



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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Ref. No. Docket PG-072246

CERTIFIED MAIL

January 29, 2008

Wayne Anderson
President
Inland Empire Paper Company
3320 N. Argonne
Spokane, Washington 99212

Dear Mr. Anderson:

Subject: 2007 Inland Empire Paper Company Drug and Alcohol Inspection

We conducted an inspection from December 11, 2007 through December 13, 2007, of Inland Empire Paper Company's (IEP) drug and alcohol programs. The inspection included a records and procedures review.

Our inspection indicates a series of 19 probable violations, as noted in the enclosed report. The majority of the probable violations are related to IEP's failure to keep abreast of changes to federal drug and alcohol testing requirements. This resulted in the company not having adequate programs that meet the requirements of Title 49 CFR Parts 199 and 40.

It is imperative that IEP keep current with federal drug and alcohol testing rules and requirements, incorporate any changes into its programs and ensure that appropriate company personnel are adequately trained on the requirements.

Your response is needed.

Please review the attached report and respond in writing by February 29, 2008. The response should include a letter of intent and the date you plan to bring the probable violations into full compliance including how the company intends to stay up to date on future changes to drug and alcohol testing rules and requirements.



What happens after you respond to this letter?

The attached report presents staff's findings 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 81.88.040, or
- Institute a complaint, seeking monetary penalties, changes in the company's practices, or other relief authorized by law and justified by the circumstances, or
- Consider the matter resolved without further commission action.

Staff has not yet decided whether to recommend to the commission pursuit of a complaint or penalty in this matter. Should the commission decide to pursue a complaint or penalty, your company will have an opportunity to present its position directly to the commission.

If you have any questions, or if we may be of any assistance, please contact Scott Rukke at (360) 664-1241. Please refer to docket number PG-072246 in any future correspondence regarding this inspection.

Sincerely,



Carole J. Washburn
Executive Secretary

Enclosure

UTILITIES AND TRANSPORTATION COMMISSION

2007 Drug and Alcohol Inspection
Inland Empire Paper Company, Spokane
Docket PG-072246

Probable Violations

The following probable violation(s) of Title 49 CFR Parts 199 and 40 were noted as a result of the inspection of Inland Empire's drug and alcohol program procedures and records.

1. **49 CFR Part 199.101(a)(4) Anti-drug plan**

- (a) *Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—*
- (4) *Procedures for notifying employees of the coverage and provisions of the plan.*

Findings:

IEP's anti drug plan does not contain a procedure for notifying employees of the coverage and provisions of the plan.

2. **49 CFR Part 199.105(a) Drug tests required**

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

- (a) *Pre-employment testing. No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.*

Findings:

IEP was unable to provide records indicating that pre-employment drug testing was conducted when employees transferred from non-covered positions to covered positions. IEP employees indicated that tests are not given for employees transferring to covered positions because all employees are given pre-employment drug tests when originally hired. It is a requirement that company drug programs and DOT drug programs be kept separate unless the company program meets the requirements of parts 199 and 40. Since your company program does not meet the requirements, a pre-employment drug test is required when an employee transfers to a covered position.

Following is an excerpt from the DOT model anti drug plan for pipeline operators to use as guidance on how to meet the minimum requirements.

1. *Pre-employment Testing. [§199.105]*

- a) *A pre-employment drug test must be conducted when either an individual is hired for a covered position or when a current employee is first transferred from a non-covered to a covered position, unless the individual is already in a Part 199 anti-drug program. Also, an employee*

who is separated from a Part 199 anti-drug program must be pre-employment tested prior to performing a covered function.

3. **49 CFR Part 199.105(c)(2) 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.*
- (2) *The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this subpart. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the Federal Register the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.*

Findings:

Records indicate that IEP had 22 DOT covered employees in 2004, 2005 and 2006. IEP conducted random drug tests on 5 employees in each of these years. This does not meet the requirement that at a minimum, 25% of covered employees be randomly tested.

4. **49 CFR Part 199.105(c)(7) Drug tests required**

(c) *Random Testing.*

- (7) *Each operator shall ensure that random drug tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.*

Findings:

- a) IEP procedures do not specify at what frequencies random testing will be conducted. IEP's procedure states that random testing will be "reasonably spread throughout the year." Part 199 guidelines and the "Model Anti Drug Plan" developed by the DOT require that operators specify a pre-determined defined frequency that falls on different days of the week. Annually and semi-annually are not acceptable.
- b) IEP's policy of sometimes allowing several months between an employee's name being randomly drawn and the actual test being conducted does not meet the requirement that tests be reasonable spread throughout the year. IEP must make accommodations to test employees at the time their names are drawn. This may be after hours, after their shift ends etc.

5. **49 CFR Part 199.105(f) Drug tests required**

(f) *Follow-Up Testing. A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.*

Findings:

IEP procedures do not specify that six follow-up tests are required within the first 12 months following a covered employee's return to duty.

6. **49 CFR Part 199.109(f) Review of drug testing results**

(f) *The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems with drug abuse, does not refer the covered employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a covered employee for assistance provided through:*

Findings:

IEP's plan does not disallow an SAP to refer employees to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest.

7. **49 CFR Part 40.153(d) How does the MRO notify employees of their right to a test of the split specimen**

(d) *You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see §40.173).*

Findings:

IEP procedures do not specify the requirements for payment when split tests are conducted.

8. **49 CFR Part 199.111(c) Retention of sample and retesting**
(c) *If the employee specifies testing by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.*

Findings:

IEP does not have any procedure for chain of custody when secondary tests are conducted.

9. **49 CFR Part 199.111(d) Retention of sample and retesting**
(d) *Since some analyses may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT Procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results.*

Findings:

IEP does not have a procedure addressing this requirement.

10. **49 CFR Part 199.115, .115(a) and .115(b) Contract 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:

In August of 2005, IEP used contract welders on a segment of pipeline that was re-located. During this inspection, we requested records of the contract welders drug and alcohol program and test records for the employees that performed covered functions on IEP's pipeline facility. IEP has not provided any records indicating that the welding contract employees were, or are, covered by a qualified drug and alcohol program.

11. **49 CFR Part 199.119(a) Reporting of anti-drug testing results**
(a) *Each large operator (having more than 50 covered employees) shall submit an annual MIS report to PHMSA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at § 40.25 and appendix H to Part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to PHMSA.*

Findings:

IEP does not have a procedure requiring that the MIS form be submitted to PHMSA upon request. It should also be noted that once PHMSA requests the MIS form from an operator with less than 50 covered employees, WAC 480-93-200(10) requires that the form be simultaneously submitted to the UTC.

12. **49 CFR Part 199.227 Retention of records**

- (b) *Period of retention. Each operator shall maintain the records in accordance with the following schedule:*
- (1) *Five years. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of 5 years.*
 - (2) *Two years. Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of 2 years.*
 - (3) *One year. Records of all test results below 0.02 (as defined in 49 CFR Part 40) shall be maintained for a minimum of 1 year.*

Findings:

IEP does not have record keeping requirements for MIS annual reports.

13. **49 CFR Part 40.333(a)(2)-(3) What records must employers keep?**

- (a) *As an employer, you must keep the following records for the following periods of time:*
- (2) *You must keep records for three years of information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees.*
 - (3) *You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.*
 - (4) *You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.*

Findings:

IEP procedures do not specify record keeping requirements for information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees or for records of the inspection, maintenance, and calibration of EBTs.

14. **49 CFR Part 199.231 Access to facilities and records**

- (a) *Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in §199.227.*
- (b) *A covered employees is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.*

- (c) *Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.*
- (d) *Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.*
- (e) *When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.*
- (f) *An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.*
- (g) *An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.*
- (h) *An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.*

Findings:

IEP does not have a procedure to address the release of information requirements found in 199.231.

15. **49 CFR Part 199.237(b) Other alcohol related conduct**

- (a) *No operator shall permit a covered employee tested under the provisions of §199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:*
 - (1) *The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under §199.225(e); or*
 - (2) *The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.*
- (b) *Except as provided in paragraph (a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.*

Findings:

IEP does not have a procedure addressing this requirement.

16. **49 CFR Part 199.239 Operator obligation to promulgate a policy on the misuse of alcohol**

- (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.*
- (b) *Required content. The materials to be made available to covered employees shall include detailed discussion of at least the following:*
- (1) *The identity of the person designated by the operator to answer covered employee questions about the materials.*
 - (2) *The categories of employees who are subject to the provisions of this subpart.*
 - (3) *Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.*
 - (4) *Specific information concerning covered employee conduct that is prohibited by this subpart.*
 - (5) *The circumstances under which a covered employee will be tested for alcohol under this subpart.*
 - (6) *The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.*
 - (7) *The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.*
 - (8) *An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.*
 - (9) *The consequences for covered employees to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under §199.243.*
 - (10) *The consequences for covered employees to have an alcohol concentration of 0.02 or greater but less than 0.04.*
 - (11) *Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.*

- (c) *Optional provisions. The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly described as being based on independent authority.*

Findings:

IEP does not have a procedure addressing the requirements found in 199.239.

17. **49 CFR Part 199.241 Training for supervisors**

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Findings:

IEP procedures do not specify that a minimum of 60 minutes of training must be provided.

18. **49 CFR Part 199.243 Referral, evaluation, and treatment**

- (a) *Each covered employee who has engaged in conduct prohibited by §§199.215 through 199.223 of this subpart shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol. This includes the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.*
- (b) *Each covered employee who engages in conduct prohibited under §§199.215 through 199.223 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.*
- (c) (1) *Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§199.215 through 199.223 of this subpart, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.*
- (2) *In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse-*
- (i) *Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and*
- (ii) *Shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the*

employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

- (d) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.*
- (e) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through-
 - (1) A public agency, such as a State, county, or municipality;*
 - (2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;*
 - (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or*
 - (4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.**

Findings:

IEP does not have a procedure addressing the requirements found in 199.243.

19. **49 CFR Part 199.245 Contractor employees**

- (a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:*
- (b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and*
- (c) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and part 40 of this title.*

Findings:

IEP does not have a procedure addressing the requirements found in 199.245.