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FACILITIES PROTECTION UNIT DIRECTOR

Georgia Public Service Commission

(404) 463-6526
(800) 282-5813

244 Washington Street, SW
Atlanta, GA 30334-5701

FAX: (404) 463-6532
psc.ga.gov

Docket No. 37619

DOCKET # 37619
DOCUMENT # 192866

Dalton-Whitfield Regional Solid Waste
Management Authority
587 Gazaway Road P. O. Box 1205
Dalton, GA 30722-1205

REF: 199 Inspection # AT22-035

☐ Certified Mail ☐ Regular Mail ☒ Email

Attention: Mr. Dirk Verhoeff

On July 12, 2022, a representative of the Georgia Public Service Commission Pipeline/Facilities Safety Office conducted an inspection of your gas system. The enclosed inspection report numbered AT22-035 is provided for your information and file.

In conjunction with this inspection report, Staff has recommended the following enforcement(s):

Enforcement Action:

- ☒ Notice of Probable Violation
- ☐ Notice of Probable Violation with Proposed Civil Penalty
- ☒ Notice of Amendment

Enforcement Letter:

- ☐ Warning Letter
- ☐ Letter of Concern

Enforcement Notification:

- ☐ Observed Issue
- ☐ No Violation

Please review and respond to this report in accordance with the attached Instructions for Responding to Enforcement Actions, Enforcement Letters, and Notifications Issued by the Georgia Public Service Commission. Please refer to Docket No. 37619 in your response.

Please let me know if there are any questions concerning this report at (404) 985-4271 or mthebert@psc.ga.gov. Thank you for your continuing contribution toward increased pipeline safety.

Sincerely,

Michelle Thebert

Michelle L. Thebert
Director, Office of Pipeline Safety/Facilities Protection

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REPORT OF NATURAL GAS SAFETY

INSPECTION NO: AT22-035

OPERATOR: Dalton-Whitfield Regional Solid Waste Management Authority

INVESTIGATOR: Alan Towe

INSPECTION DATE: July 12, 2022 REPORT MAILED DATE: January 19, 2023

Any questions concerning this report may be directed to the above address or by telephoning (404) 463-6526.

1. PURPOSE OF INSPECTION

To conduct an inspection of the Operators anti-drug and alcohol programs required by 49CFR Parts 40 and 199.

2. CONTINUING VIOLATIONS

3. CLEARED VIOLATIONS

4. NEW VIOLATIONS

Violation	Description	Inspection#	Date
199.202	Alcohol misuse plan.	AT22-035	7/12/2022
199.227	Retention of records.	AT22-035	7/12/2022
199.239	Operator obligation to promulgate a policy on the misuse of alcohol.	AT22-035	7/12/2022
199.101	Anti-Drug Plan	AT22-035	7/12/2022
199.109(b)	MRO qualifications. Each MRO must be a licensed physician who has the qualifications required by...	AT22-035	7/12/2022

5. OTHER RECOMMENDATIONS/COMMENTS

SEE ATTACHED INSPECTION REPORT

On July 12, 2022, Staff reported to Dalton-Whitfield Regional Solid Waste Management Authority to perform a Part 199 inspection of the Operator's program and records.

During this inspection, the Operator was represented by Dirk Verhoeff, Director.

Commission Staff was represented by:
Alan Towe – Lead Inspector
Jeff Baggett – Facilities Protection Supervisor

At the time of this inspection the Dalton-Whitfield Regional Solid Waste Management Authority had no previously existing probable violations.

NOTICE OF PROBABLE VIOLATION

As a result of this inspection Staff found that the Dalton-Whitfield Regional Solid Waste Management Authority was in probable violation of the minimum federal safety standards; specifically:

1. 49 CFR §199.109 - Review of drug testing results
   (b) MRO qualifications. Each MRO must be a licensed physician who has the qualifications required by DOT Procedures.

   COMMENTS: Operator unable to provide documentation demonstrating a licensed physician is serving as their MRO.

   PROBABLE VIOLATION: Operator has not ensured that their Medical Review Officer is a license physician as required under Part 199.109(b).

2. 49 CFR §199.227 - Retention of records
   (c) Types of records. The following specific records shall be maintained:
   (iii) Documentation of breath alcohol technician.

   COMMENTS: Operator was unable to provide documentation demonstrating training of their breath alcohol technician.

   PROBABLE VIOLATION: Operator has not maintained types of records required under Part 199.227(c).

3. 49 CFR §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.

COMMENTS: On page 14 of the Operators Drug & Alcohol plan it states the Operator will keep an acknowledgment form for each covered employee receiving their alcohol education material. Operator was unable to provide Staff documentation that their employees had received this required information.

PROBABLE VIOLATION: Operator was unable to demonstrate that employees had received the required alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements for compliance with Part 199.239(a)(1).

NOTICE OF AMENDMENT

As a result of this inspection Staff found that the Dalton-Whitfield Regional Solid Waste Management Authority was in probable violation of the minimum federal safety standards, specifically;

1. 49CFR §199.101 – 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 -
   (1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;
   (2) The name and address of each laboratory that analyzes the specimens collected for drug testing; and
   (3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and,
   (4) Procedures for notifying employees of the coverage and provisions of the plan.

   PROBABLE VIOLATION: Based on the observed deficiencies indicated in this report, Staff determined that the Operator has failed to prepare a plan of written procedures that contain all requirements required for a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures.

   a. OBSERVED DEFICIENCY: 49 CFR §199.3 – Definitions; covered employee, employee, or individual to be tested means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

      COMMENTS: Operator process not clear as to identification of covered employees found in appendix C of their plan or their definition of a covered employee under definitions of their plan.

   b. OBSERVED DEFICIENCY: 49 CFR §199.105(c) - Drug tests required; Random testing.

COMMENTS: Staff found current process on page 18 of Operator plan for random testing. However, the Operators plan does not include their process of using a third-party administrator named IEBT.

c. OBSERVED DEFICIENCY: 49CFR §199.105(f) - Drug tests required; 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.

COMMENTS: Operator DER stated Operator employees will not be offered follow up testing but will be terminated if found in violation of drug plan. However, Operators plan does not clarify if all employees will be terminated but states employees will be subject to disciplinary actions up to and including termination. Operator needs to specify in plan either disciplinary action with follow-up testing or termination.

2. 49CFR §199.202 – Alcohol misuse plan
Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

PROBABLE VIOLATION: Based on the observed deficiencies indicated in this report, Staff determined that the Operator has failed to prepare a plan of written procedures that contain all requirements required for a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures.

a. OBSERVED DEFICIENCY: 49CFR, §199.209 Other requirements imposed by operators
(b) Operators may, but are not required to, conduct pre-employment alcohol testing under this subpart. Each operator that conducts pre-employment alcohol testing must-
(1) Conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions);
(2) Treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others);
(3) Conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test;

(4) Conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures; and
(5) Not allow any covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

COMMENTS: Operator needs to clarify if they will or will not perform pre-employment alcohol testing for all employees.

b. OBSERVED DEFICIENCY: 49 CFR §199.243(a) - Referral, evaluation, and treatment; 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.

COMMENTS: Operator needs process for making resources available to covered employees for evaluating and resolving problems associated with the misuse of alcohol who fail any alcohol tests required under this part.

Please review and respond to this report in accordance with the attached Instructions for Responding to Enforcement Letters Issued by the Georgia Public Service Commission.

OPERATOR RESPONSE FORM

Operator Name: Dalton-Whitfield Regional Waste Mgt.

Informal Conference Requested: Yes ☐ No ☐

Docket Number: 37619

Responses required within **30 days of electronic mail.** Provide the following information for this report:

Response to Inspection Number:_____

Type of Enforcement Action(s) cited in report:			Informal Conference Requested	
☐ Notice of Probable Violation (NOPV)	☐ New	☐Continuing	☐ Yes	☐ No
☐ Notice of Amendment (NOA)	☐ New	☐Continuing	☐ Yes	☐ No
☐ Warning Letter	☐ New	☐Continuing	☐ Yes	☐ No
☐ Letter of Concern	☐ New	☐Continuing	☐ Yes	☐ No
☐ Observed Issue	☐ New	☐Continuing	☐ Yes	☐ No
☐ Proposed Civil Penalty	$ _____ PCP $ Amount (Total for report)			

Indicate below (A-E) based on the type of Enforcement Actions in this report: (Check all that apply)
Complete a separate copy of Page 2, Operator Response to Enforcement Action, for each cited item.

A. Response for **Notice of Probable Violation** (with and without proposed civil penalty):
   1. ☐ Written statement indicating that corrective measures have achieved Compliance or
   2. ☐ Written plan of action outlining the corrective measures that will be taken to achieve compliance and when compliance is anticipated.

B. Response for **NOA**:
   1. ☐ Contested: Attach written explanation, information, or other material in answer to the allegations in the Notice of Amendment stating your reasons for objecting to the NOA, in whole or in part; or
   2. ☐ Not Contested: Explanation, information, or other material believed to warrant modification of the NOA in whole or in part; or
   3. ☐ Written request for clarification. (Attached)

C. Response for **Continuing** and/or **Existing** violations:
   Current status, updates, expected completion dates, proposed modifications, etc., of the continuing and/or existing violations, even if this information was previously provided. Referencing a previously filed response letter, as status, updates, etc. alone is not sufficient for this response. Failure to provide this information may result in formal interrogatories from the Director through data requests.

D. Response for ☐ **Letter of Concern** / ☐ **Warning Letter**
   I acknowledge receipt of the Letter of Concern/Warning Letter:_____
   SIGNATURE / TITLE

   Additional Comments: (Optional)_____

E. Response for **Observed Issue** and **No Violation**: (Optional Response)
   Staff requests that the Operator acknowledge receipt of the Observed Issue/No Violation in writing, or by submitting an email to the FPU Director

Operator Response to Enforcement Action

Enforcement Action for:_____ ☐ New Violation ☐ Continuing Violation

Enter Code / Commission Rule (Complete a separate attachment for each enforcement action)

Enforcement Action(s) cited in report:	Conference Requested:	
☐ Notice of Probable Violation (NOPV)	☐ Yes ☐ No	$_____
☐ Notice of Amendment (NOA)	☐ Yes ☐ No	Proposed Penalty for this violation
☐ Warning Letter	☐ Yes ☐ No	
☐ Letter of Concern	☐ Yes ☐ No	
☐ Observed Issue	☐ Yes ☐ No	
☐ Proposed Civil Penalty	☐ Yes ☐ No	

OPERATORS RESPONSE: _____

_____

_____

_____

_____

_____

_____

_____

Response Provided by: _____ Date:_____

Name / Title

Internal use only:

Lead Inspector: _____ Date Response Reviewed:_____

Actions Acceptable: ☐ Yes ☐No Re-inspection Needed:☐ Yes ☐ No Clear Violation:☐ Yes ☐ No

_____

Supervisor Review by:_____ Date Reviewed:_____

Additional Enforcement Recommended: ☐ Yes ☐ No

_____

Director Review

Approved: ☐ Yes ☐No Schedule Special Follow-up Inspection: ☐ Yes ☐ No

Cleared Violation: ☐ Yes ☐ No

Comments:_____

_____

Filings:
For all written responses or any other official correspondence, the Operator shall file the response at the following address:

Ms. Sallie Tanner, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

The Operator must file **five (5)** copies of any response and/or official correspondence, as well as a CD with an electronic version of the response in Microsoft Word and/or a PDF, if applicable.

Informal Conference:
Any Operator who chooses to request an informal conference shall request such a conference through emailing the Director (michellet@psc.state.ga.us), calling the Director (404-463-2765), or selecting the "Request Conference" choice.

Civil Penalty Payments:
Certified check for the full amount of the recommended civil penalty or consent agreement amount made payable to the Georgia Public Service Commission. The Operator's name, applicable Docket No., and Inspection Report No. must be included on the certified check. Mail payment to:

Ms. Michelle Thebert, Director, Facilities Protection Unit
Georgia Public Service Commission
244 Washington Street
Atlanta, Georgia 30334

Hearing Requests:
The Operator has the right to request a hearing before the full Commission to contest the alleged probable violations, recommended civil penalties, and all other proposed actions of enforcement. A request for a hearing must be submitted in writing and in accordance with Commission Rule 515-2-1-.04. The Operator must include a statement of the issues that you intend to raise at the hearing. The issues may relate to the allegations, new information, proposed compliance order, proposed civil penalty, or any other recommendation for enforcement action. Please refer to Commission Rule 515-9-3-.11 and O.C.G.A. § 46-2-91 for assessment considerations upon which civil penalties are based. An operator's failure to specify an issue may result in a waiver of the right to raise that issue at hearing. The request must also indicate whether or not the Operator will be represented by counsel at the hearing.

Open Records and Trade Secret Filings:
The Operator is advised that any material provided to the Commission, and all materials prepared by the Commission, including the Notice of Probable Violations and any Orders issued in this case, may be considered public information and subject to disclosure under the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.). If you believe that any portion of your response material is security sensitive, privileged, confidential or may cause your company competitive disadvantages and would qualify for protection under the Commission's "Trade Secret Rule" (Commission Rule 515-3-1-.11), you must, along with the complete original document clearly marked "TRADE SECRET" on each page, provide a second copy of the document with the portions you believe qualify for trade secret treatment redacted, and an explanation of why you believe the redacted information qualifies for such trade secret treatment. Should the Commission receive a request for disclosure of any "TRADE SECRET" material, you will be notified, if after review, the materials and your provided justification are deemed not to meet any exemptions provided in the Georgia Open Records Act. You may appeal the Commission's decision to release material at that time. Your appeal will stay the release of those materials until a final decision is made.

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

IN THE MATTER OF:	)	
	)	
Violation Report; and Notice of Amendment	)	**DOCKET NO. 37619**
Dalton – Whitfield Regional Solid Waste	)	
Management Authority	)	
Inspection AT22-035 on July 12, 2022	)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have caused to be served a copy of the foregoing, and a copy of same was served upon all parties and persons listed below via electronic mail as indicated by an asterisk I further certify that the *Dalton-Whitfield Regional Solid Waste Management Authority* was served a hard copy of the above-stated document by U.S. Mail, certified/return receipt requested.

*Sallie Tanner, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

*Dirk Verhoeff, Executive Director
Dalton-Whitfield Regional Solid Waste Management Authority
4350 Gazaway Road
P.O. Box 1205
Dalton, GA 30722-1205
dverhoeff@dwswa.org

*Michelle Thebert, Facilities Protection Unit Director
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

Respectfully Submitted this 27th day of January 2023:

C Nesbitt

Cathy Nesbitt, Administrative Assistant
Georgia Public Service Commission
Facilities Protection Unit
244 Washington Street, SW
Atlanta, GA 30334