

WARNING LETTER

OVERNIGHT EXPRESS DELIVERY

May 25, 2023

Mr. Jason Grey
Director of Utilities
City of Danville
1040 Monument Street
Danville, Virginia 24540

CPF 1-2023-045-WL

Dear Mr. Grey:

From November 15, 2021, to February 28, 2022, an inspector from the Virginia State Corporation Commission, Division of Pipeline Safety (VA SCC), acting as Agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected City of Danville's (City) drug and alcohol program.

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

1. § 199.105 Drug tests required.

Each *operator* shall conduct the following drug tests for the presence of a *prohibited drug*:

(a) ...

(c) *Random Testing*.

(1) Except as provided in paragraphs (c)(2) through (4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

The City failed to conduct random drug tests for the presence of a prohibited drug. Specifically, the City failed to conduct the minimum annual percentage rate for random drug testing of 50 percent of covered employees, as required by §199.105(c)(1).

The City filed PHMSA's 2019 MIS report on February 5, 2020, as required per §199.119(b). The City's 2019 PHMSA/OPS Drug and Alcohol Testing Management Information System (Drug Testing) record identified 8 Pre-Employment tests, 11 Random tests, and 34 Total Number of Employees. Therefore, the City performed random drug testing on 32 percent (11 out of 34) of covered employees.

The City used a computer-based system to select employees to be randomly drug tested. The computer-based system is set to randomly select 50 percent. However, the minimum of 50 percent was not met. To prevent recurrence, the City took immediate action and established a review of the sampling rate to ensure at least 50 percent of covered employees are tested each year.

However, the City failed to conduct random drug testing at the minimum annual percentage rate of 50 percent of covered employees, in 2019, as required by §199.105(c)(1).

PHSMA encourages self-reporting of code violations. The City's transparency and corrective measure was taken into consideration during the selection of administrative enforcement actions.

2. § 199.105 Drug tests required.

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) ...

(e) Return-to-duty testing. A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning substance abuse professionals and the return-to-duty process.

The City failed to conduct return-to-duty test for the presence of a prohibited drug. Specifically, the City failed to perform a return-to-duty drug test before allowing a covered employee to resume performing covered functions after previously failing a random drug test.

During the inspection, the Virginia SCC inspector reviewed drug testing records for a covered employee performing covered function (Employee X). On June 10, 2020, Employee X conducted a random drug test. On July 19, 2020, the City received confirmation that Employee X's random drug test result was positive. On July 22, 2020, Employee X returned to work. The return-to-work drug test performed on July 21, 2020 did not comply with DOT Procedures.

Specifically, the return-to-work test did not document the urine collection using the Federal Drug Testing Custody and Control Form, as required per § 40.45 (a) and (b)¹.

¹ § 40.45 What form is used to document a DOT urine collection?

(a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. You may view this form on the Department's Web site (<http://www.transportation.gov/odapc>) or the HHS Web site (<https://www.samhsa.gov/workplace/forms-guidelines>).

(b) You must not use a non-Federal form or an expired CCF to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.

Therefore, the Company failed to conduct return-to-duty test for the presence of a prohibited drug, prior to allowing a covered employee to return to duty in the covered function, as required by §199.105(e).

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022, and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,142 for a related series of violations. For violation occurring on or after May 3, 2021, and before March 21, 2022, the maximum penalty may not 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 City of Danville 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 1-2023-045-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,

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