March 11, 1991

Subject INFORMATION: Drug Program Compliance of Contractor by Affidavit

From William H. Gute
Director, Office of Pipeline Safety Enforcement, DPS-20

To Ivan Huntoon
Chief, Central Region, DPS-26

In response to your February 5, 1991 memorandum, I offer the following:

- Part 199.21 specifically states that an operator in responsible for ensuring that contractors employed to carry out "covered functions" are in a drug testing program meeting all parts of CFR Part 199.

- There are no requirements in Part 199 specifying specific actions an operator must take to monitor contractor drug programs. For instance, there is no requirement that an operator must have onsite inspection of their contractor drug program. However, I think this would be advisable.

- In my opinion, there is inadequate evidence to site Texaco or Kaneb for a probable violation based on the fact that they are using only an "affidavit".

- In order for a probable violation to be established for the situation described in your memo, OPS could do the following:

  1. Obtain copies of contractor drug plan and review it for compliance.

  2. Obtain records of drug testing by contractor used by operators in "covered position" to assure that the "employees" are being properly tested.

  3. As another option, 199.21 requires the operator to get agreement by its contractor for OPS too make an onsite visit to contractor for drug plan review, record review, or review of collection process. Of course, this would not include direct observation. OPS could develop a case through this method.

Based on the description in your memorandum, I am unsure how these operators are complying with 199.23. Please advise.