

WARNING LETTER

VIA E-MAIL TO MR. JAMES R. MCCLURE

June 23, 2021

Mr. James R. McClure
President
Navajo Oil and Gas Company
50 Narbono Circle West
St. Michaels, AZ 86511

CPF 5-2021-032-WL

Dear McClure:

From March 4, 2021 to May 18, 2021, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected Navajo Nation Gas and Oil Company (NNGOC) PHMSA Drug and Alcohol (D&A) program by virtual and other electronic means.

As a result of the inspection, it is alleged that NNGOC has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are as follows:

1. § 40.11 What are the general responsibilities of employers under this regulation?

...

(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.

NNOGC was not responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations. NNOGC delegated some of its D&A program functions to its service agent; the Reliance Medical Group

(RMG). During the inspection of the NNOGC random drug testing program, PHMSA received several emails from the NNOGC Designated Employer Representative (DER) which stated that NNOGC refused to accept the responsibility for the failure of RMG to complete the drug testing of several of the employees selected for random drug testing.

2. §199.119 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) must submit an annual Management Information System (MIS) report to PHMSA of its anti-drug testing using the MIS form and instructions as required by 49 CFR part 40 (at §40.26 and appendix H to part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator may require by notice in the PHMSA Portal (<https://portal.phmsa.dot.gov/phmsaportallanding>) that small operators (50 or fewer covered employees), not otherwise required to submit annual MIS reports, to prepare and submit such reports to PHMSA.

NNOGC, a small operator, did not correctly prepare and submit the required annual MIS report to PHMSA after having been required by the Administrator to submit a report for calendar year 2019.

While NNOGC submitted an annual MIS report for calendar year 2019 to PHMSA, it did not include any random drug test information.

3. §199.113 Employee assistance program.

...
(c) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

The NNOGC EAP did not include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use for its supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause.

During the inspection, PHMSA asked for records of this required supervisor training. The NNGOC DER replied via return email that NNGOC did not have any training records because the training had not been completed.

4. §199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §199.225(b) receive at least 60 minutes of training on the physical, behavioral,

speech, and performance indicators of probable alcohol misuse.

NNGOC did not ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §199.225(b) received at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

During the inspection, PHMSA asked for records of this required supervisor training. The NNGOC DER replied via return email that NNGOC did not have any training records because the training had not been completed.

5. §199.105 Drug tests required.

...

(c)

...

(6) The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this subpart or any DOT drug testing rule.

NNGOC failed to randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator.

NNGOC conducts random drug testing through a consortium. In calendar year 2020, NNGOC's consortium failed to meet the minimum random drug test rate of 50 percent. The consortium selected only three employees for random drug tests; and, of those three, only one was tested for drugs, which is an annual rate of only 10 percent.

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 conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to correct the items identified in this letter. Failure to do so will result in NNGOC being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 5-2021-032-WL**. 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).

Sincerely,

Dustin Hubbard
Director, Western Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

cc: PHP-60 Compliance Registry