



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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Ref. No. Docket PG-090043

**CERTIFIED MAIL**

November 13, 2009

Jimmy Jordan,  
Corporate HSE Manager  
Akzo Nobel-Eka Chemicals Inc.  
1775 West Oak Commons Court  
Marietta, GA 30062

Dear Mr. Jordan:

**Subject: 2009 Hydrogen Pipeline Standard Inspection**

We conducted a hydrogen pipeline inspection from September 22, 2009 to September 23, 2009 of AkzoNobel Eka Chemicals Inc. (Akzo Nobel) Moses Lake facility. The inspection included a review of the system Operations and Maintenance (O&M) manual, Operator Qualification manual, Alcohol/drug Misuse Prevention Plan, records, and inspection of the pipeline facilities.

Our inspection indicates seven probable violations as noted in the enclosed report.

**Your response needed**

Please review the attached report and respond in writing by December 15, 2009. The response should include how and when you plan to bring the probable violations into full compliance.

**What happens after you respond to this letter?**

The attached report presents staff's decision on probable violations and does not constitute a finding of violation by the commission at this time.

After you respond in writing to this letter, there are several possible actions the commission, in its discretion, may take with respect to this matter. For example, the commission may:

- Issue an administrative penalty under RCW 81.88.040,, or



Akzo Nobel-Eka Chemicals, Inc.

Docket PG-090043

November 13, 2009

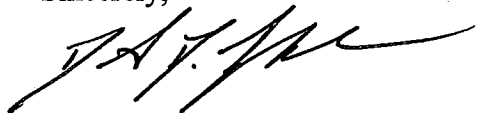
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- Institute a complaint, seeking monetary penalties, changes in the company's, practices, or other relief authorized by law, and justified by the circumstances, or
- Consider the matter resolved without further commission action.

We have not yet decided whether to pursue a complaint or penalty in this matter. Should an administrative law judge decide to pursue a complaint or penalty; your company will have an opportunity to present its position directly to the commissioners.

If you have any questions, or if we may be of any assistance, please contact Joe Subsits at (360) 664-1322. Please refer to Docket PG-090043 in any future correspondence regarding this inspection.

Sincerely,



David D. Lykken  
Acting Pipeline Safety Director

cc. Calvin Green, AkzoNobel  
Bob Cosentino, Cosentino Consulting

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**2009 Hydrogen Pipeline Safety Inspection**  
**Akzo Nobel-Eka Chemical Inc. – Moses Lake Facility**  
**Docket PG-090043**

The following probable violations of Title 49, CFR Part 192 and 199 were noted as a result of the inspection of the Akzo Nobel –Moses Lake Facility. The inspection included a review of records, operation and maintenance (O&M), emergency response, inventory and field inspection of the pipeline facilities.

**PROBABLE VIOLATIONS**

1. **49 CFR §192.614 Damage Prevention Program**

*49 CFR §192.614 (c) (1) states that the damage prevention program required by this section must at a minimum include the identity, on a current basis of persons who normally engage in excavation activities in the area in which the pipeline is located.*

**Finding(s):**

A list of excavators could not be found. Though there was a mailing list presented for public awareness mailings, this list identified some landscapers but local excavators and contractors were not noted on the list.

2. **49 CFR §192.616 Public Awareness**

*49 CFR 192.616(d) states the operator's public awareness program must specifically include provisions to educate the public, appropriate governmental organizations and persons engaged in excavation related activities on:*

1. *Use of one call notification system prior to excavation and other damage prevention activities;*
2. *Possible hazards associated with unintended releases from hydrogen pipeline facility;*
3. *Physical indications that such a release may have occurred;*
4. *Steps that should be taken for public safety in the event of a pipeline release; and*
5. *Procedures for reporting such an event.*

**Finding(s):**

Akzo Nobel public information was mailed to the identified audience, however, the information sent did not include the items described in 49 CFR §192.616(d).

3. **49 CFR §192.605 Procedural Manual for Operations, Maintenance and Emergencies**

*(b) 49 CFR §192.605(b)(1) states that the manual required must include procedures for the following, if applicable, to provide safety during maintenance and operations.*

- (1) Operating, maintaining and repairing the pipeline in accordance with the requirements of this section.*

*49 CFR 192.615(b) (2) requires that operators train appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.*

**Finding(s):**

Emergency procedures did not address the assurance of emergency procedure knowledge of personnel and verification that training is effectiveness.

4. **49 CFR §192.605 Procedural Manual for Operations, Maintenance and Emergencies**

(b) *49 CFR §192.605(b)(1) states that the manual required must include procedures for the following, if applicable, to provide safety during maintenance and operations.*

(1) *Operating, maintaining and repairing the pipeline in accordance with the requirements of this section.*

*49 CFR §192.615(b) (3) requires that employee activities are reviewed to determine whether procedures were effectively followed in each emergency.*

**Finding(s):**

Emergency procedures did not address need to review employee activities to determine whether procedures were effectively followed.

5. **49 CFR §192.605 Procedural Manual for Operations, Maintenance and Emergencies**

(b) *49 CFR §192.605(b)(1) states that the manual required must include procedures for the following, if applicable, to provide safety during maintenance and operations.*

(1) *Operating, maintaining and repairing the pipeline in accordance with the requirements of this section.*

*49 CFR §192.615(c) requires that each operator establish and maintain liaison with appropriate fire, police, and other public officials to learn the responsibility and resources of each government organization that may respond to a gas emergency, acquaint the officials with the operators ability in responding to a gas pipeline emergency, identify the types of gas pipeline emergencies of which the operator notifies the officials and plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.*

**Finding(s):**

Procedures to maintain emergency official liaison were not found in company procedures.

6. **49 CFR §199.202 Alcohol Misuse Plan**

*Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.*

**Finding(s):**

A review of Akzo Nobel's Drug and Alcohol use policies revealed missing items that need to be included in a written plan or policy, adopted and implemented. These are:

- a. 49 CFR §199.209(a) addresses the authority of operator and employee rights
- b. 49 CFR §199.209(b)(5) states that covered employees cannot perform covered functions unless the result of employee alcohol concentration is less than 0.04.
- c. 49 CFR §199.211 addresses need to notify employees of requirements and authority to perform alcohol testing.
- d. 49 CFR §199.215 states that the plan needs to specify that no employee may report to duty or remain on duty with an alcohol concentration of 0.04.
- e. 49 CFR §199.217 states that no employee may perform or continue to perform a covered function if the employee has used alcohol while on-duty.
- f. 49 CFR §199.219 states that covered employees are prohibited from using alcohol within 4 hours of reporting for duty.
- g. 49 CFR §199.219 states that employees notified to respond to emergencies must not use alcohol; once notified to report.
- h. 49 CFR §199.219 states that the operator who has actual knowledge that an employee has used alcohol, once being notified to respond to an emergency shall not allow the employee to perform covered functions.
- i. 49 CFR §199.221 states that an employee shall be prohibited from using alcohol following an accident in which the employee's action contributed or cannot be completely discounted.
- j. 49 CFR §199.221 states that employees may not use alcohol for up to 8 hours following an accident or until a post accident test has been administered.
- k. 49 CFR §199.223 states that employees are prohibited from refusing to submit to either a post-accident test, reasonable suspicion or follow-up test.
- l. 49 CFR §199.223 states that an employee's refusal to submit to a test shall result in the employee not being permitted to perform or continue to perform covered functions.
- m. 49 CFR §199.225(a)(2)(i) states that if a post accident test is not conducted within 2 hours, a record must be prepared and maintained stating why the test was not administered.
- n. 49 CFR §199.225(a)(2)(i) states that the operator should cease attempting a post accident alcohol test after 8 hours.
- o. 49 CFR §199.225(a)(2)(i) states that a record will be prepared and maintained as to why a post accident test was not administered within 8 hours.
- p. 49 CFR §199.225(a)(3) states that the employees shall be readily available until post accident testing is conducted.

- q. 49 CFR §199.225(a)(3) states that a failure to remain readily available may be deemed as a refusal to test.
- r. 49 CFR §199.225(a)(3) addresses provisions regarding the need for medical attention.
- s. 49 CFR §199.225(a)(3) addresses the need to leave an accident scene to obtain assistance in responding to the accident.
- t. 49 CFR §199.225(b)(2) states that reasonable suspicion observations be made by supervisors trained in detecting symptoms of alcohol misuse.
- u. 49 CFR §199.225(b)(3) addresses when alcohol testing is performed based on observations for reasonable suspicion testing.
- v. 49 CFR §199.225(b)(4)(i) states that if reasonable suspicion testing is not conducted within 2 hours a record stating why the test was not administered within 2 hours must be prepared and maintained.
- w. 49 CFR §199.225(b)(4)(i) states that the operator should cease attempting a reasonable suspicion alcohol test after 8 hours.
- x. 49 CFR §199.225(b)(4)(i) states that a record will be prepared and maintained as to why a post accident test was not administered within 8 hours.
- y. 49 CFR §199.225(b)(4)(iii) states that employees cannot perform or continue to perform under the influence or be impaired by alcohol until the alcohol test is administered with an alcohol concentration of less than 0.02 or the start of employee's next regular shift, but not less than 8 hours following determination to test.
- z. 49 CFR §199.225(b)(4)(iv) states that no action be taken by the operator against an employee's behavior and appearance in absence of a DOT alcohol test.
- aa. 49 CFR §199.225(b)(4) addresses independent authority imposed by the operator.
- bb. 49 CFR §199.225(c) addresses return to duty provisions, prohibited conduct, return-to-duty testing with alcohol testing less than 0.02.
- cc. 49 CFR §199.225(d)(1) addresses follow-up testing in accordance with the substance abuse professional determination.
- dd. 49 CFR §199.225(d)(2) states that follow-up testing be performed before, during or just after performing a covered function .
- ee. 49 CFR §199.225(e) states that retesting is required when an employee's alcohol concentration is more than 0.02 but less than 0.04 and when an employee is to return-to-duty within 8 hours following administration of an alcohol test with an alcohol concentration of 0.02 or greater but less than 0.04.
- ff. 49 CFR §199.227(a) states that records be maintained in a secure location with controlled access.
- gg. 49CFR §199.227(b) states that the following records be maintained for five years- these are employee alcohol tests with alcohol concentration of 0.02 or greater, documentation of employee refusal to submit to required alcohol tests, calibration documentation, employee evaluations and referrals, alcohol MIS annual report data.
- hh. 49 CFR 40.333 states that information obtained from previous employers must be maintained for 3 years.
- ii. 49 CFR §199.227(b)(2) states that collection process records and training documents must be maintained for 2 years.

- jj. 49 CFR §199.227(b)(3) states that records for all tests with results less than 0.02 be maintained for 1 year.
- kk. 49 CFR §199.227(c) states that the following records related to the collection process be maintained- collection log books, calibration documentation for EBT devices, documents on BAT training, documents, supporting decisions to administer reasonable suspicion tests, documents supporting decision to administer post accident tests, and documents supporting medical explanation of inability to provide a breath for testing.
- ll. 49 CFR §199.227(c) states that the following records related to test results be maintained- operator's test form, documents of refusal to submit to alcohol tests, documents supporting employee's dispute to result of alcohol test, and records related to other violations of part 199.
- mm. 49 CFR §199.227(c) states that the following records related to evaluations be maintained- records of determination by substance abuse professional concerning covered employee's need for assistance and records demonstrating compliance with substance abuse professional recommendations.
- nn. 49 CFR §199.227(c) states that records demonstrating operators MIS annual testing data be maintained.
- oo. 49 CFR §199.227(c) states that the following records related to education and training be maintained- alcohol misuse awareness material, documents of compliance with requirements of access to facilities and records, documents on supervisor training for reasonable suspicion determinations and documents certifying training requirements.
- pp. 49 CFR §199.229(a) states that documentation of "missed" test information must be collected and maintained.
- qq. 49 CFR §199.231(a) addresses procedures regarding the release of employee information.
- rr. 49 CFR §199.231(b) addresses release of records pertaining to employee use of alcohol.
- ss. 49 CFR §199.231 (b) addresses employee access to records without payment restrictions.
- tt. 49 CFR §199.231(c) addresses access to records by the Secretary of Transportation, PHMSA, or other DOT/State agency representatives.
- uu. 49 CFR §199.231 (d) addresses release of records including operator's alcohol testing results to the Secretary of Transportation, PHMSA, or other DOT/State agency representatives.
- vv. 49 CFR §199.231(d) addresses the release of name-specific alcohol test results when requested by appropriate officials.
- ww. 49 CFR §199.231(e) addresses the release of records to NTSB as part of an accident investigation.
- xx. 49 CFR §199.231(f) addresses release of records by operator to subsequent employer.
- yy. 49 CFR §199.231(f) addresses restrictions on release of records.
- zz. 49 CFR §199.231(g) addresses release of information to the employee, decision makers in a lawsuit, grievance, or other proceedings initiated by or on behalf of an individual.

- aaa. 49 CFR §199.231(h) addresses release of employee records upon specific, written consent of the information to an identified person.
- bbb. 49 CFR §199.233 addresses provision on removal from covered functions for violations of alcohol misuse.
- ccc. 49 CFR §199.235 addresses requirement for a referral or evaluation, following an employee engaging in prohibited conduct.
- ddd. 49 CFR §199.237 addresses provisions where employee has an alcohol concentration of 0.02 or greater but less than 0.04 to perform covered functions until the concentration is below 0.02 or the employee's next scheduled tour of duty or at least 8 hours have elapsed.
- eee. 49 CFR §199.237(b) states that no action against employee's can be taken solely on a test result of less than 0.04.
- fff. 49 CFR §199.239(a) addresses educational materials that explain the alcohol requirements.
- ggg. 49 CFR §199.239(a)(1) states that a copy of the material is provided to employees prior to the commencement of testing.
- hhh. 49 CFR §199.239(a)(2) addresses maintenance of written documentation to verify notices.
- iii. 49 CFR §199.239(a)(2) states that material provided to employees address identity of persons to provide answers about operator material, a list of covered employee categories, guidance on period of coverage during work day that an employee is subject to testing provisions, procedures to be utilized to test for presence of alcohol, explanation of refusals and consequences, consequences of employee violation of the prohibitions of the plan and removal from performing covered functions, consequences of testing at 0.02 or greater but less than 0.04, information on alcohol effects on individual's health, work., and personal life signs and symptoms of alcohol problems, evaluations and resolving problems, referral to an Employee Assistance Program or management.
- jjj. 49 CFR §199.239(c) addresses optional materials and authority for issuance of such material.
- kkk. 49 CFR §199.241 states that supervisors who make reasonable suspicion determinations must have at least 60 minutes of training.
- lll. 49 CFR §199.241 states that supervisor training must include training on physical, behavioral, speech and performance indicators of probable alcohol misuse.
- mmm. 49 CFR §199.243(a) addresses provisions to provide the employee who engage in prohibited conduct shall be advised of available resources to evaluate and resolve problems associated with alcohol misuse.
- nnn. 49 CFR §199.243(a) states that the plan shall contain names, addresses and phone numbers of SAP's, counselors, treatment programs, and third party provider networks.
- ooo. 49 CFR §199.243(b) states that employees who engage in prohibited conduct shall be referred to a substance Abuse Professional for evaluation.
- ppp. 49 CFR §199.243(c)(1) states that a return-to-duty test is required when an employee engages in prohibited conduct.



- qqq. 49 CFR §199.243(c)(2)(i) states that the plan specify evaluation by Substance Abuse Professional to determine that the employee has properly followed any prescribed program.
- rrr. 49 CFR §199.243(c)(2)(ii) states that a minimum of six tests be conducted within the first 12 months following an employee's return-to-duty test.
- sss. 49 CFR §199.243(c)(2)(ii) specifies that follow-up cannot exceed a 60 month period
- ttt. 49 CFR §199.243(c)(ii) states that the Substance Abuse Professional may terminate follow-up testing after completion of the first six tests.
- uuu. 49 CFR §199.243(d) states that evaluation and rehabilitation maybe provided by the operator, substance Abuse Professional under contract, or Substance Abuse Professional not affiliated with the operator.
- vvv. 49 CFR §199.243(e) addresses provisions regarding referral to Substance Abuse Professionals that may apply.
- www. 49 CFR §199.245(a) states that the contractor may carry out alcohol testing, training and education.
- xxx. 49 CFR §199.245(a) states that the plan stipulate that an operator is responsible for ensuring compliance with alcohol provisions.
- yyy. 49 CFR §199.245(c) states that the operator, PHMSA Administrator and DOT/State agency representative have access to property and records.
- zzz. 49 CFR §199.245(c) states that the plan have detailed specifications for monitoring contractor's compliance with the requirements of 49 CFR Parts 199 and 40.

7. **49 CFR §199.101 Anti-drug Plan**

*Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT procedures. The plan must contain methods and procedures for compliance with all the requirements of this part, including the employee assistance program.*

**Finding(s):**

A review of Akzo Nobel's Drug and Alcohol use policies revealed missing items than need to be included in a written plan or policy. These are:

- a. 49 CFR §199.3 states that the definition of "accident" and or "incident investigation" must be in the plan.
- b. 49 CFR §199.3 requires a complete definition of "covered employee."
- c. 49 CFR §199.3 identifies the drugs to be tested.
- d. 49 CFR §199.101(a)(1) states that the plan must contain the name and address of each laboratory that analyzes the specimens collected for drug testing, the name/address of the operators medical review officer and substance abuse professional and procedures for notifying employees of the coverage and provision of the plan.
- e. 49 CFR §199.103(a) states that employees may not be used who fails a drug test and the Medical Review Officer determines there is no legitimate explanation for the confirmed positive test or refuses to take a drug test.

- f. 49 CFR §199.103(b) states that a person may be used in a covered function if the person passed a DOT drug test, been recommended by a Substance Abuse Professional to return-to-duty or has not failed a return to duty drug test.
- g. 49 CFR §199.105(b) states that post accident testing be conducted as soon as possible but no later than 32 hours after the accident for persons whose performance either contributed to accident or cannot be completely discounted as a contributing factor to the accident.
- h. 49 CFR §199.105(b) States that the post accident testing decision not to test is based upon the best information available immediately after the accident that the employees performance could not have contributed to the accident.
- i. 49 CFR §199.105(b) states the post accident testing decision not to test because the time elapsed between the employee's performance and the accident; it is not likely that a drug test would reveal whether the performance was affected by drug use.
- j. 49 CFR §199.105(c) requires procedures for a random employee selection process.
- k. 49 CFR §199.105(c)(2) requires procedure to determine the 25% annualized rate.
- l. 49 CFR §199.105(c)(5) state that the random selection process be based on a random table or computer based-based number generation system or another method meeting DOT requirements.
- m. 49 CFR §199.105(c)(6) states the annualized rate of announced testing on random selection be based on total number of personnel in covered positions.
- n. 49 CFR §199.105(c)(7) states that testing be spread reasonably throughout the year.
- o. 49 CFR §199.105(d) states that at least two supervisors, at least one trained in detection of symptoms of drug use substantiate and concur in the decision to test an employee who is reasonably suspected of drug use.
- p. 49 CFR §199.105(e) states that covered employees who have refused a drug test or have returned to duty after having failed a DOT required drug test, must be evaluated face to face by a substance abuse professional.
- q. 49 CFR §199.105(f) states that follow-up testing is performed on an un-announced basis at a frequency established by the substance abuse professional for a period of not more than 60 months, at least six tests must be conducted within the first twelve months.
- r. 49 CFR §199.107(a) states that the operator use only those drug testing laboratories certified by the Department of Health and Human Services under DOT procedures.
- s. 49 CFR §199.107 (b)(1) states that the lab must permit inspections by the operator prior to being awarded a testing contract.
- t. 49 CFR §199.107(b)(2) states the lab allow unannounced inspections including examination of records.
- u. 49 CFR §199.109(a) states that the operator designates a medical review officer.
- v. 49 CFR §199.109(b) states that the medical review officer be a licensed physician and has required qualifications under 49 CFR 40.121.
- w. 49 CFR §199.109(c) states that the medical review officer functions for the operator as required under 49 CFR 40.123.

- x. 49 CFR §199.109(f) states that the medical review officer report all drug test results to the operator as required by 49 CFR 40.163.
- y. 49 CFR §199.109(f) states that the operator ensure that the substance abuse professional does not refer covered employee's requiring assistance, to the substance abuse professionals private practice.
- z. 49 CFR §199.111(a) states that samples that yield positive results on confirmation be retained by the laboratory in properly secured, long term, frozen storage for at least 365 days as required by the DOT procedures found.
- aa. 49 CFR §199.111(b) states that if the medical review officer determines there is no legitimate medical reason for a confirmed positive test result, do the procedures permit the employee to submit a written request for a retest within 60 days of receipt of the final test results from the medical review officer.
- bb. 49 CFR §199.111(b) states that the employee may request retesting by a second Department of Health and Human Services certified lab.
- cc. 49 CFR §199.111(b) states the employee must be reimbursed if the retest is negative.
- dd. 49 CFR §199.111(b) states the operator may require the employee to pay the associated retest cost in advance.
- ee. 49 CFR §199.111(c) states that if the employee requests retesting by a second laboratory does the original laboratory follow approved chain-of-custody transfer procedures.
- ff. 49 CFR §199.111(d) states that the results of retest are to be reported as confirmation of the original test results if the detected level of the drug are (a) below the DOT established limits and, (b) equal to or greater than the sensitivity of the test.
- gg. 49 CFR §199.113(a) states that the employee assistance programs include education and training about drug use.
- hh. 49 CFR §199.113(b) states that as part of the employee assistance program, information material, community service hot-line telephone number for employee assistance and the employers policy regarding the use of prohibited drugs be included.
- ii. 49 CFR §199.113(c) states that the operator provide at least 60-minute period of training for supervisory personnel.
- jj. 49 CFR §199.115 states that the operator provides by contract, that the drug testing, education and training of contractor employees required by 49 CFR Part 199 be carried out by contractor.
- kk. 49 CFR §199.115(b) states that the operator remains responsible for ensuring compliance with the requirements of 49 CFR Part 199.
- ll. 49 CFR §199.115(b) states that the contractor allow access to property and records by the operator, DOT and any jurisdictional state agency for the purpose of monitoring the operators compliance with the requirements of 49 CFR 199.
- mm. 49 CFR §199.117(a) states that the anti-drug plan require the operator to keep the following records:
  - Records demonstrating that the collection process conforms to Part 199 must be kept at least 3 years.

- Records that show an employee failed a drug test, the type of test failed and records that demonstrate compliance with the substance abuse professionals be maintained a minimum of five years.
  - MIS annual report data minimum of five years.
  - Records showing an employee passed a drug test for at least one year.
  - Records confirming that supervisor and employees have been trained as required for at least three years.
- nn. 49 CFR §199.117(b) states that procedures prohibit the release of an individual's drug test results or rehabilitation except as follows:
1. Upon written consent of the individual
  2. Upon provided by DOT procedures as part of an accident investigation or for statistical evaluation and training records
- oo. 49 CFR §199.119(c) states that the operator correctly calculates the total number of covered employees eligible for random testing throughout the year.
- pp. 49 CFR §199.119(d) that if used , the operator ensure the service agent used is testing at the appropriate percentage established for the industry and that only covered employees are in the random testing pool.
- qq. 49 CFR §199.117(e) states that all covered employees who perform multi-DOT agency functions are counted only on the MIS report for the DOT agency under which they are randomly tested.