

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

June 24, 2021

Mr. Joseph L. Hartz
Vice President Asset Management
UGI Energy Services
1 Meridian Blvd
Wyomissing, PA 19610

CPF 1-2021-052-NOPV

Dear Mr. Hartz:

From March 4, 2021 to April 22, 2021, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected the UGI Energy Services (UGIES) Drug and Alcohol (D&A) Program using email, the internet, and other virtual methods.

As a result of the inspection, it is alleged that UGIES has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR).¹

The items inspected and the probable violations are as follows:

1. §40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written

¹ Pursuant to §199.5, violations, as alleged in this Notice, of the DOT Procedures in 49 CFR Part 40 for anti-drug and alcohol programs required by Part 199 would be violations of Part 199.

consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer: ...

UGIES did not obtain written consent and did not check on the D&A testing record for those employees it intended to use for the first time to perform safety-sensitive duties on its PHMSA regulated pipelines and/or LNG facilities. As the employer, UGIES must request this D&A testing information from DOT-regulated employers who employed these employees during any period during the two years before the date of the employee's applications with the employer. The PHMSA D&A regulations define safety-sensitive duties as covered tasks in §199.3.

In calendar year 2020, UGIES conducted pre-employment DOT drug tests on 16 employees it hired to perform D&A covered functions on its PHMSA regulated pipelines and/or LNG facilities. Yet, UGIES did not check on the D&A testing record from DOT-regulated employers who employed any of the 16 employees during any period during the two years before the date of the employees' applications with UGIES.

2. §40.347 What functions may C/TPAs perform with respect to administering testing?

As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing.

(a) ...

(b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.

(1) ...

(2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.

UGIES, or its C/TPA, placed employees not covered by DOT agency regulations in the same random drug test pool with DOT covered employees.

In calendar year 2020, UGIES failed to properly distinguish its PHMSA (i.e. DOT) covered employees as defined in §199.3 from its non-covered employees. UGIES, or its C/TPA,² then placed approximately 60 employees not covered by PHMSA D&A regulations in its PHMSA random drug testing pool with approximately 130 DOT covered employees. As a result, UGIES conducted approximately one-third of its 120 random DOT drug tests in calendar year 2020 on employees not covered by PHMSA D&A regulations.

² The DOT regulations in §40.11 state that the employer is responsible for meeting all applicable requirements and procedures of part 40 and is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.

3. §199.101 Anti-drug plan.

(a) 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—

- (1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;**
- (2) The name and address of each laboratory that analyzes the specimens collected for drug testing;**
- (3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and**
- (4) Procedures for notifying employees of the coverage and provisions of the plan.**

UGIES did not maintain and follow a written anti-drug plan that conformed to the requirements of part 199 and the DOT Procedures. The UGIES anti-drug plan did not contain methods and procedures for compliance with all the requirements of part 199 and did not contain the name and address of the operator's Substance Abuse Professional (SAP).

UGIES provided PHMSA with its written UGI Energy Services Anti-Drug Plan with a revision date of October 14, 2020. The UGIES anti-drug plan did not provide the specific methods and procedures needed to explain how UGIES would meet the PHMSA and DOT drug testing regulations. Instead the anti-drug plan was largely a generic regurgitation and paraphrase of the PHMSA and DOT drug testing regulations. It contained dozens of pages and numerous sections of quotes and re-written material taken directly from the PHMSA drug testing regulations in part 199 and from the DOT procedures in part 40.

Despite the October 2020 revision date, UGIES did not maintain its written anti-drug plan. Many of the regulatory quotes and much of the re-written material taken from parts 199 and 40 was incorrect and outdated and did not reflect the 18 code amendments promulgated over the past 10 years in parts 199 and 40. While the PHMSA inspectors could not positively establish which of these amendments were included in the UGIES anti-drug plan, and which were not, the definition section of the plan contained some definitions that had not been updated in nearly 10 years. Also, Amendment 40-32 in November 2017 made important changes to part 40 and replaced the term “opiates” with “opioids” to reflect the addition of drug testing for semi-synthetic opioids. Yet, the term “opiates” was used 13 times throughout the plan while the term “opioids” was not found in the plan.

The UGIES anti-drug plan also conflated non-DOT with DOT drug testing requirements, was inconsistent with regards to company polices versus regulatory requirements, unclear on the roles of company personnel versus service agents, incorrect on the classification of covered employees, and contained statements not supported by the PHMSA/DOT drug testing regulations or which were directly contradicted by the regulations.

4. §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.

UGIES did not maintain and follow a written alcohol misuse plan that conformed to the requirements of part 199 and the DOT Procedures concerning alcohol testing programs. The plan did not contain methods and procedures for compliance with all the requirements of part 199, which incorporates the DOT Procedures by reference.

UGIES provided PHMSA with its written UGI Energy Services Alcohol Misuse Prevention Plan with a revision date of November 19, 2020. The UGIES alcohol plan did not provide the specific methods and procedures needed to explain how UGIES would meet the PHMSA and DOT alcohol testing regulations. Instead the alcohol plan was largely a generic regurgitation and paraphrase of the PHMSA and DOT alcohol testing regulations. It contained dozens of pages and numerous sections of quotes and re-written material taken directly from the PHMSA alcohol testing regulations in part 199 and from the DOT procedures in part 40.

Despite the November 2020 revision date, UGIES did not maintain its written alcohol plan. Many of the regulatory quotes and much of the re-written material taken from parts 199 and 40 was incorrect and outdated and did not reflect the 18 code amendments promulgated over the past 10 years in parts 199 and 40. While the PHMSA inspectors could not positively establish which of these amendments were included in the UGIES alcohol plan, and which were not, the definition section of the plan contained some definitions that had not been updated in nearly 10 years.

The UGIES alcohol plan also conflated non-DOT with DOT alcohol testing requirements, was inconsistent with regards to company polices versus regulatory requirements, unclear on the roles of company personnel versus service agents, incorrect on the classification of covered employees, and contained statements not supported by the PHMSA/DOT alcohol testing regulations or which were directly contradicted by the regulations.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to items 3 and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to UGI Energy Services. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to items 1 and 2, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **1-2021-052-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to UGI Energy Services (UGIES) a Compliance Order incorporating the following remedial requirements to ensure the compliance of UGIES with the pipeline safety regulations:

- A. In regard to Item # 3 of the Notice pertaining to UGIES failure to maintain and follow a written anti-drug plan that conformed to the requirements of 49 CFR Part 199 and the DOT Procedures in 49 CFR Part 40, UGIES must develop a written anti-drug plan that contains the specific methods and procedures it will use to comply with all the requirements of part 199 and part 40 and must submit the plan to PHMSA for review within 90 days of receipt of the Final Order.
- B. In regard to Item # 4 of the Notice pertaining to UGIES failure to maintain and follow a written alcohol misuse prevention plan that conformed to the requirements of 49 CFR Part 199 and the DOT Procedures in 49 CFR Part 40, UGIES must develop a alcohol misuse prevention plan that contains the specific methods and procedures it will use to comply with all the requirements of part 199 and part 40 and must submit the plan to PHMSA for review within 90 days of receipt of the Final Order.
- C. In lieu of Items A & B above, UGIES may develop a combined anti-drug and alcohol misuse prevention plan that contains the specific methods and procedures it will use to comply with all the requirements of 49 CFR Part 199 and the DOT Procedures in 49 CFR Part 40, and must submit the plan to PHMSA for review within 90 days of receipt of the Final Order.
- D. It is requested (not mandated) that UGIES maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.