

February 8, 1994

This is in response to your correspondence of November 1, 1993, requesting an opinion to determine whether the services that your company provides to pipeline operators would subject your employees to the drug testing requirements under 49 CFR Parts 199 and 40.

You indicated your company's major function is to independently observe pressure tests of pipelines that transport liquid or gas hydrocarbons and then to prepare and issue certified test reports. These services include tests of both newly constructed pipelines and for periodical testing of existing pipelines.

Your three questions and our responses are outlined below:

QUESTION: Can a contractor disclose the specific drug test results to the pipeline company for whom it is performing services requiring drug testing under 49 CFR Part 199? If your answer to the above question is no, can our company disclose "statistical" drug test results to a pipeline operating company?

ANSWER: Under 49 CFR Section 199.21, an operator is responsible for ensuring that its contractors are in compliance with the drug testing regulations. To ensure compliance, the regulation provides that an operator must be allowed access to the contractor's records, including records relating to specific drug testing results. While Section 199.23(b) restrict disclosure of information regarding specific drug testing results, the regulation does not apply to an operator monitoring its "employees" for purposes of compliance with the drug testing regulations. Thus, an operator may require a contractor to provide specific drug testing information and statistical data on those employees performing a covered function for the operator during the duration of the contract.

QUESTION: Are our employees subject to drug testing in accordance with Part 199? Our employees observe initial pressure testing of newly constructed pipelines and periodical testing of existing pipelines. Initial pressure testing of newly constructed pipelines is a required function under 49 CFR Parts 192 and 195. However, periodical pressure testing (other than initial pressure testing) of existing pipelines is not required under Parts 192 and 195. A representative of the California Fire Marshal's Office presented an opinion letter, dated April 10, 1990, prepared by your office which addressed the issue of witnessing "Live Gas Test."

ANSWER: Since new construction is exempted from the drug testing regulations the observation of initial pressure testing by your employees would not subject them to the drug

testing requirements. Also witnessing a test for some reason unconnected with compliance with a Part 192 operation or maintenance requirement would not subject an employee to drug testing.

Subpart J of Part 192 does address various test requirements when operators perform repair, replacement or relocation of pipelines. Hydrostatic testing would involve operation of a pipeline, maintenance of a pipeline, or the response to a pipeline emergency. Therefore, if such testing is done to satisfy an operation or maintenance requirement of Part 192, such as checking the line for leaks, then the employees performing the function would be subject to the drug testing regulations.

An example might be, when a corroded pipeline section is replaced and hydrostatically tested as required, the hydrostatic testing involves maintenance or possibly emergency response. As another example, when a pipeline is hydrostatically tested to qualify it for operation at a higher pressure, the hydrostatic testing involves operation of the pipeline.

Thank you for your inquiry. Please let me know if you need additional information about our drug testing requirements.

Sincerely,

Richard L. Rippert
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Office of Pipeline Safety
Compliance