

ENERGY EXPERT: ISSUES IN FOCUS

A quarterly review of disputes and complex issues in the hydrocarbon production and processing industries.

Baker & O'Brien, Inc.

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Leaking Underground Storage Tanks: Who is Responsible?

Litigation, North America

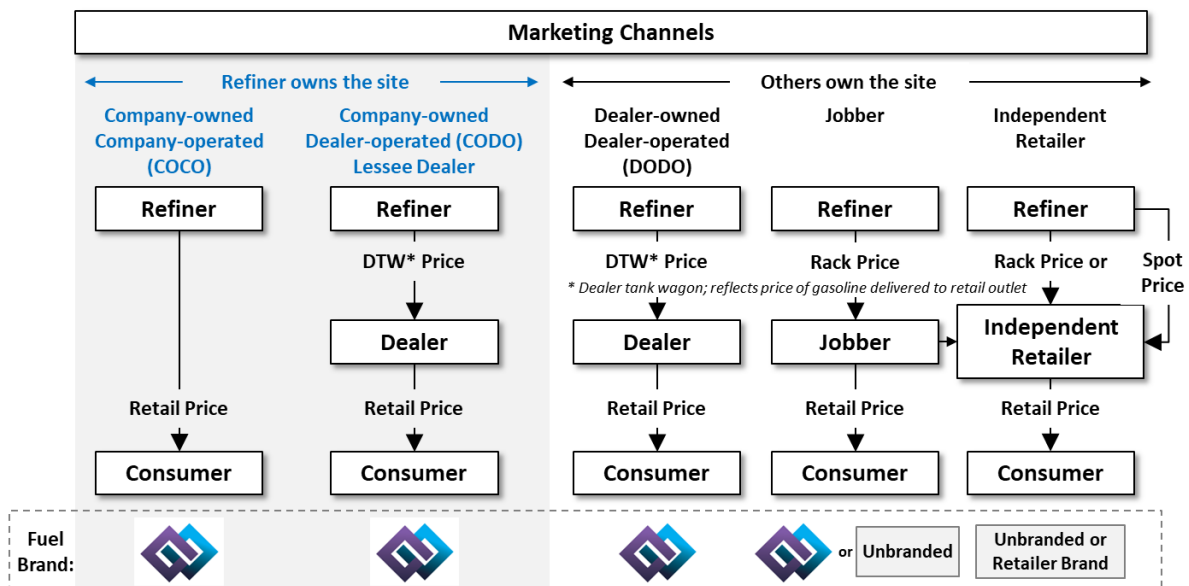
By David Tamm

Leaking underground storage tanks (UST) at retail gasoline marketing outlets became a public issue in the late 1970s and early 1980s. In 1984, Congress created a program for the Environmental Protection Agency (EPA) regulation of USTs and, in 1986, established a trust fund to deal with leaking UST cleanup. In 1988, the EPA promulgated rules to regulate USTs with a requirement that owners of USTs remove or upgrade them over the next 10-year period and delegated responsibility for UST regulation and cleanup to the states.

Around 2010, several lawsuits related to leaking UST cleanup cost liability were filed by states against various oil companies. A key question upon which the responsibility for cleanup lay was ownership of the specific USTs. The parties on one side argued that oil companies were responsible for leaking USTs at all retail locations that sold gasoline under those companies' brands. The counter argument was that this was only true in certain cases – but definitely not true in all cases. Baker & O'Brien was retained to produce an expert report and provide expert testimony regarding retail marketing practices and ownership of retail outlets.

In some cases, a refiner may directly own and operate a retail outlet, including the property and improvements. Generally, these represent a minority of the retail sites where branded gasoline and diesel fuel are sold. There are a variety of contractual arrangements that allow independent retailers to market products under a major oil company's brand. Some of these are illustrated in the diagram below.

In most of these arrangements, the major oil company supplies product but does not own the property or improvements, including the USTs. There are even cases where one major oil company grants a license to another major oil company to use its brand in specific geographic regions. For example, when ExxonMobil divested refineries in California and New Jersey, it allowed the acquiring companies to use the Exxon or Mobil brands in those regions. In such cases, the company whose brand is displayed at a retail outlet has no relationship with the branded site or the product delivered to that site.



Oilfield Incident – Multiple Parties – Who’s at Fault?

Litigation, North America

By Mel Sinquefield

After an oil and/or gas production well has been operating for a while, major maintenance or remedial treatments must be performed to restore, prolong, or enhance the production of hydrocarbons. Owners/operators of the well typically rely on the skills of specialty contractors to perform these well workover services. Well service companies that specialize in these maintenance activities provide trained craftsmen and specific tools to perform the work.



A well service company was contracted to perform a well workover that entailed removing the production pipes from the well. One of the first steps in the process is to reduce wellhead pressure followed by removal of the tubing hanger. The tubing hanger suspends the production tubing and is kept in position over the wellhead with a set of adjustable lock-screws and gland-nuts.

Downhole well workover activities involving the efforts of multiple specialty well service contractors were completed over a three-week period. Then, in preparation to return the production tubing to service, the well service companies coordinated their activities to pump out the heavy well pressure control fluids. The gland-nut for the tubing hanger had not been correctly tightened, which allowed the lock-screw assembly to be forcefully ejected during the well control fluid pumping activity.

Baker & O’Brien was requested to opine on: 1) the incident cause; and 2) site responsibilities of the various entities and individuals associated with the well workover. Following our assessment, we developed an expert report, which was utilized to negotiate a settlement.

Flow Meters: To Trust or Not to Trust, That is the Question

Arbitration, North America

By Kevin Milburn

Refineries consume large quantities of purchased natural gas and are, therefore, highly dependent on its reliable supply in order to continuously operate in a safe manner. Consequently, refineries often enter into long-term agreements with one or more suppliers to provide dedicated gas volumes. The supply of gas is typically measured using a single custody transfer meter (CTM), in conjunction with a gas analyzer, to accurately measure the natural gas flow. Additionally, the CTMs and gas analyzers, which are typically owned and maintained by the suppliers of the natural gas, must be tested and calibrated on a frequent and predetermined basis. Normally, the flow is measured before the pressure is reduced (“let-down”) into the lower pressure system through a flow control valve into the refinery’s fuel gas system.

Following a significant and recurrent imbalance in its reported monthly natural gas supply volumes, a refinery began an internal investigation into the probable causes of the imbalance. The refiner ultimately concluded that the CTM metered volumes were incorrect – and high.

The natural gas supplier was not convinced. Therefore, Baker & O’Brien was engaged to review the refiner’s analysis and the gas supplier’s position, and to opine on whether there was, in fact, an imbalance and, if so, the likely cause(s) of the imbalance.



In this case, the supply situation was not “normal” – the natural gas supplier had two supply lines, each with its own high-pressure supply CTM and, pursuant to an agreement with the refinery, an option to manually supply natural gas to three additional supplier-owned low-pressure systems “through” the refinery via an additional let-down valve. The flow into each of these three low-pressure systems was measured with three separate and parallel bi-directional CTMs. Thus, the quantity of the natural gas supplied to the refinery was calculated using five CTMs.

Baker & O’Brien reviewed the internal investigation conducted by refinery personnel and provided a report of our opinion on the methodology used in the flow calculation and the calibrations of the analyzers and CTMs.

Consulting Support for Complex Commercial Disputes

When faced with complex commercial disputes in the energy-related industries, clients often turn to Baker & O'Brien for its independent and objective support. For over 20 years, the firm's consultants have employed their engineering knowledge, industry experiences, and commercial acumen to provide assistance on a wide range of matters. Our project experience includes disputes involving operational incidents, standards of care, asset valuation, commercial supply terms, product quality, large engineering and construction projects, and intellectual property.

Our clients include many of the world's largest law firms, insurance providers, and operating companies. Law firms rely upon Baker & O'Brien to evaluate

technical and commercial aspects of a case and provide expert testimony. Our analyses, conclusions, and expert testimony have been heard by judges, juries, and arbitration panels around the world. On insurance matters, clients rely upon Baker & O'Brien's assistance for investigation of industrial accidents and quantification of resultant property damage and business interruption losses. We are also called upon to assist insurers in subrogation actions by evaluating causation theories and claims for damages.

We welcome the opportunity to discuss our qualifications in more detail as they relate to your specific area of interest.

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