



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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Sent Via Email

December 7, 2020

Randy L. Knowles
President of the Board of Commissioners
Klickitat PUD
1313 South Columbus Ave.
Goldendale, WA 98620

RE: 2020 Biogas to Natural Gas Technical Assistance Drug and Alcohol Inspection– Klickitat County Public Utility District - Renewable Natural Gas Expansion (Insp. No. 8200)

Dear Mr. Knowles:

Staff from the Washington Utilities and Transportation Commission (staff) conducted a Technical Assistance inspection, of Klickitat County Public Utility District Renewable Natural Gas Expansion (KPUD) on September 22, 2020. The inspection included a procedure and records review of KPUD's Drug and Alcohol program.

Our inspection indicates **ten** potential violations as noted in the enclosed report, which unless corrected, could potentially lead to future violation of state and/or federal pipeline safety rules.

Your response needed

Please review the attached report and respond in writing by January 8, 2021. The response should include how and when you plan to bring the potential violations into full compliance. **Since this inspection was a technical assistance inspection, we will not pursue a penalty or complaint at this time.**

If you have any questions, please contact Darren Tinnerstet at (360) 764-0779.

Sincerely,

Sean C. Mayo
Pipeline Safety Director

cc: Doug Senn, Site Supervisor, KPUD
Kevin Ricks, Renewable Energy Assets Manager, KPUD
Roy Rodgers, Consultant, Cathodic Protection Engineering, Inc.

UTILITIES AND TRANSPORTATION COMMISSION
2020 Biogas to Natural Gas Technical Assistance Pipeline Safety Inspection
Klickitat County Public Utility District – Renewable Natural Gas Expansion

The following potential violations of Title 49 CFR Parts 40 and 199 were noted as a result of the 2020 technical assistance inspection of the Klickitat County Public Utility District Renewable Natural Gas Expansion (KPUD). The inspection included a comprehensive review of the KPUD's Drug and Alcohol plan.

PROBABLE VIOLATIONS

1. **49 CFR §40.11(b) What are the general responsibilities of employers under this regulation?**

(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.

Finding:

KPUD failed to include the provision in their manual that as an operator they are responsible for the actions of all its service agents, including a consortium / third party administrator.

2. **49 CFR §40.25 Previous Employer DOT D&A Records Check**

a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) 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 transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;*
- (2) Verified positive drug tests;*
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);*

(4) Other violations of DOT agency drug and alcohol testing regulations; and

(5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

Finding:

KPUD failed to include the proper process in their manual for requesting previous employer DOT D&A records.

3. **CFR 49 §40.13 DOT vs. Non-DOT D&A Tests**

(a) DOT tests must be completely separate from non-DOT tests in all respects.

(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.

Finding:

The KPUD D&A manual did not provide a process to separate and prioritize DOT D&A testing over Non-DOT testing.

4. **CFR 49 §199.5 Qualification Requirements**

Operator's D&A program positions and/or service agents must meet the applicable qualification requirements of Part 40 and Part 199:

- 1. Medical Review Officer (MRO) [40.121 and 199.109(b)]*
- 2. Urine Specimen Collector [40.3]*
- 3. Substance Abuse Professional (SAP) [40.281]*
- 4. Laboratories certified by the Department of Health and Human Services (HHS) National Laboratory Certification program (NLCP) [40.81(a) and 199.107(a)]*

Finding:

KPUD was not able to provide records and/or documentation for all D&A program positions and/or service agents meeting the applicable qualifications requirements.

5. **CFR 49 §199.113 Employee assistance program.**

(a) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP

services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(b) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(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.

Finding:

The KPUD D&A manual did not include a process for differentiating between separate 60-minute training sessions for supervisors, one for drugs and one for alcohol. KPUD did not provide a copy of the EAP informational material provided to employees or the name of the third-party contractor who provides their EAP services.

6. **CFR 49 §40.213 Qualification Requirements for STT's and BAT's**

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

(a) *You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. Procedures and guidance are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-3784, or on the ODAPC Web site, <http://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at (<https://www.transportation.gov/odapc/get-odapc-email-updates>).*

(b) *Qualification training. You must receive qualification training meeting the requirements of this paragraph (b).*

(1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.

(2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (i.e., the ASD(s) or EBT(s)) you will be using.

(3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT

or BAT training, as applicable, under this part for a year, or who has successfully completed a “train the trainer” course.

(c) *Initial Proficiency Demonstration.* Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).

(1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be an individual who meets the requirements of paragraph (b)(4) of this section.

(2) These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.

(3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.

(d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform STT or BAT functions.

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

Finding:

KPUD was unable to provide records verifying that their D&A program positions and/or service agents meet the applicable qualification requirements of Part 40 and Part 199. Specifically, no records were available for qualifications of Screening Test Technician (STT) or Breath Alcohol Technician (BAT)

7. **CFR 49 §40.229 Alcohol Screening Test Devices**

ASDs listed on the Office of Drug & Alcohol Policy & Compliance’s Web page for “Approved Screening Devices to Measure Alcohol in Bodily Fluids” and EBTs listed on the ODAPC’s Web page for “Approved Evidential Breath Measurement Devices” are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD 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 must not be used for confirmation tests.

Finding:

The process contained in KPUD’s D&A manual does not require that Alcohol Screening Devices and Evidential Breath Testing devices be approved and listed by the ODAPC on their web page.

8. **CFR 49 §40.231(a) Alcohol Confirmation Test Devices**

(a) EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.

Finding:

The process contained in KPUD's D&A manual does not require that Alcohol Confirmation Devices and Evidential Breath Testing devices be approved and listed by the ODAPC on their web page.

9. **CFR 49 §40.255(a)(5) BAT Alcohol Confirmation Test Reports**

(a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:

(5) Immediately transmit the result directly to the DER in a confidential manner.

Finding:

The process contained in KPUD's D&A manual does not require that confirmation test results must be reported for both positive and negative test results.

10. **CFR §199.239(a) Alcohol Misuse Program Educational Materials**

(a) General requirements. Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

Finding:

KPUD was unable to provide records of the alcohol educational materials which were provided to covered employees and written notice to representatives of employee organizations.