

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 9, 2009

Mr. Greg Jans
Plant Manager
Midway Sunset Cogeneration Company
3466 West Crocker Spring Road
Fellows, CA 93224-0457

CPF 5-2009-0025M

Dear Mr. Jans:

On June 1-3, 2009, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected Midway Sunset Cogeneration Company's (MSCC) Operator Qualification (OQ) program in Fellows, California.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. §192.805 Qualification program

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(b) Ensure through evaluation that individuals performing covered tasks are qualified.

MSCC requires its contractors to submit proof of qualification with the MSCC OQ plan before performing any OQ-covered tasks. However, MSCC's OQ plan does not require sub-contractors to do the same. MSCC needs to expand the OQ provision for outside contractors performing covered tasks on its behalf to include sub-contractors as well.

2. §192.805 Qualification program

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified.

2a. MSCC's OQ program needs to be modified so that a non-qualified individual performing an OQ-covered task is both directed and observed rather than just observed.

2b. There are certain critical OQ-covered tasks such as hot tapping, stoppling, and welding that need to be performed by a qualified individual only. MSCC's OQ manual needs to be revised so that only qualified individuals from perform critical OQ covered tasks.

3. §192.805 Qualification program

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the Administrator or state agency has verified that it complies with this section.

MSCC has no provision in its OQ program to notify PHMSA or the appropriate regulatory agency of significant modifications that are made to its OQ program.

Response to this Notice

This Notice is provided pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237. 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). 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, after opportunity for a hearing, 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. § 190.237). If you are not contesting this Notice, we propose that you submit your amended procedures to my office within 30 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.

In correspondence concerning this matter, please refer to **CPF 5-2009-0025M** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

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

cc: PHP-60 Compliance Registry
PHP-500 H. Monfared (#125306)