

WARNING LETTER

VIA ELECTRONIC MAIL TO: ewright@parpacific.com; MLoveless@parpacific.com; MBurns@parpacific.com.

August 23, 2024

Eric Wright
Vice President
Par Hawaii Refining, LLC
1132 Bishop Street, Suite 2500
Honolulu, HI 96813

CPF 2-2024-013-WL

Dear Mr. Wright:

From April 10 through June 5, 2024, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected the Par Hawaii Refining, LLC (Par Hawaii), Drug and Alcohol (D&A) program using email and other virtual methods.

As a result of the inspection, it is alleged that Par Hawaii has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR).¹ The items inspected and the probable violations are as follows:

- 1. § 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?**
(a)(1) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraphs (b) through (j) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transferring into a safety-sensitive position). If the employee refuses to provide this written consent, you

¹ The PHMSA regulations in 49 C.F.R. § 199.5 state that violations of the DOT Procedures in 49 CFR Part 40 are violations of 49 CFR Part 199 with respect to the anti-drug and alcohol programs required by Part 199.

must not permit the employee to perform safety-sensitive functions.

Par Hawaii did not obtain an employee's written consent and did not request the information listed in paragraphs (b) through (j) of § 40.25 about employees seeking to begin performing safety-sensitive duties for Par Hawaii for the first time (i.e., a new hire or an employee transferring into a safety-sensitive position).

The regulations in § 40.25 require an employer to first obtain an employee's written consent and then to request the information listed in § 40.25(b) through (j) from DOT-regulated employers who employed the employee during any period during the two years before the date of the employee's application or transfer into a safety-sensitive position, which the PHMSA regulations in Part 199 refer to as covered employees.

Par Hawaii's 2022 Management Information System (MIS) report showed three employees had been given DOT/PHMSA pre-employment drug tests and hired in 2022 to perform covered functions. Par Hawaii also hired trainees who, after completing the required training, were transferred to perform covered functions.

PHMSA requested copies of the written consent forms that should have been signed by the three employees listed on the MIS report and by the employees hired as trainees and then transferred to perform covered functions. PHMSA also asked for a redacted copy of the D&A background checks of these employees. Par Hawaii responded that they did not have the records requested.

2. § 40.347 What functions may C/TPAs perform with respect to administering testing? As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing.

(a) ...

(b)(2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.

Par Hawaii's third-party administrator (TPA) included employees not covered by DOT-agency (i.e., PHMSA) regulations in the same drug random pool with DOT covered employees.

Par Hawaii failed to differentiate its PHMSA "covered employees" as defined in § 199.3 from its non-DOT employees. As a result, the TPA included in its random drug testing pool for calendar year (CY) 2023 employees who were not DOT-regulated employees.

In CY 2023, Par Hawaii reported 138 covered employees. After discussing with the operator the specifics of what defines a covered employee under § 199.3 and an internal reevaluation, Par Hawaii determined that only 67 of the 138 employees worked on the 24-mile PHMSA regulated pipeline in CY 2023.

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not 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 \$2,391,412 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.

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 promptly correct these item. Failure to do so may result in Par Hawaii 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 2-2024-013-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,

James A. Urisko
Director, Southern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

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