

Mr. Dave DeBell
Human Resources Director
Western Gas Resources
12200 North Pecos Street
Denver, Colorado 80234

Re: CPF No. 56701

Dear Mr. DeBell:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and recognizes the completion of certain corrective action. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Based on the recommendation of the Director, Western Region, this case is now closed and no further enforcement action is contemplated with respect to the matters involved in this case. Thank you for your cooperation in our joint effort to ensure pipeline safety.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

)	
In the Matter of)	
)	
Western Gas Resources,)	CPF No. 56701
)	
Respondent.)	
)	

FINAL ORDER

On August 15, 1995, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's records, including its anti-drug and alcohol misuse prevention plans, in Denver, Colorado. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated March 5, 1996, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 199.7 and 199.202, and proposed that Respondent take certain measures to correct the alleged violations.

Respondent has submitted amended procedures, in correspondence dated March 5 and March 24, 1998. Respondent did not request a hearing and therefore waived its right to one.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. § 199.7, by failing to maintain a written anti-drug plan to conform with the following sections, as more fully described in the Notice:

49 C.F.R. § 199.7(a) -- failing to clearly separate your company anti-drug plan from those portions which are required by Parts 40 and 199;

49 C.F.R. § 199.11(c) -- failing to maintain written procedures describing random drug testing procedures;

49 C.F.R § 40.33(c)(3) -- failing to maintain written procedures requiring the designated

management official to employ procedures that ensure, to the maximum practicable extent, that employees' contact with the MRO be held in confidence;

49 C.F.R. § 40.33(c)(4) -- failing to maintain written procedures to indicate if, after making all reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave;

49 C.F.R. § 40.33(c)(5) -- failing to maintain written procedures to indicate the circumstances under which an MRO may verify a positive test without having communicated directly with the employee about the test;

49 C.F.R. § 40.33(c)(6) -- failing to maintain written procedures to describe the circumstances under which an employee may dispute an MRO's decision to declare a positive test, as described in 49 C.F.R. § 40.33(c)(5), after the MRO has been unable to communicate with the employee;

49 C.F.R. § 40.33(e) -- failing to maintain written procedures to describe the circumstances under which an MRO is authorized to conduct a reanalysis of the original sample, when an employee has received a positive test result after the employer has used the single sample method of collection;

49 C.F.R. § 40.33(i)(1) -- failing to maintain written procedures to describe the circumstances under which an MRO may disclose medical information relating to a drug test.;

49 C.F.R. § 40.25(e)(3) -- failing to maintain written procedures to specify the role a higher-level supervisor, or a designated representative, must play in the decision by a collection site person to obtain a specimen;

49 C.F.R. § 40.25(f)(3) -- failing to maintain written procedures to specify that if an individual fails to arrive at his or her assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken;

49 C.F.R. § 40.25(f)(10)(iv) -- failing to maintain written procedures to describe specimen collection procedures;

49 C.F.R. § 40.25(f)(16) -- failing to maintain written procedures to specify that whenever there is reason to believe that a particular individual has altered or substituted the specimen, a second specimen shall be obtained as soon as possible;

49 C.F.R. § 40.31(d)(4) -- failing to maintain written procedures to specify that employers with fewer than 2000 covered employees may submit blind performance test specimens, may submit only blank samples, or may submit two separately labeled portions of a specimen from

the same non-covered employee;

49 C.F.R. § 40.35 -- failing to maintain written procedures to specify that employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, and that the laboratory disclose information related to a positive drug test to the individual, the employer, or the decision maker in a lawsuit, grievance, or other proceeding initiated by the individual; and

49 C.F.R. § 40.37 -- failing to maintain written procedures to specify that any employee who is the subject of a drug test may have access to records relating to his or her drug test and records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Further, I find that Respondent violated 49 C.F.R. § 199.202, by failing to maintain a written alcohol misuse plan to conform with the following sections, as more fully described in the Notice:

49 C.F.R. § 199.207(a) and (b) -- failing to maintain written procedures to specify that subpart B of Part 199 preempts any state or local law, rule, regulation, or order under the conditions specified by this section, and that subpart B shall not be construed to preempt provisions of state criminal law;

49 C.F.R. § 199.211 -- failing to maintain written procedures to specify that before performing an alcohol test, each operator must notify a covered employee that the alcohol test is required by subpart B;

49 C.F.R. § 199.219 -- failing to maintain written procedures to specify that each operator shall prohibit covered employees from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty;

49 C.F.R. § 199.221-- failing to maintain written procedures to specify that each operator shall prohibit any covered employee from using alcohol following an accident if his or her performance has not been discounted as a contributing factor to the accident;

49 C.F.R. § 199.223 -- failing to maintain written procedures to specify each operator shall require a covered employee to submit a post-accident alcohol test, a reasonable suspicion alcohol test, or a follow-up alcohol test. No operator shall permit an employee who refuses to submit to such a test to perform covered functions;

49 C.F.R. § 199.225(b)(3) -- failing to maintain written procedures to specify that a covered employee may be directed to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions, just before the employee is to perform covered

functions, or just after the employee has ceased performing covered functions;

49 C.F.R. § 199.225(b)(iv) -- failing to maintain written procedures to specify no operator shall take any action against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test;

49 C.F.R. § 199.225(d)(2) -- failing to maintain written procedures to specify that follow-up testing shall be conducted when the covered employee is performing covered functions, just before the employee is to perform covered functions, or just after the employee has ceased performing such functions;

49 C.F.R. § 199.227(a) -- failing to maintain written procedures to specify each operator shall maintain records of its alcohol misuse prevention program in a secure location with controlled access;

49 C.F.R. § 199.227(b) -- failing to maintain written procedures to specify each operator shall maintain records based on the schedule contained in this section;

49 C.F.R. § 199.227(c)(1) -- failing to maintain written procedures to specify the following record must be maintained: connection process records, collection log books, calibration documentation, documents generated in connection with decision to administer reasonable suspicion alcohol tests, and documents verifying the existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing;

49 C.F.R. § 199.227(c)(2) -- failing to maintain the following specific written records: the operator's copy of the alcohol test form, documents related to an employee's refusal to submit to an alcohol test, and documents related to the refusal of a covered employee to dispute the result the result of an alcohol test administered under subpart B;

49 C.F.R. § 199.227(c)(3) -- failing to maintain written procedures to specify that each operator shall maintain any records that are related to other violations of subpart B of Part 199;

49 C.F.R. § 199.227(c)(4) -- failing to maintain written procedures to specify that each operator shall maintain records pertaining to any determination concerning a covered employee's need for assistance, and any recommendations made by a substance abuse professional;

49 C.F.R. § 199.227(c)(5) -- failing to maintain written procedures to specify that each operator shall maintain records related to the operator's MIS annual testing data;

49 C.F.R. § 199.229(a) -- failing to maintain written procedures to specify that each large operator shall submit an MIS report to RSPA by March 15 of each calendar year;

49 C.F.R. § 199.231(f) -- failing to maintain written procedures to specify that each operator shall make records available to a subsequent employer upon receipt of a written request from the covered employee;

49 C.F.R. § 199.231(h) -- failing to maintain written procedures to specify that each operator shall release information regarding a covered employee's records as directed by the written consent of the employee;

49 C.F.R. § 199.235 -- failing to maintain written procedures to specify that no operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243;

49 C.F.R. § 199.237(b) -- failing to maintain written procedures to specify that no operator is permitted to take action against an employee based solely on test results showing an alcohol concentration less than 0.04;

49 C.F.R. § 199.239(b)(3) -- failing to maintain written procedures to specify the exact period of the work day that each covered employee is required to be in compliance with subpart B of Part 199;

49 C.F.R. § 199.239(b)(6)-- failing to maintain written procedures to specify the procedures that will be used to test for the presence of alcohol, to protect the covered employee and the integrity of the breath testing process, to safeguard the validity of the test results, and to ensure that results are attributed to the correct employee;

49 C.F.R. § 199.243(e) -- failing to maintain written procedures to specify the entities a covered employee requiring assistance may and may not be referred to by a substance abuse professional;

49 C.F.R. § 40.51(a)(6) -- failing to maintain written procedures to specify that each breath alcohol technician (BAT) shall be trained in the operation of the EBT he or she is using, and in the alcohol testing procedures of Part 199, and maintain documentation, as provided in § 40.83, to indicate the training and proficiency test of each BAT who tests employees;

49 C.F.R. § 40.53(a) -- failing to maintain written procedures to specify that each employer may only use EBTs for screening tests;

49 C.F.R. § 40.55(a) -- failing to maintain written procedures to specify an EBT shall have a quality assurance plan developed by the manufacturer in order to be used in either screening or confirmation alcohol testing subject to Part 199;

49 C.F.R. § 40.57(a), (b), (d), and (e) -- failing to maintain written procedures to specify proper locations for breath alcohol testing, including unusual circumstances in which testing may be necessary at a facility that does not meet the requirements under paragraph (a), and failing to maintain procedures to indicate that the BAT shall supervise only one employee's use of the EBT at a time;

49 C.F.R. § 40.59 -- failing to maintain written procedures to specify the breath alcohol testing form to be used under Part 199;

49 C.F.R. § 40.61(a) and (b) -- failing to maintain written procedures to specify that the BAT will require positive identification from the employee upon the employee's entering the alcohol testing location, and the BAT shall explain the testing procedures to the employee;

49 C.F.R. § 40.63 -- failing to maintain written procedures for screening tests;

49 C.F.R. § 40.65-- failing to maintain written procedures for confirmation tests;

49 C.F.R. § 40.67(b) -- failing to maintain written procedures to specify that if a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number;

49 C.F.R. § 40.69 -- failing to maintain written procedures to address circumstances when an employee is unable to provide an adequate amount of breath;

49 C.F.R. § 40.79 -- failing to maintain written procedures to describe the circumstances under which a test is invalid; and

49 C.F.R. § 40.81(a) and (d) -- failing to maintain written procedures to specify that the employer shall maintain records in a secure manner, and make records available to the Secretary of Transportation, and any DOT agency or state agency with regulatory authority over the employer.

Based on the information contained in the record, I find that Respondent violated 49 C.F.R. §§ 199.7 and 199.202, by failing to maintain written anti-drug and alcohol misuse plans to conform with the preceding sections. These findings of violation will be considered as prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has demonstrated corrective action addressing the items in the proposed compliance order. The Director, Western Region, OPS has accepted these measures as adequately fulfilling the requirements of the regulations and no

further action is needed with respect to a compliance order.

Under 49 U.S.C. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon receipt.

/s/ Richard B.Felder

Richard B. Felder
Associate Administrator for Pipeline Safety

Date Issued: ____04/28/98____