

**April 29, 2016**

Ms. Cathy Conlow  
City Manager  
City of Bangor  
Bangor City Hall  
73 Harlow Street  
Bangor, Maine 04401

**Re: CPF No. 1-2015-6001**

Dear Ms. Conlow:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by the City of Bangor to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, P.E., Director, Eastern Region, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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**In the Matter of** )

**City of Bangor, Maine,** )  
**a municipal corporation,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 1-2015-6001**

**FINAL ORDER**

From August 19-21, 2014, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the City of Bangor's (City or Respondent) Airport Feeder Line pipeline facilities (Airport Line) and procedures in Bangor, Maine. The City owns and operates the Bangor International Airport, including a hazardous liquid fuel pipeline running 0.934 miles that supplies the airport's hydrant system. The Bangor International Airport serves the general public as well as military charter flights making refueling stops.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 27, 2015, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that the City had committed various violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct the alleged violations.

The City responded to the Notice by letter dated June 9, 2015 (Response). Respondent did not contest the alleged violations but requested an extension of time to prepare an appropriate response to the Notice. On June 17, 2015, PHMSA granted the extension, affording the City additional time to respond by July 28, 2015.

On July 23, 2015, Respondent submitted an additional response to the Notice (Second Response). In its Second Response, the City did not contest the violations as alleged in the Notice but requested additional time to address each violation and to explore the option of converting the Airport Line from a pressurized to a full gravity-feed system.

<sup>1</sup> Pipeline Safety Violation Report (May 27, 2015) (Violation Report) (on file with PHMSA), at 1.

Respondent submitted a third response by letter dated August 24, 2015 (Third Response). In its Third Response, the City confirmed that it was not possible to convert its pipeline to a full gravity-feed system without a significant financial investment. Respondent further indicated its willingness to continue to address each violation in order to ensure proper compliance. Respondent did not request a hearing and, therefore, has waived its right to one.

### **FINDINGS OF VIOLATION**

The City did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to prepare and follow, for its Airport Line, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that at the time of the PHMSA inspection, the City provided a copy of its operations and maintenance manual entitled, “Bangor International Airport Pipeline Operations and Maintenance Manual,” which failed to meet the requirements of 49 C.F.R. § 195.402(a). In addition, the City did not have procedures or records for reviewing the manual at intervals not exceeding 15 months, but at least once each calendar year.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to prepare and follow, for its Airport Line, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3), which states, in relevant part:

**§ 195.404 Maps and records.**

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information;...

(3) The maximum operating pressure of each pipeline.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records of its pipeline system, including the maximum operating pressure (MOP) of the Airport Line. Specifically, the Notice alleged that at the time of inspection, Respondent lacked records of its system showing information on how the City had established the MOP of the Airport Line.

As a follow-up to the inspection, PHMSA requested that Respondent provide additional documentation related to its establishment of the pipeline's MOP. The City provided subsequent emails, dated September 22, 2014, September 26, 2014, and October 8, 2014, which demonstrated how the City had established "Maximum Allowable Operating Pressure." However, neither the information provided during the inspection nor the subsequent emails included sufficient records necessary to validate the pipeline's MOP pursuant to 49 C.F.R. § 195.406(a).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records of its system showing information on how the City had established the MOP of the Airport Line.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452, which states in relevant part:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a) *Which pipelines are covered by this section?* This section applies to each hazardous liquid pipeline that could affect a high consequence area, including any pipeline located in a high consequence area unless the operator effectively demonstrates by risk assessment that the pipeline could not affect the area. (Appendix C of this part provides guidance on determining if a pipeline could affect a high consequence area.) Covered pipeline are categorized as follows:...

(1) . . .

(2) Category 2 includes pipelines existing on May 29, 2001, that were owned or operated by an operator who owned or operated less than 500 miles of pipeline subject to this part. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.452 by failing to prepare and follow a written integrity management program for its pipeline facilities that could affect a high consequence area (HCA).<sup>2</sup> Specifically, the Notice alleged that the Airport Line is a Category 2

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<sup>2</sup> Pursuant to 49 C.F.R. 195.450, a high consequence area means:

(1) *A commercially navigable waterway*, which means a waterway where a substantial likelihood of commercial navigation exists;

(2) *A high population area*, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;

HCA pipeline and is therefore required to have an integrity management program. Specifically, the Notice alleged that, at the time of inspection, Respondent provided a one-page document, *Pipeline Integrity Management Program 49 C.F.R. § 195.452*, dated December 20, 2010. This procedure, however, lacked most of the required elements of an integrity management program, including a baseline assessment plan required by § 195.452(b).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452 by failing to prepare and follow a written integrity management program for its pipeline facilities that could affect an HCA.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.505, which states:

**§ 195.505 Qualification program.**

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

- (a) Identify covered tasks;
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;
- (d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an accident as defined in Part 195;
- (e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;
- (f) Communicate changes that affect covered tasks to individuals performing those covered tasks;
- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed;
- (h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and
- (i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator

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(3) An *other populated area*, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;

(4) An *unusually sensitive area*, as defined in § 195.6.

significantly modifies the program after the Administrator or state agency has verified that it complies with the section.<sup>3</sup>

The Notice alleged that Respondent violated 49 C.F.R. § 195.505 by failing to prepare and follow a written operator qualification program with the various provisions quoted above. Specifically, the Notice alleged that during the inspection, Respondent provided the PHMSA inspector with a copy of its operator qualification program (OQ Program), *DOT Operator Qualification Plan, dated February 1, 2011 (OQ Plan)*. The Notice alleged, however, that the *OQ Plan* lacked various elements required by the regulation. For example, it did not include information on how the covered task list was developed or a complete list of covered tasks, and contained a three-year reevaluation interval for all tasks, with no justification or basis for selecting such an interval. Additionally, the *OQ Plan* did not identify initial qualification, retraining, and reevaluation requirements for individuals performing covered tasks, nor did it have a documented training program to ensure that individuals performing covered tasks had the necessary knowledge and skills to perform the task.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505 by failing to prepare and follow a written qualification program that included all the provisions as outlined in the pipeline safety regulation.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1, 2, 3, and 4 in the Notice for violations of 49 C.F.R. §§ 195.402(a), 194.404(a)(3), 195.452, and 195.505, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(a) (**Item 1**), Respondent must establish and implement a manual of written procedures that fulfills the requirements of

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<sup>3</sup> This version of § 195.505 was in effect at the time the alleged violation occurred. On March 11, 2015, § 195.505(i) was revised to read as follows:

After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section. Notifications to PHMSA may be submitted by electronic mail to [InformationResourcesManager@dot.gov](mailto:InformationResourcesManager@dot.gov), or by mail to ATTN: Information Resources Manager, DOT/PHMSA/OPS, East Building, 2<sup>nd</sup> Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590.

§ 195.402 in its entirety (e.g., Emergency Response Training Program, Damage Prevention Program, Integrity Management Program, Corrosion Control Procedures, etc.), within 270 days of issuance of the Final Order.

2. With respect to the violation of § 195.404(a)(3) (**Item 2**), Respondent must provide sufficient procedures for, and adequate records related to, the establishment of the MOP in accordance with § 195.406(a) for all jurisdictional pipeline segments, within 90 days of the issuance of the Final Order.
3. For any pipeline facilities that do not have the necessary and adequate MOP records necessary to establish the MOP, Respondent must develop and implement a plan to establish the MOP in accordance with § 195.406(a). This plan must be submitted to the Region Director for possible modification and approval within 150 days of issuance of the Final Order, and have the MOP established within 365 days of issuance of the Final Order. The plan must include the following:
  - i. A list of all jurisdictional pipeline segments;
  - ii. A delineation of those sections needing pressure testing from those that do not;
  - iii. Results of any pressure tests performed in accordance with Subpart E in 49 C.F.R. Part 195;
  - iv. Safety measures that should be taken pre- and post- pressure testing; and
  - v. Documentation showing completion of any associated repairs identified during the pressure test in accordance with appropriate procedures and federal pipeline safety regulations.
4. Respondent must provide O&M Procedures documenting MOP, to include information on how the pipeline facilities will be operated and monitored to assure operation within the limits prescribed by § 195.406, within 365 days of issuance of the Final Order.
5. With respect to the violation of § 195.452 (**Item 3**), Respondent must establish and implement a pipeline integrity management program that fulfills the requirements of § 195.452 in its entirety, including development and implementation of a baseline assessment, within 365 days of issuance of the Final Order. Additionally, Respondent must submit the following information to the Regional Director within 270 days of the Final Order:
  - i. A description of the pipeline segments covered under the integrity management program, to include type and grade of pipe, age of pipe, welding type(s) utilized on the pipeline (longitudinal, if applicable, and circumferential);
  - ii. The method(s) selected to assess the integrity of the line pipe; and

- iii. The schedule for completing the integrity assessment established in accordance with § 195.452.
6. With respect to the violation of 195.505 (**Item 4**), Respondent must complete, at a minimum, the following actions within 270 days of the issuance of this Final Order:

Establish and implement an OQ Program consistent with § 195.505, to include all tasks that meet the four-part test in § 195.501. The plan must include:

- i. A listing of all tasks that are required to be performed by qualified individuals;
  - ii. A listing of all qualified individuals, and the tasks and dates for which they were qualified;
  - iii. Initial qualification, retraining, and reevaluation requirements for each covered task, to demonstrate the knowledge, skills, and abilities of qualified individuals; and
  - iv. Procedures for ensuring that contractor personnel performing covered tasks on the pipeline facilities are qualified.
7. All documentation demonstrating compliance with each of the items outlined in this Compliance Order must be submitted to the Director, Eastern Region, PHMSA, Bear Tavern Road, Suite 103, West Trenton, NJ 08628. Documentation and recordkeeping must be consistent with appropriate regulations in 49 C.F.R. Part 195.
  8. Finally, pursuant to the authority of 49 U.S.C. 60118(b) and 49 C.F.R. § 190.217, Respondent is requested (not mandated) to maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Eastern Region, PHMSA. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC

20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued