



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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June 27, 2019

Heather Rosentrater
Vice President, Energy Delivery
Avista Utilities Corporation
1411 East Mission
PO Box 3727
Spokane, WA 99220-3727

RE: 2019 Combined Anti-Drug and Alcohol Misuse Program Audit – Avista Corporation - Headquarters (Insp. No. 7783)

Dear Ms Rosentrater:

Staff from the Washington Utilities and Transportation Commission (staff) conducted a Combined Anti-Drug and Alcohol Misuse Program audit in your Spokane headquarters on May 7-8, 2019. The inspection was conducted jointly with the Idaho Public Utilities Commission and included a review of your program procedures and records.

Our inspection indicates three probable violation(s) as noted in the enclosed report. We also noted one area 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 by July 29, 2019. 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 81.04.405; or

- Issue a complaint under RCW 81.88.040, seeking monetary penalties, changes in the company's practices, or other relief authorized by law, and justified by the circumstances. Any pipeline company that violates any pipeline safety provision of any commission order, or any rule in this chapter including those rules adopted by reference, or chapter [81.88](#) RCW is subject to a civil penalty not to exceed two hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty for a related series of violations is two million dollars; or
- Consider the matter resolved without further commission action.

We have not yet decided whether to pursue a penalty or complaint in this matter. Should the commission decide to assess a penalty or initiate a complaint, your company will have an opportunity to respond and formally present its position.

If you have any questions or if we may be of any assistance, please contact Scott Rukke at (360) 870-4923 or at scott.rukke@utc.wa.gov. Please refer to the subject matter described above in any future correspondence pertaining to this inspection.

Sincerely,



Sean C. Mayo
Pipeline Safety Director

cc: Mike Faulkenberry, Director of Natural Gas
Karen Cash, Manager, Integrity Management and Compliance
Paul Good, Manager, Integrity Management and Compliance
Randy Bareither, Pipeline Safety Engineer

UTILITIES AND TRANSPORTATION COMMISSION
2019 Combined Anti-Drug and Alcohol Misuse Program Audit No. 7783
Avista Utilities, Headquarters, Spokane Washington

The following probable violation(s) and area of concern of Title 49 CFR Part 199 were noted as a result of the 2019 Combined Anti-Drug and Alcohol Misuse Audit of Avista Utilities' (Avista) company wide program. The inspection included a review of the program records for Avista Utilities and associated contractor personnel.

PROBABLE VIOLATIONS

1. **49 CFR §199.105(c)(1) and (c)(6) Drug Tests Required**

(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.*

(6) *The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this subpart or any DOT drug testing rule.*

Finding(s):

Avista uses multiple contractors to perform construction and maintenance activities on their gas distribution and transmission systems. These contractors perform covered functions which requires that they have a Drug and Alcohol testing program that meets the requirements of Title 49 CFR Parts 199 and 40. The annual random drug testing rate for 2018 was 50-percent of covered employees as determined by the PHMSA Administrator. The percentage of random tests required each year is based on the positive test rate from the previous year and is either 25-percent or 50-percent of covered employees.

The following contractors performing covered functions for Avista did not meet the random drug testing rate for 2018:

a. Advanced Underground Utility Locating (AUUL):

AUUL is part of a "consortium" pool administered by a third party.

During our inspection, a review of the contractors DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form indicated that the contractor may not have met the 50-percent random testing rate. Avista has since

confirmed that the consortium pool did not meet the required testing rate of 50-percent for 2018. Avista removed AUUL as a contractor as of April 2019

b. Cascade Cable Constructors Inc:

Cascade Cable was part of a “consortium” pool administered by a third party. During our inspection a review of the contractors DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form indicated that the contractor may not have met the 50-percent random testing rate. Avista has since confirmed that the consortium pool did not meet the required testing rate of 50-percent for 2018. The contractor has opted to be removed from the consortium pool and have a stand-alone pool for 2019.

2. **49 CFR §199. 113(c) Employee assistance program.**

§199.113(c) 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.*

Finding(s):

Avista uses multiple contractors to perform construction and maintenance activities on their gas distribution and transmission systems. These contractors perform covered functions which requires that they have a Drug and Alcohol testing program that meets the requirements of CFR Parts 199 and 40. Drug testing based on reasonable cause requires the concurrence of two supervisors, one if which is trained in specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. MIS records for Avista’s contractor ELM Locating and Utility Services indicated that they performed 5 reasonable suspicion drug tests in 2018. Only one employee actually worked in Washington State on Avista’s facilities. We requested that Avista provide the required 60 minute training record for the supervisors that initiated the test. Neither the supervisor nor the company Designated Employer Representative (DER) had received the required training at the time the test was initiated.

Area of Concern

49 CFR §199.115 Contractor employees.

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this part are complied with; and

(b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

Findings:

Avista's process for monitoring contractor compliance with Title 49 CFR Parts 199 and 40 appears to not be adequate to ensure all requirements of the parts are met. Avista should implement a process to better monitor contractors including any third party consortiums or administrators for compliance with the drug and alcohol testing requirements of Parts 199 and 40 of the CFR.