



U.S. Department
of Transportation

**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

WARNING LETTER

UNITED POSTAL SERVICE – DELIVERY SIGNATURE REQUESTED

September 7, 2010

**MR. JIM BENNING, DIRECTOR OF PUBLIC WORKS & UTILITIES
CITY OF DULUTH PUBLIC WORKS & UTILITIES
411 WEST FIRST STREET, RM 211
DULUTH, MINNESOTA 55802**

Reference: OpID No. **3590**

CPF 9-2010-1009W

Dear Mr. Benning:

As of April 15, 2010, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code audited your Management Information System (MIS) submittal and determined that no drug or alcohol testing data was received or entered for calendar year (CY) 2009.

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

1. § 199.119(a) Reporting of anti-drug testing results

Each large operator (having more than 50 covered employees) shall submit an annual MIS report to PHMSA of its anti-drug testing using the Management Information System (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 shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to PHMSA.

*** Note: An extension was granted to all operators to file CY2009 MIS data not later than April 15, 2010**

Probable Violation 1: No MIS drug testing report received.

Bases for the Violation 1: According to the Drug and Alcohol Management Information System (DAMIS) database, there is no drug testing data entered in DAMIS to indicate a MIS report was submitted either electronically or through the MIS paper form (OMB No. 2105-0529).

2. § 199.229(a) Reporting of alcohol testing results.

Each large operator (having more than 50 covered employees) shall submit an annual MIS report to PHMSA of its alcohol testing results using the Management Information System (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 previous calendar year (January 1 through December 31). The Administrator may require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to PHMSA.

*** Note: An extension was granted to all operators to file CY2009 MIS data not later than April 15, 2010**

Probable Violation 2: No MIS alcohol testing report received.

Bases for the Violation 2: According to the Drug and Alcohol Management Information System (DAMIS) database, there is no alcohol testing data entered in DAMIS to indicate a MIS report was submitted either electronically or through a MIS paper form (OMB No. 2105-0529).

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violation. 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 item(s) identified in this letter. Failure to do so will result in **CITY OF DULUTH PUBLIC WORKS & UTILITIES** being subject to additional enforcement action.

A reply to this letter is not required. If you choose to reply please refer to **CPF 9-2010-1009W**. 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 within 30-days of receipt of this letter. MIS submissions, replies or questions can be addressed to:

Stanley T. Kastanas, Director
Office of Substance Abuse Policy, Investigations and Compliance
Pipeline and Hazardous Materials Safety Administration
P.O. Box 945*
Lowell, MA 01854-0945*

*[*Note: Use only US Postal Service when mailing to this address. Call 202-550-0629 if you need to mail with any other mail carrier.]*

For electronic submissions or questions and guidance, please contact the undersigned PHMSA representative either through the address noted above or applying the following contact information:

Contact Number: 202-550-0629
E-mail Address: Stanley.Kastanas @DOT.GOV

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,

Stanley T. Kastanas, Director
Office of Substance Abuse Policy, Investigations and Compliance
Pipeline and Hazardous Materials Safety Administration