



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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CERTIFIED MAIL

December 2, 2013

Tim Bruce
VP of Primary Production
Air Liquide Industrial, U.S. LP
2700 Post Oak, Suite 1800
Houston, Texas 77056

Dear Mr. Bruce:

**RE: 2013 Anti-Drug and Alcohol Misuse Inspection – Air Liquide Industrial, U.S. LP,
Kalama, WA**

Staff from the Washington Utilities and Transportation Commission (staff) conducted an Anti-Drug and Alcohol Misuse Plan Inspection from November 6 to November 7, 2013 at Air Liquide's (A-L) Kalama, WA facility. The inspection included a records review and inspection of A-L specimen collection facility.

Our inspection indicates two (2) probable violations as noted in the enclosed report. We also noted two (2) areas of concern, which unless corrected, could potentially lead to future violations of state and/or federal pipeline safety rules.

Your response needed

Please review the attached report and respond in writing January 3, 2014. The response should include how and when you plan to bring the probable violations into full compliance.

What happens after you respond to this letter?

The attached report presents staff's decision on probable violations and does not constitute a finding of violation by the commission at this time.

After you respond in writing to this letter, there are several possible actions the commission, in its discretion, may take with respect to this matter. For example, the commission may:

- Issue an administrative penalty under RCW 81.88.040, or;



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- Institute a complaint, seeking monetary penalties, changes in the company's practices, or other relief authorized by law, and justified by the circumstances, or;
- Consider the matter resolved without further commission action.

We have not yet decided whether to pursue a complaint or penalty in this matter. Should an administrative law judge decide to pursue a complaint or penalty, your company will have an opportunity to present its position directly to the commissioners.

If you have any questions or if we may be of any assistance, please contact Dennis Ritter at (360) 664-1159. Please refer to the subject matter described above in any future correspondence pertaining to this inspection.

Sincerely,



David D. Lykken
Pipeline Safety Director

Enclosure

cc: Scott Moon, Operations Supervisor Plant Manager
Gary Babish, ALIUS PP WZ Operations Manager
Jennifer Morgan, Human Resources, Employee Relations Generalist

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
2013 Anti-Drug and Alcohol Misuse Plan Inspection
Air Liquide Industrial, U.S. LP—Kalama, WA

The following probable violations and areas of concern of Title 49 CFR Part 40 and 199 were noted as a result of the 2013 inspection of the Anti-Drug and Alcohol Misuse Prevention Plan (Plan). The inspection included a review of the Plan for required elements, a review of record keeping practices including a random selection of records and field inspection of the specimen collection facility.

PROBABLE VIOLATIONS

1. **49 CFR §199.113 Employee Assistance Program**

(c) *Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.*

49 CFR §199.241 Training for Supervisors:

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Finding(s):

Air Liquide could not provide records that Scott Moon, Operations Supervisor, Kalama WA, had been trained as required.

2. **49 CFR §40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?**

- (a) *As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data listed in Appendix B to this part to the employer on a semi-annual basis.*
- (1) *The summary must not reveal the identity of any employee.*
 - (2) *In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.*
 - (3) *The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.*
 - (4) *The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.*

Finding(s):

During the inspection, the statistical summaries required by this section could not be produced by Air Liquide. Air Liquide subsequently requested these summaries from the laboratory which did produce them. These reports are to be sent to the operator twice per year and Air Liquide needs to ensure their laboratory is complying. However, as the records could not be found, they could not verify compliance.

AREAS OF CONCERN OR FIELD OBSERVATIONS

1. **49 CFR 40§40.229 What devices are used to conduct alcohol screening tests?**

EBTs and ASDs on the NHTSA conforming products lists (CPL) for evidential and non-evidential devices are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

Finding(s):

Air Liquide's Plan states the following in Appendix B:

"LIST OF APPROVED EVIDENTIAL BREATH TESTING DEVICES (EBTS)
UTILIZED:

EBT Manufacture Name and EBT Model Name: Lifeloc Technologies Phoenix 6."

However, the operator approved specimen collection facility, Peace Health Medical Group, uses a Drager Alcoltest 7410 Plus. This machine is on the NHTSA CPL, however, it should be listed in the Plan or language added to the Plan which allows other NHTSA approved EBTs to be used.

2. **49 CFR 40§40.43 What steps must operators of collection sites take to protect the security and integrity of urine collections?**

(e) *If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.*

- (1) *Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).*
- (2) *Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.*
- (3) *You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.*
- (4) *You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.*

Finding(s):

In conducting the collection site walk through, it was noted that door to the collection area from lobby was not locked. It was also noted that specimens which have been collected and processed and are waiting to be shipped to various labs are not secure-they are placed in bins in a pass through area. Access to this area is not secure; the doors on each end were open and unlocked, although, according to staff, you must be escorted to be in this area. This situation should be discussed with your consortium to ensure it complies with their requirements as well as the rule.