are:

**1. §195.442 Damage Prevention Program**

**(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term "excavation activities" includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.**

Countrymark did not carry out their written program to prevent damage to their 8-inch pipe, in accordance with §195.442(c)(5), when personnel did not provide adequate temporary marking of the pipeline prior to commencement of the tiling operation. Countrymark personnel received prior notice of the excavation via the one-call system and responded, but they allowed the tiling contractor to proceed while knowing the location of the pipeline was not positively marked. The pipeline route had been erroneously marked by as much as 200 feet from the actual pipeline location. The failure to positively locate and mark the pipeline's location prior to commencement of the tiling operation resulted in the pipe being struck where the line was unmarked, and the subsequent release of approximately 200 barrels of diesel fuel from the pipeline.

**2. §199.105 Drug tests required**

**Each operator shall conduct the following drug tests for the presence of a prohibited drug:**

**(b) Post-accident testing. As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such decision must be based on the best information available that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.**

Countrymark did not perform post-accident drug tests of two employees, as soon as possible but no later than 32 hours after the accident occurred, whose performance could not be completely discounted as a contributing factor to the accident that occurred on November 6, 2009. The employees did not adequately mark the 8-inch pipeline prior to excavation activity; therefore, their performance contributed to the accident. Also, Countrymark did not have sufficient information to decide that employee performance could not have contributed to the accident. Countrymark did not have drug testing of the employees completed until November 9, 2009.

**3. §199.225 Alcohol tests required**

**Each operator shall conduct the following alcohol tests for the presence of alcohol:**

**(a) Post-accident. (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.**

Countrymark did not perform post-accident alcohol tests of two employees, as soon as possible after the accident, whose performance could not be completely discounted as a contributing factor to the accident that occurred on November 6, 2009. The employees did not adequately mark the 8-inch pipeline prior to excavation activity; therefore, their performance contributed to the accident. Also, Countrymark did not have sufficient information to decide that employee performance could not have contributed to the accident. Countrymark did not attempt to perform any alcohol testing of the two employees.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$180,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$100,000
2	\$ 40,400
3	\$ 40,400

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being

made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2010-5009** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

David Barrett  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*