

Judge's Ruling in Oil and Gas Worker's Death Could Spark Change

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Practices

Workplace Safety and Health

A judge's decision to award lifetime workers' compensation benefits to the widow of a Colorado oil and gas worker who died from toxic gases after opening a tank to measure oil levels could reverberate throughout the industry.

Jim Freemyer, 59, died in July, 2014, after he inhaled a toxic mix of hydrocarbons in a low-oxygen atmosphere while he was gauging the level of oil in a tank at the Gaddis oil holding tank site near Johnstown, Colorado. The procedure, known as "tank gauging," occurs when a worker — usually a truck driver — measures the amount of oil in a tank by dropping a device similar to a tape measure into the vessel until it hits bottom, retrieving the gauge by winding it up, and noting the measurement of the oil depth on the tape.

In July, a judge ruled that Freemyer's widow was entitled to funeral expenses and a monthly death benefit. The employer, Now or Never Trucking, Inc., of Greeley, said it will not appeal the decision, *Bloomberg BNA* reported.

Besides paying expenses and benefits, the trucking firm also faces a \$19,600 proposed penalty from the Occupational Safety and Health Administration. In a letter to Freemyer's widow in January, OSHA said it had determined Now or Never Trucking had not evaluated the respiratory hazard present during tank gauging, and alleged the victim had been working in an oxygen deficient atmosphere above or adjacent to an open thief hatch. In addition, OSHA said the company had not implemented engineering controls to eliminate or limit exposure to oxygen deficient atmospheres, or provided training to employees so they could recognize the hazard and employ work practices and personal protective equipment to guard against it.

The company's insurer, Pinnacol Assurance, initially denied the benefits, claiming Freemyer's poor health, not his workplace exposure, led to his death. However, the judge was persuaded by the testimony of a doctor who concluded Freemyer's pre-existing cardiovascular disease resulted in his not being able to survive the toxic environment at the tank. Without the exposure, Freemyer would not have died when he did, the judge concluded. The judge also noted that instructions for the filter respirator Freemyer was wearing indicated that it was not designed for low-oxygen environments.

Pinnacol, which also provides coverage for other Colorado employers, told *Bloomberg BNA* it wanted to do whatever it could to minimize the potential for such accidents in the future. Spokeswoman Edie Sonn said, "We have seen media coverage of other similar tragic incidents and want to be sure that our policyholders are aware of the safety resources available to them to address the issue of toxic fumes in gas gauging."

Sonn said that, besides developing materials internally, Pinnacol is sharing resources from the National Institute for Occupational Safety and Health, which earlier this year called attention to nine production workers who died during tank gauging work over a five-year period ending in 2014. Freemyer was one of those workers. The deaths promoted the OSHA National STEPS Alliance, a public-private partnership that includes OSHA and NIOSH, to issue a tank hazard alert this spring. That alert was featured in [our newsletter](#).

Representatives of oil and gas producers Encana Corp. and Anadarko Petroleum Corp. told *Bloomberg BNA* they are evaluating alternatives to manual gauging for measuring oil levels in tanks, such as remote gauging and other automated control technologies. Besides remote gauging and automated gauging, sight gauges, closed loop systems, and remote venting are other engineering controls the OSHA National STEPS Alliance recommends.

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