

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 21, 2013

Mr. Peter Guadagni
Operations Manager
Island Energy
City of Pittsburg
440 Walnut Avenue
Mare Island, CA 94592-0001

CPF 5-2013-0007M

Dear Mr. Guadagni:

On November 28 through 30, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected Island Energy (IE), City of Pittsburg's procedures and records for their anti-drug and alcohol misuse plans in Pittsburg and Mare Island, California.

As a result of the inspection, PHMSA has identified inadequacies within IE's anti-drug and alcohol misuse plan procedures as described below:

- 1. §199.101 Anti-drug plan.**
 - (a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—**
 - (1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program.**

The IE anti-drug plan procedures were unclear to our Substance Abuse/Misuse Director. Within the anti-drug plan, references are made to regulations under the purview of the Federal Motor Carrier Safety Administration (FMCSA), which are not always applicable to personnel performing pipeline covered functions or consistent with PHMSA pipeline safety regulations. These references are potentially confusing for covered employees and plan administrators. IE's anti-drug plan must detail the methods and procedures used to ensure that "covered" employees, as defined by §199.3, comply with all of the requirements of 49 CFR Part 199.

2. §199.101 Anti-drug plan.

(a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

(1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program.

The IE anti-drug plan procedures were found inadequate by our Substance Abuse/Misuse Director with regards to defining a pipeline safety accident per §199.3. The IE anti-drug plan must include the §199.3 definition of an accident. Inclusion of this definition in IE's anti-drug plan allows covered employees, covered employee supervisors, the Designated Employer Representative (DER), and applicable service providers (e.g., collectors, MRO, laboratory) to discern the drug testing requirements for a "covered employee" involved in a PHMSA pipeline safety accident versus a FMCSA vehicular accident.

3. §199.101 Anti-drug plan.

(a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

(1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program.

The IE anti-drug procedures were found inadequate by our Substance Abuse/Misuse Director with regards to procedures outlining post-accident drug testing per 199.105(b). Post accident drug testing procedures must explicitly define which employees are covered by IE's anti-drug plan. Furthermore, the anti-drug plan does not adequately identify the covered employees, covered employee supervisors, the Designated Employer Representative (DER), and applicable service providers (e.g., collectors, MRO, laboratory) that must be considered for mandatory drug testing requirements following a PHMSA pipeline safety accident.

4. §199.202 Alcohol misuse plan.

Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

The IE alcohol misuse plan procedures were unclear to our Substance Abuse/Misuse Director. Within the alcohol misuse plan, references are made to regulations under the purview of the Federal Motor Carrier Safety Administration (FMCSA), which are not always applicable to personnel performing pipeline covered functions or consistent with PHMSA pipeline safety regulations. These references are potentially confusing for covered employees and plan administrators. IE's alcohol misuse plan must detail the methods and procedures used to ensure that "covered" employees, as defined by §199.3, comply with all of the requirements of 49 CFR Part 199.

5. §199.202 Alcohol misuse plan.

Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

The IE alcohol misuse procedures were found inadequate by our Substance Abuse/Misuse Director with regards to procedures outlining post-accident alcohol testing as required by §199.225(a)(1), §199.225(a)(2)(i), and §199.225(a)(3). Post-accident alcohol testing procedures must explicitly define which employees must be tested, when those tests must be administered, and actions to take be taken if a covered employee subject to post-accident testing refuses to submit to testing.

6. §199.202 Alcohol misuse plan.

Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

The IE alcohol misuse procedures were found inadequate by our Substance Abuse/Misuse Director with regards to procedures outlining post-accident use of alcohol as specified in §199.221. Procedures must be clear and definitive in IE's alcohol misuse plan in order for covered employees, potentially involved in a pipeline safety accident versus a FMCSA vehicular accident, to recognize their post-accident obligations. Moreover, covered employee supervisors, the Designated Employer Representative (DER), or other appropriate IE representative recognize their responsibility for ensuring 49 CFR Part 199 alcohol testing requirements are met by the affected covered employees.

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 CFR § 190.237). If you are not contesting this Notice, we propose that you submit your amended procedures to my office within thirty (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.

It is requested (not mandated) that Island Energy maintain documentation of the safety improvement costs associated with fulfilling this Notice of Amendment (preparation/revision of plans, procedures) and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration.

In correspondence concerning this matter, please refer to **CPF 5-2013-0007M** and send all documents to our office at 12300 W Dakota Ave., Suite 110, Lakewood CO, 80228, 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

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

cc: PHP-60 Compliance Registry
PHP-2 Stanley Kastanas (Activity #143489)