



# Significant OQ Changes - NY

**Dennis Kuhn, Vice President Compliance**

[dkuhn@astarinc.com](mailto:dkuhn@astarinc.com)

[www.astarinc.com](http://www.astarinc.com)

325-660-8914



# STATE LEVEL OQ PROGRAM CHANGES: NY & CT...



## NY

- Established OQ White Paper - 2017.
- 2021 NPRM based on White Paper.
- March 2022 - Final Rule

## CT

- Has draft changes - based on NY NPRM.
- Working informally with operators to review draft regulations and solicit feedback.
- Technical sessions are ongoing.



# NEW YORK STATE PUBLIC SERVICE COMMISSION - NPRM

- NPRM = Changes to 16 NYCRR Part 255, Transmission and Distribution of Gas. In specific Chapter III, Gas Utilities, Subchapter C, Safety.
- Main focus for NPRM is to improve Operator Qualification Programs



# NEW YORK OQ NPRM KEY CHANGES

➤ Changes to the 4 part test:

- 1) Covered tasks are all activities, identified by the operator, that:
  - i. are performed on a pipeline facility;
  - ~~ii. are operations and maintenance tasks;~~
  - ~~iii. are performed as a requirement of this Part;~~ and
  - iv. affect the operation or integrity of the pipeline.



# NEW YORK OQ NPRM KEY CHANGES

➤ Changes to the 4 part test:

1) Covered tasks are all activities, identified by the operator, that:

- i. are performed on a pipeline facility; and
- ii. affect the operation or integrity of the pipeline.



# NEW YORK OQ NPRM KEY CHANGES

Evaluation means a process, established and documented by the operator, to determine an individual's ability to perform a covered task by any of the following:

- (a) Written or oral examination and
- ~~(b) Oral examination;~~
- ~~(c) Work performance history review;~~
- (b) Observation during: or performance on the job or during Simulations; ~~or~~
- ~~(e) Other forms of assessment.~~



# NEW YORK OQ NPRM KEY CHANGES

Qualified means that an individual has completed an ~~been~~ evaluation~~ed~~ and can correctly:

(a) Perform the ~~assigned~~ covered tasks; and

(b) Recognize and react to abnormal operating conditions specific to any covered task that may be encountered while performing the covered task;





# NEW YORK OQ NPRM KEY CHANGES

Qualified means --- Continued previous slide

Demonstrate the knowledge required to perform the covered task, such as: selection, maintenance requirements, calibration requirements and proper operation of equipment, including variations that may be encountered in the performance of the covered task due to equipment and environmental conditions, and context differences;

- demonstrate the skills required to perform the covered task including:



# NEW YORK OQ NPRM KEY CHANGES

Qualified means --- Continued previous slide

- Variations required in the performance of the covered task due to equipment or new operation differences or changes or both; and
- Demonstrate the physical abilities required to perform the specific covered task.



# NEW YORK OQ NPRM KEY CHANGES

Each operator shall have and follow a written qualification program. The program shall include provisions ~~to~~that:

- (1) Identify covered tasks and abnormal operating conditions on the operator's system with sufficient specificity to that system;



# NEW YORK OQ NPRM KEY CHANGES

Continued....

- (2) Detail the training requirements, including the minimum training needed per covered task, to ensure that each individual performing a covered task is provided the knowledge and skills to be qualified and requalified, when necessary, prior to the individual performing the covered task. Training shall include hands-on learning or simulations unless an effective alternative has been documented and justified;



# NEW YORK OQ NPRM KEY CHANGES

Continued....

~~(2)~~(3) Ensure through evaluation that each individual[s] performing a covered task has gained the knowledge and skills needed [~~are-qualified~~] to perform the covered task in accordance with the operator's procedures and on the type of equipment used by the operator for the task for which the individual is deemed qualified provided that:



# NEW YORK OQ NPRM KEY CHANGES

Continued....

- (ii) Evaluations shall not be conducted within 48 hours of training;
- (iii) Written tests to confirm knowledge of elements of covered tasks and abnormal operating conditions are given in a secure location under secure procedures;
- (iv) A passing grade on an evaluation shall not be awarded if the individual incorrectly answered any question about an abnormal operating condition; and



# NEW YORK OQ NPRM KEY CHANGES

Continued....

- (v) Observation of on-the-job performance is not used as a sole method of evaluation. However, when on-the-job performance is used as an evaluation method for a covered task, the operator qualification procedure must define the measures used to determine successful completion of the on-the-job performance evaluation



# NEW YORK OQ NPRM KEY CHANGES

Records:

Individual Qualification records shall include, at a minimum:

- Evaluation of ability to recognize and react to abnormal operating conditions, whether task-specific or non-task-specific, that could occur anywhere on an operator's system;
- Name of the evaluator and date of evaluation; and
- Training that took place to support the individual's qualification or requalification for each covered task.





# NEW YORK OQ NPRM KEY CHANGES

## Engineering Functions:

The operator shall determine engineering functions specific to the design, construction, operation, and integrity of pipelines that contain elevated risk.

The operator shall have and follow a written program that includes a training, mentoring, and evaluation process to be used for establishing competency of personnel performing these higher risk engineering functions.



# NEW YORK OQ NPRM KEY CHANGES

- Addition of specific training requirements
  - 1) Operators must detail the training requirements, including the minimum training time per covered task...Training shall include on-the-job training that includes hands-on learning or simulations;
  - 2) Training and evaluation process to be used for personnel performing engineering tasks, specific to the design, construction, operation, and integrity of pipelines.
  - 3) Hands-on evaluations shall not be performed within 48hours of training.



# NEW YORK OQ NPRM KEY CHANGES

- Addition of specific training requirements (Cont.)
  - 4) Establish Evaluator training and requirements to be an Evaluator.
  - 5) Include a Mutual Aid training and evaluation plan.
  - 6) Provide supplemental training for individuals when procedures and specifications are changed for the covered task.



# NEW YORK OQ NPRM KEY CHANGES

## ➤ OQ Program: Records

- 1) Records shall be kept and made available for audit for work completed by a non-qualified individual while being directed and observed by a qualified individual.
- 2) Program effectiveness assessments.
- 3) Re-evaluation intervals for all covered tasks; and criteria used for selecting, training, and qualifying evaluators



# NEW YORK OQ NPRM KEY CHANGES

## ➤ OQ Program Effectiveness

- 1) The operator shall develop program measures to determine the effectiveness of the qualification program.
- 2) An operator must conduct the program effectiveness review within 36 months of the effective date of this rule and at least every 24 months, not to exceed 27 months thereafter.



# NEW YORK OQ NPRM KEY CHANGES

## ➤ OQ Program Effectiveness Measures

The process to mandated to measure program effectiveness contains specific requirements:

- Task not performed properly
- KSA's not adequate
- Changes to Tasks not adequately evaluated
- Changes made to program not communicated
- Evaluation not conducted properly
- Training not adequate
- Individual failed to recognize an AOC



## EXPANDING TO OTHER STATES?



We may see other states beyond New York contemplate taking action to require OQ program improvements.

The industry will be watching the progress of the NY NPRM closely to see if precedent is established for this type of state-level regulatory activity.



# PHMSA OQ FAQs





# PHMSA OQ FAQs

- What responsibility does an operator have if it chooses to use an off-the-shelf OQ program? (§§ 192.805, 195.505)
  - The operator must ensure that any OQ program selected is applicable to its operating characteristics, procedures, and equipment.
  
- Are contractors required to have a written OQ program? (§§ 192.805, 195.505)
  - No. The operator must ensure that any individuals who perform covered tasks on the operator's pipeline system—meet the requirements of the operator's OQ program.



# **D&A Program Inspections**

## **(Contractors Programs)**



# Responsibilities

**Operators are responsible for meeting 49 CFR parts 40 and 199 to include but not limited to:**

- Maintain and follow a written Anti-Drug & Alcohol Misuse Prevention Plan that conforms to the requirements
- Ensure all covered employees are aware of the provisions and coverage of the plan
- All actions of your officials, reps, and agents (including service agents) in carrying out the requirements of the DOT agency regulations
- Contractor compliance



# Contractor D&A Programs

Operators compliance include contractor programs:

- 199.115
- 199.245



# Contractor D&A Programs

## §199.115 Sub Part B (Drug testing) Contractor 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.



# Contractor D&A Programs

## §199.245 Sub Part C (Alcohol testing) 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 ...



# Contractor D&A Programs

Are you prepared for an audit? What is your process?

## A-9: Contractor Anti-Drug and Alcohol Misuse Prevention Programs

If a pipeline operator allows contractors who perform covered functions on the operator's regulated pipeline or LNG facility to conduct their own D&A Programs

Does the operator have a process to oversee contractors to ensure they comply with Parts 199 and 40? [§199.115 & §199.245]

Do the contractors allow access to property and records by the operator, PHMSA, and a representative of a state agency (if applicable) to allow for the monitoring the operator's compliance with Part 199? [§199.115(b)].

No Issue Identified

Potential Issue Identified

Notes:

Blank area for notes.

# Responsibilities

Develop a process to audit and monitor your contractor D&A programs to gauge effectiveness and ensure it satisfies requirements



**Contractor Stats** +

ID	CONTRACTOR	LOCATION	SUBMISSION	RANDOM TEST	AUDIT	STATUS
441762	Contractor A	Substation 123	Complete	—	In Progress	🔄
623419	Contractor B	Pipeline 024	Complete	64.7%	Complete	✓
823176	Contractor C	Refinery 27	To Do	—	To Do	✗



# Contractor D&A Programs

## Conduct Inspections / Reviews

### Review Internal and contractor plans.

- December is typically when the Administrator updates the testing percentages.
- Stay up to date with rule changes.
- Review Covered Pool – do not flood the pool

### Ensure contractor plan reviews are conducted prior to work and annually

- Plan reviews should also include document reviews to assure compliance with plan.



# Contractor D&A Programs

## Conduct Inspections / Reviews

### Review and maintain contractor covered employee pool listing(s)

- Ensure process Have a process to verify the employees working are on the testing pool.

### If using a 3rd party to monitor contractor programs, periodically review/audit the process.

- Do plan reviews/audits to assure minimum requirements are met



# Proposed Rule Changes

## Proposed Rule : Include Oral Fluid Testing – (RIN 2105-AE94)

On February 28, 2022, DOT published in the Federal Register a notice of proposed rulemaking proposing to amend its transportation industry drug testing program procedures regulations, 49 CFR part 40, to include oral fluid testing. The proposal includes other provisions to update the Department's regulation, and to harmonize, as needed, with the new Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the U.S. Department of Health and Human Services.



# Proposed Rule Changes

## DOT COVID-19 Drug & Alcohol Testing Statement of Enforcement Discretion for Substance Abuse Professionals and Service Agents

Effective July 1, 2022, ODAPC now extends the statement only for remote SAP evaluations, through December 31, 2022. Also, effective July 1, 2022, ODAPC will not extend the statement for the requalification timelines for service agents.



# QUESTIONS



# Thank You

**Dennis Kuhn, Vice President, Compliance**

[dkuhn@astarinc.com](mailto:dkuhn@astarinc.com)

[www.astarinc.com](http://www.astarinc.com)

325-660-8914

