

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

VIA E-MAIL TO MR. MARTIN ADAMS

April 27, 2022

Mr. Martin Adams
General Manager
Los Angeles Department of Water and Power
111 N. Hope St.
Los Angeles, CA 90012

CPF 5-2022-037-NOPV

Dear Mr. Adams:

From January 3, 2022, to March 10, 2022, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected the Los Angeles Department of Water and Power (LADWP) Drug and Alcohol (D&A) Program using email, the internet, and other virtual methods.

As a result of the inspection, it is alleged that LADWP has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR).¹

¹ Pursuant to §199.5, violations, as alleged in this Notice, of the DOT Procedures in 49 CFR Part 40 for anti-drug and alcohol programs required by Part 199 would be violations of Part 199.

The items inspected and the probable violations are as follows:

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;**
 - (2) The name and address of each laboratory that analyzes the specimens collected for drug testing;**
 - (3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and**
 - (4) Procedures for notifying employees of the coverage and provisions of the plan.**

LADWP did not maintain and follow a written anti-drug plan that conformed to the requirements of Part 199 and the DOT Procedures.

When asked during the inspection to provide the written anti-drug plan required by §199.101(a), LADWP submitted to the PHMSA inspectors four documents. None of the documents met the requirements for a written PHMSA anti-drug plan as required by the regulations. The documents did not contain the required methods and procedures necessary for compliance with all the requirements of Parts 199 and 40 and did not contain the name and address of the Medical Review Officer (MRO) or the Substance Abuse Professional (SAP).

Confidential - Administrative Manual - Vol. 2 Sec. 100-02 - Health Policies & Gu - 3297

This two-page document was not a PHMSA written anti-drug plan. It was an interim LADWP D&A policy statement with a date of 11-17-86; two years before the promulgation of the PHMSA drug testing regulations in November 1988.

Confidential - Administrative Manual - Vol.2 Sec. 00-03- Health Policies & Guid – 3296

This 23-page document was not a PHMSA written anti-drug plan. It was an LADWP D&A health policy and guidelines document with a date of 01-02-97.

Confidential - DOT Employee Handbook February 2010

While this document with a date of February 2010 referred to the drug regulations of the U.S. Department of Transportation (DOT), the Federal Motor Carrier Safety Administration (FMCSA) and PHMSA, it was not a PHMSA written anti-drug plan developed in accordance with §199.101(a). The document conflated DOT, PHMSA, and FMCSA regulations, conflated company policies with PHMSA regulations, and contained erroneous, misleading, and out of date information.

Confidential - DOT Supervisor's Guide 2021

While this document with a date of April 2021 referred to the drug regulations of the U.S. DOT, the FMCSA and PHMSA, it was not a PHMSA written anti-drug plan developed in accordance with §199.101(a). The document conflated DOT, PHMSA, and FMCSA

regulations, conflated company policies with PHMSA regulations, and contained erroneous, misleading, and out of date information.

2. **§ 199.109 Review of drug testing results.**

...
(d) MRO reports. The MRO must report all drug test results to the operator in accordance with DOT Procedures.

The MRO who received the laboratory results of a positive random DOT drug test conducted on an LADWP covered employee on February 23, 2020, did not report the drug test results to the LADWP in accordance with DOT Procedures (i.e. 49 CFR Part 40).

The regulations in §199.5 require the anti-drug programs required by Part 199 to be conducted according to the requirements of both Parts 199 and 40. Section 40.11 states that employers are responsible for meeting all applicable requirements of Part 40 and are responsible for all actions of its officials, representatives, and agents (including service agents), in carrying out the requirements of the DOT agency regulations.

3. **§ 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.

LADWP did not maintain and follow a written alcohol misuse plan that conformed to the requirements of Part 199 and the DOT Procedures concerning alcohol testing programs.

When asked during the inspection to provide the written alcohol misuse plan required by §199.202, LADWP submitted to the PHMSA inspectors the same four documents it submitted for the written anti-drug plan (see item # 1 above). None of the documents met the requirements for a written PHMSA alcohol misuse plan as required by the regulations. The documents did not contain the required methods and procedures necessary for compliance with all the requirements of Parts 199 and 40.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to 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. 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 documentation involved for the above probable violations and recommend that LADWP be preliminarily assessed a civil penalty of \$38,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$19,000
2	\$19,000

Proposed Compliance Order

With respect to items 1 & 3 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Los Angeles Department of Water and Power. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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 you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2022-037-NOPV** and, for each

document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: PHP-60 Compliance Registry

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Los Angeles Department of Water and Power (LADWP) a Compliance Order incorporating the following remedial requirements to ensure the compliance of LADWP with the pipeline safety regulations:

- A. In regard to Item # 1 of the Notice pertaining to LADWP's failure to maintain and follow a written anti-drug plan that conformed to the requirements of 49 CFR Part 199 and the DOT Procedures in 49 CFR Part 40, LADWP must develop a written anti-drug plan that contains the specific methods and procedures it will use to comply with all the requirements of part 199 and part 40 and must submit the plan to PHMSA for review within 90 days of receipt of the Final Order.
- B. In regard to Item # 3 of the Notice pertaining to LADWP's failure to maintain and follow a written alcohol misuse plan that conformed to the requirements of 49 CFR Part 199 and the DOT Procedures in 49 CFR Part 40, LADWP must develop a alcohol misuse plan that contains the specific methods and procedures it will use to comply with all the requirements of part 199 and part 40 and must submit the plan to PHMSA for review within 90 days of receipt of the Final Order.
- C. In lieu of Items A & B above, LADWP may develop a combined anti-drug and alcohol misuse plan that contains the specific methods and procedures it will use to comply with all the requirements of 49 CFR Part 199 and the DOT Procedures in 49 CFR Part 40, and must submit the plan to PHMSA for review within 90 days of receipt of the Final Order.
- D. It is requested (not mandated) that LADWP maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.