

## NOTICE OF AMENDMENT

### OVERNIGHT EXPRESS DELIVERY

July 2, 2019

Kelly P. Kinnett, P.E.  
Water and Gas Director  
City of Danville  
1040 Monument Street  
Danville, VA 24540

**CPF 1-2019-0008M**

Dear Mr. Kinnett:

On November 29 and 30, 2017, inspectors from the Virginia State Corporation Commission (VA SCC) acting as Agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected the City of Danville's (City) procedures.

On the basis of the inspection, PHMSA has identified the apparent inadequacies found within the City's plans or procedures, as described below:

**1. § 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;**

The City's anti-drug plan was inadequate in that it did not conform to the requirements of 49 C.F.R. Part 199 and 49 C.F.R. Part 40 (DOT Procedures).

During the inspection, the VA SCC inspector reviewed the City's Drug and Alcohol Control and Testing Policy, effective July 1, 2012, (Testing Policy) and noted the Testing Policy did not include:

- provisions to ensure that DOT drug tests are completely separate from non-DOT drug tests in all respects, as required by § 40.13(a).
- provisions to ensure that the City does not knowingly use as an employee any person who fails a drug test required by Part 199 and the medical review officer (MRO) makes a determination under DOT Procedures (§ 40.25), or refuses to take a drug test required by Part 199, as required by § 199.103(a).
- provisions to ensure the urine specimen collectors used by the City meet the applicable qualifications, as required by § 40.33.
- provisions to ensure the drug testing laboratory does not test DOT specimens for any other drugs: only marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, and phencyclidine, as required by § 40.85.
- provisions to ensure the City stops using the services of the service agent no later than 90 days after the Department has published a public interest exclusion (PIE), as required by § 40.409(b).
- the correct definition of an accident, as defined in § 199.3. The definition in the City's Drug and Alcohol Testing Policy was missing the following language "Unintentional estimated gas loss of three million cubic feet or more." as specified in § 191.3(1)(iii).
- provisions to ensure post-accident drug testing was performed on covered employees whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident, as required by § 199.105(b).
- provisions on minimum annual percentage rate for random drug testing, as required by § 199.105(c).
- provisions for the use of only drug testing laboratories certified by the Department of Health and Human Services, as required by § 199.107(a) and § 40.81(a).
- provisions to ensure the City's MRO has the applicable qualification requirements, required per § 199.109(b) and § 40.121.
- provisions to ensure the laboratory reports laboratory results directly, and only, to the MRO at his or her place of business, required per § 199.109(d) and § 40.97(b).
- provisions to ensure the test results are transmitted to the MRO in a timely manner, preferably the same day that the review by the certified scientist is complete, as required per § 199.109(d) and § 40.97(d).
- provisions to ensure that the City is responsible for ensuring contractors carrying out the drug testing, education, and training required by Part 199 (for employees who are contractors or are employed by a contractor), as required by § 199.115(a).

Therefore, the City's anti-drug plan was inadequate because it did not conform to the requirements of Parts 199 and 40.

**2. § 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.**

The City's alcohol misuse plan was inadequate in that it did not conform to the requirements of Part 199 and 49 C.F.R. Part 40 (DOT Procedures) concerning alcohol testing programs.

During the inspection, the VA SCC inspector reviewed the City's Drug and Alcohol Control and Testing Policy, effective July 1, 2012, (Testing Policy) and noted the Testing Policy did not include:

- provisions to ensure that DOT alcohol tests are completely separate from non-DOT alcohol tests in all respects, as required by § 40.13.
- provisions to ensure that breath alcohol technicians (BAT) and screening test technicians (STT) meet each of the requirements of § 40.213.
- the correct definition of an accident, as defined in § 199.3. The definition in the City's Testing Policy was missing the following language, "Unintentional estimated gas loss of three million cubic feet or more," as specified in § 191.3(1)(iii).
- provisions for, as soon as practicable following an accident, administering to each surviving covered employee alcohol tests for the presence of alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident, as required per § 199.225(a).
- provisions to require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions of Subpart C of Part 199, as required by § 199.225(b)(1).
- provisions for not permitting any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency, as required by § 199.233.
- provisions specifying that the City is responsible for ensuring that a contractor carrying out the alcohol testing, training and education requirements of Subpart C of Part 199 and Part 40 (for employees who are contractors or employed by a contractor) comply with those requirements, as required by § 199.245(b).

Therefore, the City's alcohol misuse plan was inadequate because it did not conform to the requirements of Parts 199 and 40 concerning alcohol testing programs.

Response to this Notice

This Notice is provided pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.206. Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being 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, revised procedures, or a request for a hearing under §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 an Order Directing Amendment. If your plans or procedures are found inadequate as alleged in this Notice, you may be ordered to amend your plans or procedures to correct the inadequacies (49 C.F.R. § 190.206). If you are not contesting this Notice, we propose that you submit your amended procedures to my office within [number of days] days of receipt of this Notice. This period may be extended by written request for good cause. Once the inadequacies identified herein have been addressed in your amended procedures, this enforcement action will be closed.

It is requested (not mandated) that the City maintain documentation of the safety improvement costs associated with fulfilling this Notice of Amendment (preparation/revision of plans, procedures) and submit the total to Robert Burrough, Director, PHMSA Eastern Region, 840 Bear Tavern Road, Suite 300, West Trenton, NJ 08628. Please refer to **CPF 1-2019-0008M** on each document you submit, and whenever possible provide a signed PDF copy in electronic format. Smaller files may be emailed to [robert.burrough@dot.gov](mailto:robert.burrough@dot.gov). Larger files should be sent on USB flash drive accompanied by the original paper copy to the Eastern Region Office.

Additionally, if you choose to respond to this (or any other case), please ensure that any response letter pertains solely to one CPF case number.

Sincerely,

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

Enclosures: *Response Options for Pipeline Operators in Compliance Proceedings*