

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 05, 2023

GI-2022-10-ANG-35-06-07

Michael Lamond
CFO/Administrator
(209) 772-3006
P.O. Box 550
Valley Springs, California 95252

SUBJECT: Closure Letter for the 2022 General Order (GO) 112-F Gas Inspection of Alpine Natural Gas's Operator Qualification and Anti-Drug and Alcohol Misuse Programs

Dear Mr. Lamond:

The Safety and Enforcement Division (SED) of the California Public Utilities Commission reviewed Alpine Natural Gas's (ANG) response letter dated December 1, 2022 for the findings identified during the General Order 112-F inspection of ANG's Operator Qualification and Anti-Drug and Alcohol Misuse Prevention Programs. The inspection was conducted between October 10 and October 12, 2022.

Included is SED's evaluation of ANG's responses taken for the three (3) violations and five (5) identified Areas of Concern.

This letter serves as the official closure of the 2022 GO 112-F Inspection of ANG's Operator Qualification and Anti-Drug and Alcohol Misuse Programs.

Thank you for your cooperation in this inspection. If you have any questions, please contact Victor Muller at (916) 327-6780 or by email at Victor.Muller@cpuc.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dennis Lee".

Dennis Lee, P.E.
Program and Project Supervisor
Gas Safety and Reliability Branch
Safety and Enforcement Division

Cc: Terence Eng, SED
Victor Muller, SED
Jason McMillan, SED

Summary of Inspection Findings

Dates of Inspection: 10/10/2022-10/12/2022

Operator: ALPINE NATURAL GAS

Operator ID: 31515 (primary)

Inspection Systems: Alpine Natural Gas

Assets (Unit IDs) with results in this report: Alpine (87544)

System Type: DA

Inspection Name: 2022 Alpine Natural Gas D&A

Lead Inspector: Victor Muller

Unsatisfactory Results

Drug and Alcohol : General Program Requirements (DA.GENERAL)

Question Title, ID DOT vs. Non-DOT D&A Tests, DA.GENERAL.NONDOTTESTS.P

Question 5. Does the process separate and prioritize DOT drug and alcohol testing over all non-DOT drug and alcohol testing?

References 40.13(a) (40.13(b))

Issue Summary Title 49 Code of Federal Regulations (CFR) §40.13(f) states:

(f) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

During this inspection, SED discovered that ANG has been using the Department of Transportation (DOT) Alcohol Transfer Form (ATF) for all alcohol testing, including the random alcohol testing outlined in Article V.C of ANG's Drug & Alcohol (D&A) Policy. Random alcohol testing is not required by Parts 199 or 40. Therefore, random alcohol tests are non-DOT tests. SED finds ANG in violation of Title 49 CFR §40.13(f) for using the DOT ATF for non-DOT tests. ANG must ensure that the DOT ATF and the Federal Drug Testing Custody and Control Form (CCF) are not being used for non-DOT tests.

ANG's Response:

Alpine will ensure that moving forward it will not use the DOT ATF and CCF are not being used for non-DOT tests.

SED's Conclusion:

SED has reviewed and accepted ANG's response. SED may review any actions taken regarding this violation during the next Anti-Drug and Alcohol Misuse inspection.

Drug and Alcohol : Anti-Drug Program (DA.DRUG)

Question Title, ID Random Drug Testing, DA.DRUG.RANDOM.P

Question 6. Does the process ensure that random drug testing is conducted as required?

References 199.105(c)(5) (199.105(c)(6), 199.105(c)(7), 199.105(c)(8), 199.105(c)(9))

Issue Summary Title 49 CFR §199.105(c)(1) states:

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(c) Random testing.

(1) Except as provided in paragraphs (c)(2) through (4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued docket number PHMSA-2020-0135 establishing the minimum random drug testing rate for 2021 at 50%. ANG's Management Information System (MIS) report for 2021 shows that 1 of 3 covered employees were randomly tested. SED finds ANG in violation of Title 49 CFR §199.105(c)(1) for failure to meet the minimum annual percentage rate for random drug testing.

Additionally, Article V.C of ANG's D&A plan states in part, "C. Random Testing. Company may conduct random alcohol and drugs tests." Title 49 CFR §199.105(c)(1) establishes that it is mandatory for ANG to perform random drug testing. SED recommends that ANG revise their D&A policy to indicate that ANG will/shall/must conduct random drug testing.

ANG's Responses:

Alpine will ensure that moving forward it will meet the minimum annual percentage rate for random drug testing.

Article V, Section C (of ANG's revised Alcohol and Drug Policy).

SED's Conclusion:

SED has reviewed and accepted ANG's responses. SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.

Drug and Alcohol : Alcohol Misuse Prevention Program (DA.ALCOHOL)

Question Title, ID Alcohol Misuse Program Educational Materials Content, DA.ALCOHOL.EDUCATIONCONTENT.R

Question 16. Do records indicate the alcohol misuse educational materials provided by the operator included the required content?

References 199.239(b)

Issue Summary Title 49 CFR §199.239(b)(5) states:

(b) Required content. The materials to be made available to covered employees shall include detailed discussion of at least the following:

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

Article V.C of ANG's D&A policy states that the, "Company may conduct random alcohol and drugs tests." Random alcohol testing is not required by Subpart C of Part 199 or Parts 40 and 199. Random alcohol tests performed by an operator are therefore non-DOT tests. ANG's D&A policy does not clearly identify random alcohol tests as non-DOT tests, nor do any of the other educational materials provided by ANG. SED finds ANG in violation of Title 49 CFR §199.239(b)(5) for failure to communicate to covered employees under which circumstances they are subject to DOT testing.

ANG's Response:

Article V, Section C (of ANG's revised Alcohol and Drug Policy).

SED's Conclusion:

SED has reviewed and accepted ANG's responses. SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.

Concerns

Drug and Alcohol : General Program Requirements (DA.GENERAL)

Question Title, ID Previous Employer DOT D&A Record Checks, DA.GENERAL.PREVIOUSEMPLOYERRECORDS.P

Question 4. Does the process include previous employer DOT D&A record checks for employees seeking to perform covered functions for the first time (i.e., a new hire or an employee transferring into a safety-sensitive position)?

References 40.25(a) (40.25(b), 40.25(c), 40.25(d), 40.25(e), 40.25(f), 40.25(g), 40.27, 40.321(b), 40.351(d))

Issue Summary ANG's D&A policy does not contain requirements for ANG to get written consent per Title 49 CFR §40.25(a) from new or transferred employees prior to requesting the required information listed in Title 49 CFR §40.25(b) from a previous employer. SED understands that ANG has not employed anyone to perform covered tasks that worked for a DOT-regulated employer within 2 years of being employed by ANG, but SED recommends that ANG amend their D&A policy to ensure future compliance with Title 49 CFR §40.25(a).

ANG's Response:

Article II, Sections A-E (of ANG's revised Alcohol and Drug Policy).

SED's Conclusion:

SED has reviewed and accepted ANG's responses. SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.

Drug and Alcohol : Anti-Drug Program (DA.DRUG)

Question Title, ID Prohibited Drugs, DA.DRUG.PROHIBITEDDRUGS.P

Question 3. Does the process require that DOT drug tests are only conducted for the "prohibited drugs" specified in Part 40?

References 199.3 (40.3)

Issue Summary Title 49 CFR §40.3 defines the term "drugs" as used in Part 40 and Title 49 CFR §40.85 lists 5 categories of drugs that DOT samples may be tested for. From Title 49 CFR §40.85:

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test "DOT specimens" for any other drugs.

(a) Marijuana metabolites.

(b) Cocaine metabolites.

(c) Amphetamines.

(d) Opioids.

(e) Phencyclidine (PCP).

Article III(b)(2) of ANG's D&A policy defines Illegal drugs and substances as including, "...drugs which are not legally obtainable, like marijuana, cocaine, amphetamines, designer drugs, "controlled substances," and drugs which are legally obtainable but have been obtained illegally (for example, using drugs prescribed for some one else)."

This definition of illegal drugs is not associated with ANG's testing procedures. SED understands that ANG does not test for any drugs beyond the five classes specified in Part 40, and SED recognizes that ANG may require that employees not use or possess illegal drugs and substances as defined by ANG's D&A policy, including those omitted by Part 40, as a condition of employment. However, the policy does not otherwise clarify which drugs DOT samples are tested for and there may be an implication that ANG's more expansive list of illegal drugs are tested for by ANG instead of the 5 classes of drugs required by Part 40. SED recommends that ANG revises their policy to clarify that ANG's DOT drug tests only test for the required classes of drugs.

ANG's Responses:

Article III, Subsection B.2 (of ANG's revised Alcohol and Drug Policy).

SED's Conclusion:

SED has reviewed and accepted ANG's responses. SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.

Question Title, ID Reasonable Cause Drug Testing, DA.DRUG.REASONABLECAUSE.P

Question 7. Does the process ensure that reasonable cause drug testing is conducted as required?

References 199.105(d) (199.117(a)(3), 40.355(g), 40.355(h))

Issue Summary Article V.F of ANG's D&A Policy states that the "Company's representative" will justify reasonable cause drug testing. Title 49 CFR §199.105(d) requires a trained supervisor to justify reasonable cause drug testing. SED recommends that ANG better define the term "Company representative" to ensure compliance with Title 49 CFR §199.105(d).

ANG's Response:

ANG did not respond to this concern.

SED's Conclusion:

SED maintains this concern and recommends that ANG better define which company representatives can justify reasonable cause drug testing to ensure compliance with Title 49 CFR §199.105(d). SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.

Question Title, ID Follow-Up Drug Testing, DA.DRUG.FOLLOWUPTTEST.P

Question 9. Does the process ensure that follow-up drug testing is conducted as required?

References 199.105(f) (40.67(b), 40.307, 40.309)

Issue Summary SED understands that ANG has not had an employee return-to-duty and therefore has not performed follow-up testing.

Articles V and VI of ANG's D&A Policy outline the requirements for an employee to return-to-duty, but do not detail the requirements of parts 199 and 40 for follow-up afterwards. There are statements within these articles that ANG will follow the requirements of Title 49 CFR Part 40, Subpart O, but those statements are accompanied by insufficient details. SED recommends that ANG add sufficient details to Article VI of their D&A Policy regarding when follow-up testing will be required and the responsibility of the Substance Abuse Professional (SAP) in determining the number and frequency of tests to ensure future compliance with Title 49 CFR §199.105(f) and §199.225(d).

ANG's Response:

Article VI, Subsection B.3 (of ANG's revised Alcohol and Drug Policy).

SED's Conclusion:

SED has reviewed and accepted ANG's responses. SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.

Training and Qualification : Operator Qualification (TQ.OQ)

Question Title, ID Notification of Significant Plan Changes, TQ.OQ.CHANGENOTIFY.P

Question 1. Does the process require significant OQ program changes to be identified and the Administrator or State agency notified?

References 192.805(i) (192.18)

Issue Summary Part Ten of ANG's Operator Qualification (OQ) plan states that ANG will notify the CPUC if a change is "deemed major". However, the process does not define what the major changes are. SED recommends that ANG add processes to their OQ plan that identify "significant" changes to ensure future compliance with Title 49 CFR §192.805(i)

ANG's Responses:

Response: Part Ten of ANG's OQ Plan was revised by replacing "deemed major" to "significant," and significant changes include, without limitation: increasing evaluation intervals, increasing span of control ratios, eliminating covered tasks, mergers and/or acquisition changes, evaluation method changes such as written vs. observation, and wholesale changes made to OQ plan.

SED's Conclusion:

SED has reviewed and accepted ANG's responses. SED may review any actions taken regarding this concern during the next Anti-Drug and Alcohol Misuse inspection.