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

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

WARNING LETTER

OVERNIGHT EXPRESS MAIL

July 09, 2013

Charles Denault, President
Delaware Storage & Pipeline Company
400 Amherst Street, Suite 405
Nashua, NH 03063

CPF 1-2013-6001W

Dear Mr. Denault:

From December 6 to December 8, 2011, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected Delaware Storage and Pipeline Company's (DSPC) Public Awareness Program, *Public Awareness Program for Delaware Storage & Pipeline Company, Revised November 10, 2009* (*Public Awareness Program for DSPC*) and materials in Little Creek, Delaware.

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. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4 Message Content. Specifically, DSPC did not have a documented process for providing programs in both English and in other languages commonly used by significant concentration of non-English speaking population along the pipeline.

Pursuant to API RP 1162 Section 4, "communications materials should be provided in language(s) spoken by a significant portion of the intended audience." The *Public Awareness Program for DSPC* had no information on what data would be evaluated to make the determination whether or not the program should be provided in both English and other languages, the frequency of evaluation, and defining what the operator deems "significant number and concentration."

2. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.1 Pipeline Purpose and Reliability.

Pursuant to API RP 1162 Section 4.1, "[o]perators should consider providing a general explanation of the purpose of the pipeline and/or facilities and the reliability of pipelines meet the energy needs of the region. . . ." The *Public Awareness Program for DSPC* (including materials that were sent to stakeholders) did not contain a general explanation of the purpose of the pipeline and/ or facilities and the reliability of pipelines to meet the energy needs of the region it is in.

3. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.2 Hazard Awareness and Prevention Measures.

Pursuant to API RP 1162 Section 4.2, "[o]perators should provide a very broad overview of potential hazards, their potential consequences and the measures undertaken by the operator to prevent or mitigate the risks from pipeline. . . ." The *Public Awareness Program for DSPC* (including materials that were sent to the affected public and excavators stakeholders) did not contain potential hazards, its potential consequences and the measures undertaken by the operator to prevent or mitigate the risks from pipelines information.

4. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.3.4 Liaison with Emergency Officials.

Pursuant to API RP 1162 Section 4.3.4, the message content should have "information that describes the ongoing relationship between the operator and local emergency response officials to help prevent incidents and assure preparedness for emergencies." The *Public Awareness Program for DSPC* (including material sent to the affected public and excavators stakeholders) did not describe an ongoing relationship between the operator and local emergency response officials.

5. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.9 Right-of-Way (ROW) Encroachment Prevention.

Pursuant to API RP 1162 Section 4.9, "[p]ipeline operators should communicate that encroachments upon the pipeline ROW inhibit the operator's ability to respond to pipeline emergencies, eliminate third-party

damage, provide ROW surveillance, perform routine maintenance, and perform required federal/state inspections. . ." The *Public Awareness Program for DSPC* (including materials that were sent to stakeholders) did not communicate information regarding ROW encroachment.

6. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.10 Pipeline Maintenance Construction Activities.

Pursuant to API RP 1162 Section 4.10, "[p]ipeline maintenance-related construction activities should be communicated to the audience affected by the specific activity in a timely manner appropriate to the nature and extent of the activity." The *Public Awareness Program for DSPC* did not contain procedures for communicating any pipeline construction activities to any stakeholders.

7. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.11 Security.

Pursuant to API RP Section 4.11, "[w]here applicable and in accordance with the national Homeland Security efforts, pipeline operators should communicate an overview pertaining to security of their pipelines and related facilities." The *Public Awareness Program for DSPC* (including materials that were sent to stakeholders) did not contain information pertaining to security of its pipelines and related facilities.

8. **§195.440 Public awareness.**
(a) 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* § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Sections 7.2 Program Recordkeeping.

Pursuant to API RP 1162 Section 7.2 (c), an operator must keep records of all program evaluations, including current results, follow-up actions and expected results. The *Public Awareness Program for DSPC* did not address this requirement.

9. **§195.440 Public awareness.**
(a) 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 § 195.3).

DSPC failed to develop a written continuing public education program that followed the guidance in API RP 1162 Sections 8.4 Measuring Program Effectiveness.

API RP 1162 Section 8.4 identifies four measures that an operator should evaluate for effectiveness for the four intended stakeholder audience (affected public, emergency responders, public officials, and excavators).

According to the *Public Awareness Program for DSPC*, "[a] survey has been designed to evaluate the effectiveness of the Program message delivery materials and methods for the affected public stakeholder audience." (emphasis added) DSPC did not have procedures for evaluating the effectiveness of its program for emergency responders, public officials, and excavators.

10. §195.440 Public awareness.
(a) 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 § 195.3).

DSPC failed to implement *Section 11.3.1 Evaluation of Survey Responses for Affected Public Stakeholder* of its written continuing public education program.

Section 11.3.1 Evaluation of Survey Responses for Affected Public Stakeholder describes a scoring system and evaluation process for the answers/responses for affected public survey. However, DSPC could not produce any records that demonstrated that it scored and evaluated the answer/responses from the affected public survey.

11. §195.440 Public awareness.
(a) . . .
(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

DSPC's *Public Awareness Program for DSPC* failed to follow API RP 1162 Section 4.6.1 Transmission Pipeline Markers and assess the unique attributes and characteristic of the its pipeline and facilities.

API RP 1162 Section 4.6.1 states that "[t]he operator's awareness communications should include information about what pipeline markers look like. . . ." API RP 1162 Section 4.6.1 refers to Appendix C for additional details. In Appendix C of API RP 1162, under C.6.1 Transmission Pipeline Markers, it states that the "[p]ublic awareness materials should include illustrations and descriptions of pipeline markers used by the operator and the information that the markers contain." (emphasis added) The *Public Awareness Program for DSPC* (including materials that were provided to stakeholders) illustrated generic pipeline markers, which was not a representation of DSPC's pipeline markers.

12. §195.440 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.

DSPC failed to follow the general program recommendation of Section 7.3 Record Retention. Specifically, DSPC did not retain records of stakeholder audiences with whom it communicated and its program evaluation for a minimum of five (5) years.

Pursuant to API RP 1162 Section 7.3, records of stakeholder audiences with whom it has communicated and program evaluation should be retained for a minimum of five (5) years. However, DSPC was unable produce those records prior to 2008.

13. **§195.440 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.

DSPC failed to follow the general program recommendation, including baseline and supplemental requirement of API RP 1162 Section 8.4 Measuring Program Effectiveness because it did not conduct an effectiveness evaluation for the emergency responders, public officials, and excavators.

API RP 1162 Section 8.4 identifies four measures that an operator should evaluate for effectiveness for the four intended stakeholder audience (affected public, emergency responders, public officials, and excavators). At the time of this inspection, DSPC was unable to produce any documentation or evidence to show that it conducted an effectiveness evaluation for the emergency responders, public officials, and excavators.

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed $200,000 per violation per day the violation persists up to a maximum of $2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed $100,000 per violation per day, with a maximum penalty not to exceed $1,000,000 for a related series of violations. 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 correct the items identified in this letter. Failure to do so will result in DSPC being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, please address your correspondence to: Byron Coy, PE, Director, PHMSA Eastern Region, 820 Bear Tavern Road, Suite 103, W. Trenton, NJ 08628 and please refer to **CPF 1-2013-6001W**. 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).

Sincerely,

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