



US Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street S W
Washington D C 20590

Mr. Steve D. Fetter
President
Canal Energy & Services, Inc.
P.O. Box 984
Belle Chasse, LA 70037-0984

NOV 23 1998

Termination of Approval No. 107-92-01
Canal Energy & Services, Inc.

Dear Mr. Fetter:

I hereby terminate the designation of Canal Energy & Services, Inc. (Canal Energy) as an approval agency for IM portable tanks, in accordance with 49 C.F.R. § 107.405.

I find that Canal Energy certified portable tanks as meeting the IM 101 specification which:

1. Canal Energy designed and for which Canal Energy supplied valves; and
2. Canal Energy owned, in between purchasing these tanks from R&S Fabrication, Inc. (R&S) and reselling them to Environmental Treatment Team, Inc. (ETT) or Allwaste Oilfield Services (Allwaste).

Each of these actions constitutes a sufficient basis to terminate Canal Energy's approval. These actions constitute violations of your commitment (as required by 49 C.F.R. § 107.402(b)(5)) that Canal Energy would maintain independence from the manufacturers and owners of the portable tanks certified by Canal Energy.

When Canal Energy designed portable tanks for manufacture by R&S and subsequent ownership by ETT and Allwaste, it lost the independence from the manufacturer and owner that an approval agency must maintain. This is true regardless of whether Canal Energy ever performed other "construction or manufacturing activities" or took ownership of the portable tanks -- which you deny. The fact that Canal Energy supplied and installed "pop-off" valves on these tanks also represents a lack of independence from the manufacturer and owners of these tanks. Furthermore, Canal Energy's ownership of these tanks is established by the R&S invoices to Canal Energy (Exhibits 5 and 9 to my June 4, 1998 letter), Canal Energy's payment of those invoices (Exhibit 6), and the statement of R&S's president that the portable tanks built for ETT and Allwaste were "sold to Canal Energy" (Exhibit 8).

The sketches (Exhibit 3) and drawing (Exhibit 4) prepared by Canal Energy, and the calculations (Exhibit 15) prepared by Mr. Angers on behalf of your company, establish that Canal Energy designed the portable tanks built by R&S for ETT. In his written statement (Exhibit 8), R&S's president has confirmed that R&S built the ETT portable tanks "as per instruction and sketches supplied by Canal Energy," and that R&S also built portable tanks for Allwaste "to Canal Energy sketches and instruction." Your statement that "ETT tank designs were never duplicated for anyone but ETT" does not show that any person independent from Canal Energy designed these portable tanks that Canal Energy certified as meeting the IM 101 specification.

Your acknowledgment that the "[f]inal approved drawings" and calculations for the ETT portable tanks were not prepared until June and July 1995, by which time 21 tanks had been constructed and certified by Canal Energy, also establishes that Canal Energy failed to follow the procedures for approval of IM portable tanks set forth in 49 C.F.R. § 173.32a(b). These procedures do not sanction the use of "preliminary" drawings for the construction of portable tanks, or the certification of these tanks as meeting the IM 101 specification prior to approval of the drawings and calculations by the approval agency. By itself, this is also sufficient grounds for termination of the designation of Canal Energy as an approval agency for IM portable tanks.

Exhibits 14-21 to my June 4, 1998 letter appear to show that Canal Energy improperly certified or otherwise represented that certain portable tanks met the requirements in the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, when these tanks did not meet HMR requirements. This would support a finding that Canal Energy lacked knowledge of the HMR and lacked the ability to review and evaluate design drawings and design and stress calculations. As you note, some words were omitted from language quoted from Exhibit 14 in my June 4, 1998 letter to you; at the top of p. 5, my letter should have stated that the ETT portable tanks certified by Canal Energy:

do not conform to drawings in that relief valves are located on fixed side instead of hinged side of tank. Lift eyes are not shown on drawing. Some tanks have one eye on hinged head; others have two. Tanks with relief valve located on fixed end have an additional nozzle (opening) on hinged side which is not on drawing.

You have asked that an administrative law judge hear the allegations in RSPA's July 5, 1996 Notice of Probable Violation (Notice) that Canal Energy improperly approved portable tanks as meeting the IM specifications. For that reason, at this time, I am not relying on Exhibits 14-21 (except as to the date of the calculations in Exhibit 15) or the additional matters set forth in Parts II.B. and II.C. (pp. 5-6 of my letter) as grounds for terminating the designation of Canal Energy as an approval agency for IM portable tanks. However, my action terminating the designation of Canal Energy as an approval agency does not (1) affect or resolve that enforcement action in any way, (2) preclude the initiation of any other enforcement proceedings against Canal Energy for violations of the HMR (including amendment of the July 5, 1996 Notice), or (3) foreclose a determination in the future that the additional matters set forth in Parts II.B. and II.C. of my June 4, 1998 letter constitute separate grounds for termination of Canal Energy's designation as an approval agency for IM portable tanks.

Sincerely,



Alan I. Roberts
Associate Administrator for
Hazardous Materials Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED