

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 23, 1994

Mr. Jon W. Kinnison  
President  
Marathon Pipe Line Company  
231 East Lincoln  
Findlay, Ohio 45840

CPF No. 34514M

Dear Mr. Kinnison:

On September 29 - 30, 1993, a representative of the Central Region, Office of Pipeline Safety, pursuant to Section 211(c) of the Hazardous Liquid Pipeline Safety Act, 49 U.S.C. App. § 2001 et. seq. (HLPESA), conducted an inspection of your anti-drug plan at your headquarters in Findlay, Ohio.

As a result of this review, and the requirements of § 199.7(a) to maintain and follow a written anti-drug plan that conforms to the requirements of Part 199 and the DOT Procedures at 49 Code of Federal Regulations (CFR), Part 40, the following inadequacies were noted in your written procedures:

**1) § 199.7 Anti-drug plan.**

**§ 199.7 requires that the written anti-drug plan contain the methods and procedures for compliance with all the requirements set out in 49 CFR Part 199 and 49 CFR Part 40, including the employee assistance program, and procedures for notifying employees of the coverage and provisions of the plan. Also § 199.7 requires that the name and address of each NIDA laboratory that analyzes the specimen collected for drug testing, and the name and address of the operator's medical review officer, must also be included in the anti-drug plan.**

Marathon's anti-drug plan did not have adequate procedures to address the following items:

a) § 199.17 Retention of samples and retesting.

§ 199.17(b) states that "If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test other than the unauthorized use of a prohibited drug, the original sample must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the retest is negative".

and,

§ 40.3 Definitions.

§ 40.3 defines an employee as "An individual designated in a DOT agency regulation as subject to drug urine testing and the donor of a specimen under this part. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part."

The operator is required to provide job-applicants the same retest rights available to employees. Marathon did not include job-applicants in its definition of an employee. Additionally, Marathon did not specifically address the retest rights of job-applicants elsewhere in the anti-drug plan. Marathon must either include job-applicants in its definition of an employee or specifically address job-applicant retest rights in its plan.

2) § 40.31 Employer blind performance test procedures.

§ 40.31(d)(1) states that "Each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures as provided in this paragraph.

(2) Each employer shall submit three blind performance test specimens for each 100 employee specimens it submits,

up to a maximum of 100 blind performance test specimens submitted per quarter. A DOT agency may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

(4) Employers with fewer than 2000 covered employees may submit blind performance test specimens as provided in paragraph (d)(3) of this section. Such employers may also submit only blank samples or may submit two separately labeled portions of a specimen from the same non-covered employee.

(5) Consortiums shall be responsible for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium.

(6) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individual responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the finding to DHHS.

(7) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the employer shall promptly notify the DOT agency concerned. The DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and, if there is reason to believe the error could have been systemic, the DOT agency may also require review and reanalysis of previously run specimens.

(8) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality control data from the batch of specimens which included the false

positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency. DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again."

Marathon's anti-drug plan did not contain procedures describing blind performance test requirements. Marathon records indicate that adequate blind performance testing is performed.

3) § 40.25 Specimen collection procedures.

§ 40.25(f)(10)(i) states that "Upon receiving the specimen from the individual, the collection site person shall determine if it contains at least 60 milliliters of urine. If the individual is unable to provide 60 milliliters of urine, the collection site person shall direct the individual to drink fluids and, after a reasonable time, again attempt to provide a complete sample using a fresh specimen bottle (and fresh collection container, if employed). The original specimen shall be discarded. If the employee is still unable to provide a complete specimen, the following rules apply:

(A) In the case of a post-accident test or test for reasonable cause (as defined by the DOT agency), the employee shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to 8 hours from the beginning of the collection procedure.

(B) In the case of a preemployment test, random test, periodic test or other test not for cause (as defined by the DOT agency), the employer may elect to proceed as specified in paragraph (f)(10)(i)(A) of

this section (consistent with any applicable restrictions on hours of service) or may elect to discontinue the collection and conduct a subsequent collection at a later time.

(C) If the employee cannot provide a complete sample within the up to 8-hour period or at the subsequent collection, as applicable, then the employer's MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. (In preemployment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing."

Marathon's anti-drug plan did not contain procedures discussing what steps would be taken if the individual is unable to provide a sample containing 60 milliliters of urine within 8 hours.

When it is found that an operator's procedures are inadequate, Title 49 CFR, § 190.237 provides that the operator, after notice and opportunity for hearing, may be required to amend its plans and procedures. This letter serves to provide you with notice of the inadequate procedures and the response options as prescribed under § 190.237, Title 49 CFR. The operator is allowed thirty (30) days after receipt of such notice to submit written comments or request an informal hearing. After considering the material presented, the Office of Pipeline Safety is required to notify the operator of the required amendment or withdraw the notice proposing the amendment.

The purpose of this letter is to document and to provide you with a notice of the inadequate procedures at the time of the inspection. If you do not desire to contest the notice, please provide the revised anti-drug plan procedures within thirty (30) days of receipt of this notice.

Sincerely,

Ivan A. Huntoon

Director, Central Region  
Office of Pipeline Safety