



U.S. Department
Of Transportation
**Pipeline and
Hazardous Materials
Safety Administration**

820 Bear Tavern Road, Suite 103
West Trenton, NJ 08628
609.989.2171

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS MAIL

November 7, 2013

Theopolis Holeman
Group Vice President, US Operations & Services
Spectra Energy Corporation
5400 Westheimer Court
Houston, TX 77056

CPF 1-2013-1022

Dear Mr. Holeman:

From May 10 to 12, 2011, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected Spectra Energy Corporation's (Spectra) Public Awareness Program titled *Spectra Energy External Communication Plan, U.S. Pipelines, Revised October 20, 2010 (External Communication Plan)*¹, in Houston, Texas.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. §192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).

Spectra failed to implement its written continuing public education program, *External Communication Plan, Appendix A. Program Evaluation Methods/Survey*.

¹ Applicable to Spectra Energy's affiliated Company business units.

Appendix A. Program Evaluation Methods/Survey of the External Communications Plan states that a “survey should be conducted within 1-2 weeks of distribution of materials” for general public living within/near the Right-of-Way (ROW) of Spectra. Also, it states a “recommended sample size for our survey of the general public would be 750” and “[t]his would yield a precision of +/-3% at a 90% confidence interval.” However, Spectra’s surveys that were conducted by a third party and industry did not have a sample size of 750 as stated in *Appendix A of the External Communication Plan*. Also, the statistical confidence level that was specified in the industry survey conducted in 2007 and the third party surveys conducted six (6) times from 2005 to 2011 was inconsistent with the *External Communication Plan*.

In addition, *Appendix A. Program Evaluation Methods/Survey of the External Communications Plan* states that a “survey should be conducted within 1-2 weeks of distribution of materials” for excavators who may work within the ROW and emergency response officials. Also, it states:

[t]he sample size for this survey depends on the number of excavators/emergency response officials that materials were sent to. The research company hired to conduct the survey can determine the correct sample size to yield a margin of error +/-3% at a 90% confidence level if they know how many mailings, etc. were made.

However, neither the third party nor industry survey information that Spectra provided addressed this requirement. The third party survey conducted six (6) times from 2005 to 2011 did not include excavators or emergency response officials. And, the industry survey conducted in 2007, contained results for combined stakeholder groups instead of emergency response officials and excavators individually as well as contained the statistical confidence level information that was inconsistent with the *External Communication Plan*.

2. §192.616 Public awareness.

(a) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Spectra failed to follow the general program recommendation, including baseline and supplemental requirements in API RP 1162 Section 4.4.

Pursuant to Section 4.4 of API RP 1162, “[o]perators should provide a summary of emergency preparedness information to local public officials and should indicate that detailed information has been provided to emergency response agencies in their jurisdictions.”

Spectra mailed a brochure in 2010 to local public officials that did not include a summary of the emergency preparedness information and indicate that the information was given to local emergency response agencies. Spectra did not produce any documentation or records that showed it did provide local public officials emergency preparedness information.

3. §192.616 Public awareness.**(a) ...****(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.**

Spectra failed to follow the general program recommendation, including baseline and supplemental requirements in API RP 1162 Section 4.4.3.

Pursuant to Section 4.4.3 of API RP 1162, “operators should include information about how emergency officials can access the operator’s emergency response plans covering their jurisdiction” in the message content to emergency officials. However, Spectra’s brochure/materials that were mailed to emergency officials in 2010 and the *2010 Program Guide Pipeline Emergency Response & Damage Prevention Training Pennsylvania* did not address how emergency officials can access its emergency response plan. During the inspection, Spectra indicated that it advised emergency responder that the emergency response plans are available to them during its business hours at the group meetings. But, Spectra could not provide documentation that showed that information was provided to emergency responders.

4. §192.616 Public awareness.**(a) ...****(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.**

Spectra failed to follow the general program recommendation, including baseline and supplemental requirements under API RP 1162 Section 4.7. Specifically, Spectra did not provide information about whether it has High Consequence Areas (HCAs) and/or an Integrity Management Program (IMP) to the affected public, emergency officials, and public officials.

Section 4.7 of API RP 1162 describes the information that should be included in the message content to affected public, emergency officials, and public officials within HCAs. Pursuant to Section 4.7.1 of API RP 1162, operators should include general information that some segments along their transmission pipeline are designated as HCAs and that an IMP has been developed, to affected public. Also, operators should include information on where to obtain an overview of their IMP or view upon request. However, Spectra’s brochure that was mailed to the affected public in 2010 did not contain the aforementioned information.

In addition, Section 4.7.2 of API RP 1162 requires operators to include an overview of the IMP to emergency officials as well as a chance for them to provide feedback on the IMP. However, Spectra’s brochure that was mailed to the emergency officials in 2010 did not contain information about its IMP and how to provide feedback.

Furthermore, Section 4.7.3 of API RP 1162 requires operators to include information on where to obtain an overview of their IMP or view upon request, to the public officials. However, Spectra’s brochure that was mailed to the public officials in 2010 did not contain the aforementioned information.

Spectra did not include the information outlined under Section 4.7 of API RP 1162 to the appropriate stakeholders.

5. §192.616 Public Awareness

(a) . . .

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Spectra failed to follow the general program recommendation, including baseline and supplemental requirements in API RP 1162 Section 8.4 because it did not perform an effectiveness evaluation.

Spectra had no documentation or records that showed it evaluated the survey results or any other data for each individual stakeholder group (affected public, excavators, public officials, and emergency responders) to determine whether the program is effective or improvement is necessary.

Under Section 8.4 of API RP 1162, an operator should measure the program effectiveness. As such, an operator should assess four measures to determine whether the actions undertaken in the implementation of API RP 1162 are achieving the intended goals and objectives (effectiveness evaluation) (emphasis added).^[1] Under Section 8.5 of API RP 1162, an operator must evaluate the effectiveness of its program “[n]o more than four years apart.”^[2]

During the inspection, PHMSA inspectors requested that Spectra provide documentation of its effectiveness evaluation. Subsequently, a Spectra representative provided a copy of a table/questionnaire titled “2009 Communication Plan Evaluation” with the date December 9, 2009. In addition, Spectra also provided a copy of results from an industry survey that was conducted in 2007 and results from third party surveys conducted six (6) times from 2005 to 2011.

First, the “2009 Communication Plan Evaluation” had questions that generally focus on whether action(s) have been implemented, and findings that stated where in the program the action(s) have or have not been implemented. This document did not address the effectiveness of the public awareness program. Second, the results from the survey conducted by industry did not survey individual stakeholders, rather instead combined some stakeholders together. Third, the results from the survey conducted by the third party only surveyed the affected public. Thus, Spectra could not assess the results of the surveys because there was no recent survey that included all stakeholders.

In conclusion, Spectra could not demonstrate that it evaluated the effectiveness of its public awareness program in accordance with Section 8.4 of API RP 1162.

^[1] American Petroleum Institute Recommended Practice 1162, First Edition, December 2003, Section 8.4 Measuring Program Effectiveness at pages 27-28.

^[2] *Id.*, Section 8.5 Summary of Baseline Evaluation Program at page 29.

Proposed Compliance Order

With respect to item 5 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Spectra. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to items 1, 2, 3 and 4, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Be advised that failure to do so may result in Spectra being subject to additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 1-2013-1022** and for each document you submit, please provide a copy in electronic format whenever possible, and please whenever possible provide a signed PDF. Smaller files may be emailed to Byron.Coy@dot.gov. Larger files should be sent on a CD accompanied by the original paper copy to the Eastern Region Office.

Sincerely,

Byron Coy, PE
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), proposes to issue to Spectra Energy Corporation (Spectra) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Spectra with the pipeline safety regulations:

1. In regards to Item Number 5 of the Notice pertaining to §192.616(c), Spectra must :
 - a. Conduct an evaluation in accordance with Section 8.4 of American Petroleum Institute (API) Recommended Practice (RP) 1162 and its applicable procedures within sixty (90) days of receipt of the Final Order.
 - b. Submit a report that details how it plans to implement improvement(s) (if necessary) to its public awareness program based on the results of the evaluation or justify why improvements are not practicable and not necessary for safety within one hundred twenty (150) days of receipt of the Final Order.
 - c. Submit all related information and reports for this effort to Byron Coy, PE, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Suite 103, Bear Tavern Road, West Trenton, NJ 08628.
2. It is requested (not mandated) that Spectra maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. 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.