

Debs Gamblin

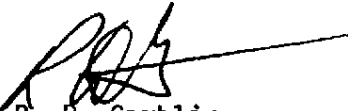
RECEIVED **SONOCO**

SEP 6 1979

To R. E. Lehmkuhl

Date 8-31-79

The attached is our response to the Federal Railroad Administration concerning fines on methyl chloride cars. We had sent you some previous information on this.


R. D. Gamblin

E. M. J. L. C. P.

mbr
Enclosure

VME 737777

AUG 30 1979

Conoco Inc.
P O Box 2197
Houston, TX 77001

August 27, 1979

Office of Chief Counsel
Federal Railroad Administration
400 Seventh Street S. W.
Washington, D. C. 20590

Subject: Notice of Probable Violation
FRA HMTA No. ZCOC-79-1
Continental Oil Company

Gentlemen:

Pursuant to alternatives described in 49 CFR, Sections 209.107 (a)(2) and 209.111 (a) Conoco Inc., formerly known as Continental Oil Company, hereby offers (without prejudice to any defenses permitted by law) to pay in compromise to the proposed assessments in the above referenced Notice of Probable Violation the following penalties:

<u>Count No.</u>	<u>Proposed Assessment</u>	<u>Compromise Offer</u>
1	\$2,000	\$1,000
2	7,000	-0-
3	7,000	2,500
TOTAL	\$16,000	\$3,500

We believe the Federal Railroad Administration's proposed assessments will do nothing to produce positive action beyond that already undertaken by Conoco prior to and early after the incidents. Further, it is our opinion the proposed penalties are unreasonable in view of the available facts. Our objective is consistent with that of the Administration - the safe transportation of hazardous materials. In support of this contention and of the compromise offer, your consideration of the attached statement is respectfully requested.

Very truly yours,

L. G. Hubbard

L. G. Hubbard
Director, Hazardous Materials
Transportation

VME 737778

gf

cc: J. W. Dallman
Manager, Wrenshall Refinery

R. T. Ferrell
Manager, Lake Charles Chemical Plant

Docket Clerk (RCC-1) (3 copies)
Office of Chief Counsel
Federal Railroad Administration
400 Seventh Street, S. W.
Washington, D. C. 20590

FEDERAL RAILROAD ADMINISTRATION

Notice of Probable Violation

FRA HMTA No. ZCOC-79-1

Continental Oil Company

July 31, 1979

STATEMENT

OF

CONOCO INC.

Due Date: August 30, 1979

Conoco Inc.
5 Greenway Plaza East
Houston, Texas 77046

By: L. G. Hubbard
Director, Hazardous
Materials
Transportation

VMF 737779

GENERAL COMMENTS

It is the policy of Conoco Inc. to conduct all its activities in a safe manner, exposing neither employees nor the general public to unsafe operating practices.

Exemplifying this philosophy in the area of hazardous materials transportation, Conoco's Surface Transportation Department has added two full-time positions (Director of Hazardous Materials Transportation, and Director of Safety and Environmental Affairs) whose charge is to analyze, interpret and implement federal and state safety regulations, and to develop and implement departmental safety programs for the transportation of hazardous products, supplies and equipment.

Conoco Chemicals, a Division of Conoco Inc., Westlake, Louisiana, has developed an in-depth training program concerning the transportation of hazardous materials in tankcars. The program combines the training techniques of classroom audio/visual (coordinated slide/tape) instruction, field instruction (the application of classroom instruction to actual tankcar loading and unloading operations), and post-program testing. The training is given to shift supervisors, "top" operators, loaders, pumpers, shipping clerks, and safety personnel - everyone who is involved with the handling and shipping of hazardous materials. The program consists of the following segments:

1. Legal obligations and requirements (2 hours)

Subject matter includes: 1974 Hazardous Materials Transportation Act; definitions for hazardous materials classification and hazard identification information; civil and criminal penalties for violations; the moral, legal, and economic objectives and obligations for the proper handling of hazardous materials.

2. Tankcar Anatomy (4 hours)

Describes in detail the major parts of general purpose and pressure tankcars. Includes areas such as the running gear, tanks, safety appliances, and stenciling.

3. Pre-Trip Inspection (4 hours)

Describes a systematic, "walk-around" inspection checklist for each type of tankcar. It points out areas both in classroom instruction and field instruction where defects, improper stenciling, etc. are prevalent and the remedies for these problems.

4. Safe Loading Procedures (2 hours)

This segment describes safety hazards which may be encountered when loading and unloading cars. It explains how to deal with these situations as well as describing normal safe operating procedures.

Conoco has been an active participant of the CHEMTREC (Chemical Transportation Emergency Center) program for several years. In connection therewith, Conoco has developed an internal emergency response program, the "Conoco CHEMTREC Emergency Call Manual", which details the purpose, scope, personnel responsibilities, and the procedures to be followed when responding to calls for emergency assistance. The Conoco CHEMTREC Center (CCC) is located at the VCM Plant Control Room in the Westlake complex. Without failure, Conoco has responded either through telephone counsel or by providing on-site assistance whenever called upon concerning transportation incidents which involve our products.

It should be noted that Conoco historically has supported governmental and industrial innovations which enhance the safe handling and transportation of hazardous materials.

SPECIFIC COMMENTS

Summary of Violation, Count No. 1: "On or about March 6, 1978, respondent knowingly offered for transportation at its plant at Westlake, Louisiana, car number CONX 7998, a tankcar loaded with methyl chloride, classified as a flammable gas, which was not placarded in accordance with 49 C.F.R. 172.504(a)".

Without question on March 7, 1978, a Conoco employee erroneously applied a "Flammable" placard to CONX 7998 which, because it contained methyl chloride, required a "Flammable Gas" placard. We contend, however, that even though we as shipper had primary responsibility for applying the correct placard, the inconsistency of the "Flammable" placard with other hazard identification information should have curtailed the movement of the car and brought corrective action in the early stage of transportation. Specifically, our shipping paper (FRA Exhibit E) correctly shows:

Proper Shipping Name: "Methyl Chloride"
Hazard Class: "Flammable Gas"
Placard Notation: "Placarded Flammable Gas"

Additionally, on this document as on all Conoco Chemical's shipments, we voluntarily applied the railroad devised "49 series" Standard Transportation Commodity Code number. The tankcar was also stenciled with the proper shipping name in accordance with 49 CFR, Sections 172.330 (a)(1)(b)(c)(1) and 173.314 (a)(5). Section 172.508 (b) provides that "No rail carrier may accept a rail car containing a hazardous material for transportation unless the placards for the hazardous material are affixed thereto as required by this subpart". Further, Section 174.59 provides "No person may transport a rail car carrying hazardous materials unless it is marked and placarded as required by this subchapter".

In no sense do we wish to convey that placard errors are condoned. To the contrary, we want the FRA to know that positive action has been taken to prevent recurrence of such errors in our loading procedures at Westlake. One step is the training program discussed earlier which covers the placarding aspect of loading responsibilities in depth. The most significant improvement, however, is that signs which relate to the loader the shape, words, and color of the actual placard required for the product loaded have been placed on all the tankcar loading racks.

In view of the foregoing, we request that the FRA reduce the proposed assessment for this violation to no more than \$1,000.

Summary of Violation, Count No. 2: "On the date and at the location specified in Count 1 above, respondent knowingly offered for transportation the car specified in Count 1, without determining that the fittings were in proper condition for the safe transportation of the lading, and without adequately securing the manway covers to prevent leakage of vapor and liquid, in violation of 49 C.F.R. 173.31 (b)(1) and (3)".

There is no question that car number CONX 7998 was leaking vapor to the atmosphere from the left side of the manway cover plant flange when inspected by Mr. C. H. Laws on March 8, 1978, at the Southern Pacific Railroad's yard at Lake Charles, Louisiana. The car was, in fact, however, not leaking when it was offered to the Kansas City Southern Railroad at Westlake on March 7, 1978. Every effort was made by Conoco to ensure the car was safely secured and free of leaks. Our Tankcar Loading Report, which at that time served as a pre-trip inspection summary, specifically indicates the car was not leaking at the time loading was completed.

According to 173.31 (b)(1) "When tanks are loaded and prior to shipping, the shipper must determine to the extent practicable, that the tank, safety appurtenances and fittings are in proper condition for the safe transportation of the lading", and 173.31 (b)(3) provides in part that "Manway covers and outlet valve caps must be made tight against leakage of vapor and liquid, by use of gaskets of suitable materials before cars are tendered to carrier for transportation". Conoco did fulfill the mandate of the regulations cited by the FRA.

It should also be noted that 49 CFR, Section 174.9 (a) provides in part that "Each loaded placarded tankcar must be inspected by the carrier before acceptance at the originating point and when received in interchange to see that it is not leaking....". Section 174.12 (a) provides in part "An intermediate shipper or carrier may not forward or transport a shipment of hazardous materials if it does not meet the requirements of this subchapter". Apparently, neither the Kansas City Southern nor the Southern Pacific Railroads found the car to be leaking at origin or at interchange.

Lacking in Mr. C. H. Laws' written account of the alleged violation on CONX 7998 is the fact that Conoco Chemicals' Safety Director, Mr. S. F. Pitts responded to the Southern Pacific Railroad's request for assistance on March 8, 1978, when Inspector Laws discovered the car to be leaking in the Southern Pacific's Lake Charles yard. Mr. Pitts unsuccessfully attempted to stop the leak by further tightening the flange nuts before he ordered the car returned to Conoco's plant for unloading. The failure to curtail the leak by tightening the flange indicated the existence of a problem other than the nuts being improperly tightened. This was substantiated when it was subsequently discovered at the Cities Service repair shop that the flange was minutely "cocked" and, therefore, prone to intermittent leaking even though the gasket was sound and the nuts were properly secured at time of loading.

That which we have discussed regarding Count No. 2 up to this point is history. As with Count No. 1, the most significant thing which we wish to convey is that Conoco's safety philosophy dictates that our operations personnel must go beyond ensuring "to the extent practicable", as provided in Section 173.31 (b)(1), that our tankcars are safe when tendered to the railroads for transportation. Immediately following the incident with CONX 7998, our Westlake Chemical Plant management took certain steps beyond those recognized as normally reasonable to eliminate similar situations in the future. Excerpting from Mr. S. F. Pitts' March 13, 1978 memo to the Operations Supervisors in the Westlake Plant: "All pressure cars, after loading is complete, are to have all plugs, packing, and relief valves checked for leaks by soap testing. Any evidence of leaks must be corrected before reporting the car ready for shipping. This check is to be noted on the loading report. It is advisable that a soap test be made before loading so that if correction requires the car to be empty, we will not have to unload the product. This should apply to tanktrucks also".

In view of the fact that the evidence substantiates CONX 7998 was properly secured and free of leaks when it was tendered to the originating carrier on March 7, 1978, and in view of the positive safety actions undertaken by Conoco immediately thereafter, we request that the FRA withdraw in its entirety the proposed assessment under Count No. 2.

Summary of Violation, Count No. 3: "On or about September 11, 1978, respondent knowingly offered for transportation at Wrenshall, Minnesota, car number CONX 9250, a tankcar loaded with liquified petroleum gas, which was filled in excess of the maximum filling density permitted for that car, in violation of 49 C.F.R., Section 173.314 (f)".

The thoroughness and exactness with which District Supervisor Anunson investigated the September 11, 1978, unintentional overload of CONX 9250 was confirmed by Conoco's internal investigation of the incident. Not even partial exoneration is sought based on the "arithmetic" facts presented.

General Comments
Page 5

We remain perplexed that the incident occurred despite the well documented intent to allow even more than the required minimum safe outage. We share Mr. Anunson's expressed opinion, therefore, that the "evidence obtained does not indicate Continental Oil Company willfully or knowingly overfilled CONX 9250.....".

Whether expressed by Mr. Anunson or not, we vehemently disagree with the FRA's contention (Reference Summary of Violation, Count No. 3, Addendum A) that Conoco "knowingly offered for transportation.....CONX 9240.....which was filled in excess of the maximum filling density permitted.....".

We shall not dwell on this matter except to point out that Section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809), upon which the FRA obtains its authority to conduct a proceeding to assess a civil penalty, limits such action to "any person (except an employee who acts without knowledge) who is determined.....to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty". And, in the next sentence of Section 110 the phrase "knowingly commits" is associated with "any person who transports or causes to be transported.....".

We are grateful that this incident was resolved without injury to any person or damage to any property. Even though no fault was found in the Wrenshall Refinery's procedures, the safety awareness level at that facility has been greatly intensified.

In our search for some criteria on which to evaluate the level of proposed assessment, we reviewed the examples of actual penalties published in every issue of the Department of Transportation's "Hazardous Materials Newsletter" (formerly the "Office of Hazardous Materials Newsletter") from January, 1976, through June, 1979. Only one penalty for an incident of apparently similar circumstances and gravity is shown; that being in the August, 1977, issue which is synopsized as follows: Union Carbide (Shipper) - Overfilling tank-car with LPG. Plugs and valves not properly secured. Penalty \$2,500.

Conoco Inc. requests that the Federal Railroad Administration reduce the proposed assessment for Count No. 3 to no more than \$2,500.

SUMMARY

To the best of our knowledge this citation is the first such offense for which Conoco Inc. has been cited by the Federal Railroad Administration. In view of this record, in view of the foregoing discussion of the individual counts, and most important because Conoco Inc. lives by a safety philosophy in which minimum standards are simply not enough, we respectfully seek the Administration's acceptance of the compromise offer to pay the amounts herein stated.

Debs Gamblin

RECEIVED **CONOCO**

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AUG 13 1979

To

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Date

*You may get some
questions on the
attached.*

RECEIVED
AUG 13 1979

VME 737785

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
Washington, D.C. 20590

NOTICE OF PROBABLE VIOLATION

FRA BMTA No. : 200C-79-1

Issued: JUL 31 1979

Respondent : Continental Oil Company

Representative served : Andrew K. McCollpin, Esq.
Senior Vice President and
General Counsel
Continental Oil Company
High Ridge Park
Stamford, Connecticut 06904

No. of alleged violations : 3

Total proposed assessment : \$16,000

The above-referenced respondent is hereby charged with violating the Hazardous Materials Transportation Act (49 U.S.C. 1801-1812) and the Department of Transportation Regulations issued thereunder (49 CFR Parts 106-189). This proceeding is instituted on the basis of specific allegations set forth in Addendum A to this Notice and in the field investigation reports which are enclosed herewith and incorporated herein by reference.

Administrative assessment of civil penalties is authorized by section 110 of the Hazardous Materials Transportation Act (45 U.S.C. 1809), which prescribes a penalty of up to \$10,000 for each violation and requires that certain factors be considered in determining the amount of penalty in a particular matter. In the case of a continuing violation, each day constitutes a separate offense. Federal Railroad Administration (FRA) procedures for the assessment of penalties for violations related to transportation or shipment in the rail mode are set forth in Part 203 of Title 49, Code of Federal Regulations. Addendum B to this Notice summarizes the right of the respondent to request an oral hearing and describes other alternatives available for the disposition of this matter.

Failure to reply to this Notice within thirty (30) days of the date of issuance constitutes a waiver of any right to contest the allegations and authorizes the Chief Counsel, FRA, to find the facts to be as alleged and to assess the civil penalty set forth above.

For Raymond K. James
Chief Counsel

J. Thomas Purphy
J. THOMAS PURPHY
Assistant Chief Counsel
Enforcement Division

VME 737793

Xmas TO - BW - ABC - DSS - LGH. (8/6/79)
RET

PHA HMTA No. Z000-79-1

Accordium A-
Notice of Probable Violation

Count No.	Inspector's Report	Summary of Violation	Proposed Assessment
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1	C. H. Laws 3665-CIL-534	On or about March 6, 1978, respondent knowingly offered for transportation at its plant at West Lake, Louisiana, car number CONX 7938, a tank car loaded with methyl chloride, classified as a flammable gas, which was not placarded in accordance with 49 C.F.R. §172.504(a).	\$ 2,000
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2	C. H. Laws 3665-CIL-534	On the date and at the location specified in count 1 above, respondent knowingly offered for transportation the car specified in count 1, without determining that the fittings were in proper condition for the safe transportation of the liquid, and without adequately securing the manway covers to prevent leakage of vapor and liquid, in violation of 49 C.F.R. §173.31(b)(1) and (3).	7,000
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3	L. C. Anunson 3665-LCA-749	On or about September 11, 1978, respondent knowingly offered for transportation at Wrenshall, Minnesota, car number CONX 9250, a tank car loaded with liquefied petroleum gas, which was filled in excess of the maximum filling density permitted for that car, in violation of 49 C.F.R. §173.314(f).	7,000
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VME 797794

A

Addendum B
Notice of Probable Violation

On receipt of this Notice, you may proceed in one of the following ways (49 CFR § 209.107):

(1) You may elect to pay the proposed penalty and close the case. 49 CFR § 209.109. Payment should be made by certified check or money order payable to the Federal Railroad Administration, Accounting Division (RAD-43), 2100 Second Street, S.W., Washington, D.C. 20590.

(2) You may make an informal response, which should include written explanations and information in answer to or in mitigation of the charges and may include a request for an informal conference. 49 CFR § 209.111. After considering all of the information presented, FRA will take final action to dismiss the Notice or to assess a civil penalty, as appropriate.

(3) You may request an oral hearing to be presided over by an administrative law judge authorized to render a decision in this proceeding. A request for hearing must be made in writing and must contain the information required by 49 CFR § 209.113.

Failure to respond in accordance with one of the alternatives set forth above within thirty (30) days of the date of issuance of this Notice constitutes a waiver of any right to appear and contest the merits of the allegations or the amount of penalty before FRA or any court and authorizes the Chief Counsel or his delegate to find the facts to be as alleged and to assess a penalty in the amount set forth in this Notice. 49 CFR § 209.107. The thirty (30) day period may be extended upon a showing of good cause made in writing.

Respondent may offer to compromise a proposed or assessed penalty at any time prior to referral to the Attorney General for collection by contacting the Assistant Chief Counsel, Enforcement Division, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

All materials filed in this proceeding, other than correspondence related to offers of settlement, should be addressed to the Docket Clerk (RCC-1), Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

Questions concerning this proceeding may be directed to the Enforcement Division, Office of Chief Counsel. Phone: (202) 426-8235.

VMP 737795