

2011 South Dakota Pipeline Safety Inspection

Summary of Deficiencies

Operator: Xcel Angus Anson

Inspection Types: Drug and Alcohol Plan Inspection

Inspection Dates: 12/12/2011-12/14/2011, 12/21/2011; 03/02/2012, 03/05/2011-03/07/2012

Notices of Probable Violation

| Code Section | Code Description | Deficiency Noted | Proposed Correction Due Date | Penalty Proposed | Maximum Allowable Penalty | Compliance Order Proposed |
|--------------|---------------------|---|------------------------------|------------------|---------------------------|---------------------------|
| §199.105(c) | Random Drug Testing | The majority Xcel's employees are being randomly tested under their DOT driver random testing. However, there are a number of gas only employees that have been excluded from random testing, because they are not covered by the DOT driver testing. These employees need to be included in a random testing pool immediately. | 09/30/2012 | \$750 | \$10,000 | |

Warnings

| Code Section | Code Description | Deficiency Noted | Warning | Proposed Correction Due Date |
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| §199.101 | <p>A.01.a. Written Anti-Drug Plan</p> <p>A.01.a. Verify that the operator maintains and follows a written Anti-Drug Plan that conforms to Part 199 and Part 40 and that the plan contains the following [§199.101]:</p> <ol style="list-style-type: none"> 1. Methods and procedures for compliance with all the requirements of Part 199, including the employee assistance program; 2. The name and address of each laboratory that analyzes the specimens collected for drug testing; | <p>These are all contained in the plan. However, the information has not been kept current. The plan must be updated to include the new information.</p> | <p>Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action.</p> | 04/30/2012 |

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| | <p>3. The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and</p> <p>4. Procedures for notifying employees of the coverage and provisions of the plan.</p> | | | |
| §40.13 | <p>A.01.d. DOT vs. Non-DOT Tests</p> <p>A.01.d. Verify that the Anti-Drug Program ensures that the DOT tests are completely separate from non-DOT tests in all respects [§40.13].</p> | Need to add language in section 3 that addresses this. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.21, §199.7 | <p>A.02.a.Employee Stand Down</p> <p>Verify that the Anti-Drug Program prohibits standing down an employee before the Medical Review Officer (MRO) has completed the drug test verification process or that an approved waiver is granted per the requirements of [§40.21] and [§199.7].</p> | It was stated that this is Xcel's common practice. However, it is not addressed the plan and needs to added. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.25, §199.105(a) | <p>C.01.a. Verify that drug testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)].</p> <ul style="list-style-type: none"> In addition, verify that a covered employee must not perform their 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 | A documented good faith effort is not being completed for gas employees. The information is being requested, but follow-up is not being done. This needs to be rectified. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

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| | effort to obtain drug testing information from previous DOT-regulated employers. | | | |
| §199.105(b) | <p>C.02 Post-Accident Drug Testing Verify that the Anti-Drug Program ensures that post-accident tests for the presence of a prohibited drug are completed as required by §199.105(b).</p> <p>C.02.a. Verify that post-accident drug testing is performed, as soon as possible but no later than 32 hours after an accident (§ 195.50) or incident (§ 191.3), for each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident [§199.105(b)].</p> <ul style="list-style-type: none"> In addition, verify that procedures are in place for direct observation when required under §§40.67(a), (b) and (d) | The within 32 hrs criteria is missing from the plan's requirements. This needs to be amended. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.105(c) | <p>C.03.a. Minimum Annual Percentage Rate C.03.a. Verify that the minimum annual percentage rate used for random drug testing of covered employees complies with §199.105(c)(1) through (4).</p> | <p>Language needs to be added to Section 6.4.2, page 7 of 14 referring to the DOT minimum guidelines for random testing.</p> <p>The form numbers mentioned in the plan need to be amended.</p> | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.105(c) | <p>C.03.c. Selection of Random Testing Pool C.03.c. Verify that the operator selects a sufficient number of covered employees for random testing during each calendar year to equal an annual rate not less than the required minimum annual percentage rate (see</p> | When the gas only employees are randomly drug tested, documentation needs to be produced that supports the randomness of the employee selection. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

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| | <p>Protocol C.03.a.) [199.105(c)(6)].</p> <ul style="list-style-type: none"> To calculate the total number of covered employees eligible for random testing throughout the year you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods [199.119(c)]. | | | |
| §199.105(c) | <p>C.03.d. Scheduling of Random Tests C.03.d. Verify that random drug tests are unannounced and that the dates for administering the tests are spread reasonably throughout the calendar year [199.105(c)(7)].</p> | <p>When the gas only employees are randomly drug tested, documentation needs to be produced that demonstrates that the drug tests are unannounced and that the dates are spread reasonably throughout the calendar year.</p> | <p>Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action.</p> | 04/30/2012 |
| §199.105(d) | <p>C.04.a. Basis for Reasonable Cause Testing C.04.a. Verify that decisions to test are reasonable and articulable, and based on specific contemporaneous physical, behavioral or performance indicators of probable drug use. Verify that at least two supervisors, one of whom is trained in detection of the symptoms of drug use, substantiate and concur in the decision to test an employee who is reasonably suspected of drug use [§199.105(d)].</p> | <p>The form number in the plan is out of date. This needs to be updated. Initial reasonable suspicion requests are made by the supervisor and confirmed by the appropriate HR staff as the secondary supervisor. This process needs to be included in the plan's description of reasonable suspicion testing.</p> | <p>Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action.</p> | 04/30/2012 |
| §199.105(e) | <p>C.05 Return-to-duty Drug Testing Verify that the Anti-Drug Program ensures that a covered employee that violates DOT drug regulations may not return to duty for a covered function until the employee has</p> | <p>This section needs to be amended to address all DOT requirements for this section.</p> | <p>Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action.</p> | 04/30/2012 |

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| | <p>complied with the requirements for SAPs and return-to-duty testing [§199.105(e)].</p> <p>C.05.a. Verify that a covered employee that violates DOT drug regulations does not return to duty for a covered function until the employee:</p> <ol style="list-style-type: none"> 1. Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), and §199.105(e)], and 2. After completion of the SAP process above, successfully completes a return-to-duty drug test [§40.305(a) and §199.105(e)]. 3. As of August 31, 2009, verify that all return-to-duty testing was performed under direct observation [§40.67(b)] | | | |
| §40.307, §40.309, §199.105(f) | <p>C.06.a. SAP Follow-up Testing Plan C.06.a. Verify that the SAP establishes a written follow-up testing plan for a covered employee that violates DOT drug regulations and seeks to return to the performance of a covered function [§40.307(a)].</p> | This section needs to be amended to address all DOT requirements for this section. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.307, §40.309, §199.105(f) | <p>C.06.b. Follow-up Testing Scheduling C.06.b. Verify that follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months. At least six tests must be conducted within the first 12 months following the covered employee's return to duty. [§40.307,</p> | This section needs to be amended to address all DOT requirements for this section. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

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| | §40.309, and §199.105(f)]. | | | |
| §§40.67(a), (b), (d) | C.07 Employer Responsibilities Regarding Direct Observation During Collections for Drug Testing C.07.a. Verify that procedures are in place for direct observation when required under §§40.67(a), (b) and (d) | This section needs to be amended to address all DOT requirements for this section. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.81(a), §199.107(a) | D.01.a. Drug Testing Laboratory Certification D.01.a. Verify that the drug testing laboratory used for all testing required by Part 40 and Part 199 is certified by the Department of Health and Human Services (HHS) [§40.81(a) and §199.107(a)]. | <u>Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215-2802, (800) 445-6917.</u> Needs to be updated in the plan. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.109(a) | E.01.a. Designated MRO E.01.a. Verify that an MRO is designated or appointed by the Anti-Drug Plan [§199.109(a)]. | MRO identified in the plan is not the current MRO utilized by Xcel. The plan needs to be amended. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.333(c) | F.01.a. Record Keeping Requirements F.01.a. Verify that the following records are retained as required by Part 40 and Part 199 and that the records are maintained in a location with controlled access [§40.333(c)] | Records concerning §40.25 have not been kept for gas only employees. These records need to be gathered and kept per DOT and Xcel requirements. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.113(a) | G.01.a. Established EAP G.01.a. Verify that an EAP is provided for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. Each EAP must include education and training on drug use (see Protocols G.01.b. and G.01.c.) [§199.113(a)]. | Records showing current EAP provider have been reviewed, but the plan needs to be amended. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

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| §40.13 | <p>H.01.d. DOT vs. Non-DOT Tests</p> <p>H.01.d. Verify that the Alcohol Misuse Prevention Program ensures that the DOT tests are completely separate from non-DOT tests in all respects [§40.13].</p> | See note on A.01.d. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.25(a), (b) | <p>J.01.a. Verify that alcohol testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)].</p> <ul style="list-style-type: none"> • In addition, verify that a covered employee must not perform their 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 alcohol testing information from previous DOT-regulated employers. | See note on C.01.a. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.225(a) | <p>J.02.a. Verify that post-accident alcohol testing is performed:</p> <ol style="list-style-type: none"> 1. As soon as practicable following an accident (§ 195.50) or incident (§ 191.3) for each surviving covered employee if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing | The within 2 hours testing criteria is missing from the plan. This needs to be amended. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

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| | <p>factor to the accident [§199.225(a)(1)].</p> <p>2. Within two hours following the accident (§ 195.50) or incident (§ 191.3), otherwise, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a post-accident test is not administered within eight hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test [§199.225(a)(2)].</p> | | | |
| §199.225(b) | <p>J.03.a. Verify that decisions to test are based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse [§199.225(b)(2)]</p> | See note on C.04.a. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.225(c), §199.243 | <p>J.04.a. Verify that a covered employee that engages in conduct prohibited by §§199.215 through 199.223 does not return to duty for a covered function until the employee:</p> <ol style="list-style-type: none"> 1. Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), §199.235, and §199.243(b)], and 2. After completion of the SAP | This section needs to be amended to address all DOT requirements for this section. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

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| | process above, undergoes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 [§40.305(a), §199.225(c), and §199.243(c)]. | | | |
| §40.307, §40.309, §199.243 | J.05.a. Verify that the SAP establishes a written follow-up testing plan for a covered employee that engages in conduct prohibited by §§199.215 through 199.223 and seeks to return to the performance of a covered function [§40.307(a)] | This section needs to be amended to address all DOT requirements for this section. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.307, §40.309, §199.225(d) §199.243(c)(2)(ii) | J.05.b. Verify that follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months. At least six tests must be conducted within the first 12 months following the covered employee's return to duty [§40.307, §40.309, §199.225(d) and §199.243(c)(2)(ii)]. | This section needs to be amended to address all DOT requirements for this section. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §40.333(c), §199.227(a) | L.01.a. Verify that the following records are retained as required by Part 40 and Part 199 and that the records are maintained in a secure location with controlled access [§40.333(c) and §199.227(a)] | Records retention section of the plan needs to be updated. Need to see calibration documentation going back 5 years. Records concerning §40.25 have not been kept for gas only employees. These records need to be gathered and kept per DOT and Xcel requirements. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |
| §199.117(b), §199.231(b) | M.02.a. Verify that upon written request from an employee, records of drug and alcohol use, testing results, and rehabilitation are provided to the employee [§199.117(b) and §199.231(b)]. | This needs to be added to the plan. | Xcel may be in violation of the code section in Column A. Xcel is advised to correct this or be subject to enforcement action. | 04/30/2012 |

Notices of Concern

| Code Section | Code Description | Comment |
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