

Mr. David B. Kearney  
Assistant City Attorney  
City of Richmond  
900 East Broad Street, Suite 300  
Richmond, VA 23219

**RE: In the Matter of City of Richmond – CPF No. 1-2010-0001**

Dear Mr. Kearney:

Enclosed is a copy of the Consent Agreement and Order including a copy of the Notice of Probable Violation and Proposed Civil Penalty, which was erroneously omitted. The service of this Consent Agreement and Order was previously deemed effective.

Thank you for your cooperation.

Sincerely,

James M. Pates, Esq.  
Assistant Chief Counsel  
for Pipeline Safety

**FEBRUARY 5, 2013**

Mr. David B. Kearney  
Assistant City Attorney  
City of Richmond  
900 East Broad Street, Suite 300  
Richmond, VA 23219

**RE: In the Matter of City of Richmond – CPF No. 1-2010-0001**

Dear Mr. Kearney:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement reached between PHMSA and the City of Richmond in this enforcement action and that you signed on January 18, 2013. Service of the Consent Order and Consent Agreement 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

**VIA CERTIFIED MAIL**

Enclosure

cc: Mr. Byron Coy, Director, Eastern Region, OPS  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety, OPS

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

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**In the Matter of** ) )  
 ) )  
**City of Richmond, Virginia,** ) )  
**a municipal corporation,** ) **CPF No. 1-2010-0001**  
 ) )  
**Respondent.** ) )  
\_\_\_\_\_) )

**CONSENT AGREEMENT AND ORDER**

By letter dated May 6, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Proposed Violation in this proceeding, which arose out of an on-site inspection of the pipeline facilities of the City of Richmond's (City or Respondent) gas distribution facilities in Richmond, Virginia. The City operates a municipal gas distribution system consisting of approximately 1,700 miles of gas distribution lines.<sup>1</sup> The inspection was conducted on March 26-27, 2009, pursuant to chapter 601 of Title 49, United States Code, by a Virginia State Corporation Commission (VA SCC) inspector, acting as agent for OPS.

As a result of the VA SCC inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 6, 2010, a Notice of Probable Violation and Proposed Civil Penalty (Notice), a copy of which is attached hereto as Appendix One. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$49,700 for the alleged violation. The Notice also proposed finding that Respondent had committed two other probable violations of 49 C.F.R. Part 192 and warning the City to take appropriate corrective action or be subject to future enforcement action.

The City responded to the Notice by letter dated June 2, 2010, and requested a hearing to contest the alleged violation and proposed penalty and to present evidence regarding its good-faith compliance efforts. A hearing was subsequently held on August 26, 2010, in Washington, D.C., with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing, the City provided a post-hearing statement for the record, by letter dated September 15, 2010.

<sup>1</sup> <http://www.richmondgov.com/> (last accessed 6/7/2011).

Following the hearing, the parties entered into good-faith discussions to resolve the issues presented and have reached agreement that it would be in the best interests of the parties, pursuant to 49 C.F.R. Part 190, to resolve this enforcement action without further proceedings and to enter into this Consent Agreement and Order (Agreement), without adjudication of any issue of fact or law.

**NOW, THEREFORE**, upon consent and agreement of Respondent and PHMSA (collectively, Parties), the Parties agree as follows:

### **I. General Provisions**

1. Respondent acknowledges that the City and its pipeline system are subject to the jurisdiction of the federal Pipeline Safety Laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's actions in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent consents to the issuance of the Agreement, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice or the validity of this Agreement, including all rights to administrative or judicial hearings or appeals.

3. This Agreement shall apply to and be binding upon the Parties and their respective officers, directors, and employees, and to Respondent's successors, assigns, or other entities or persons otherwise bound by law. The City agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of its officers, employees, and agents whose duties might reasonably include compliance with its terms.

4. The Parties agree that Respondent neither admits nor denies the allegation of violation in the Notice, but admits, for purposes of this Agreement, the facts as stated in the Notice. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.

5. This Agreement does not waive or modify any Federal, State, or local law or regulation applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification or any permit, under any Federal, State, or local law or regulation. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations, and permits.

6. Pursuant to 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. § 190.221, Respondent's failure to comply with this Agreement may result in the assessment of civil penalties up to \$200,000 per violation per day, or in referral of the case for judicial enforcement.

## **II. Compliance Terms**

7. The Parties acknowledge and agree that the City, prior to 2009, engaged in the practice of installing prospective gas distribution service lines, referred to locally as “bond issues,” in areas of new development. These incomplete plastic pipeline stubs were installed so that street paving could be completed without further cutting of the pavement. Gas lines were subsequently tied in, as new buildings were erected. Pursuant to this practice, the City would install a new main, with service taps, excess flow valves, and stubbed bond issues ending in purge points. The City would simultaneously pressure test the mains and the bond issues, after opening the curb valves and closing the purge points. Next, the curb valves would be closed, residual gas in the bond issue stub released, and the purge points capped. These air-filled lines were then brought above ground. Upon construction of an actual building, the City would complete the service by excavating the bond issue, cutting it below ground, and tying it into the completed portion of the service line to the building.

8. The Parties agree that the practice described in Paragraph 7 above constitutes a threat to public safety because it allows gas lines that have been installed but not yet connected to customers to be inadvertently connected to gas service and left above ground and unprotected from deterioration and external damage.

9. The City represents that it has discontinued the practice described in Paragraph 7 above and has used its best efforts to replace or correct any plastic pipe “bond issues” where such connections were located above ground and unprotected from deterioration and external damage. The City further represents that all existing bond issues have been buried or otherwise protected against deterioration and external damage, which has been verified by the VA SCC.

10. Respondent further agrees, as of the Effective Date of this Agreement, to cease and desist permanently from the practices described in Paragraph 7 above.

11. The Parties acknowledge and agree that the warning items set forth in Items 2 and 3 of the Notice shall remain in full force and effect. The warnings were for:

49 C.F.R. § 192.303 (Item 2) — Respondent’s alleged failure to construct each transmission line or main in accordance with comprehensive written specifications or standards consistent with 49 C.F.R. Part 192; and

49 C.F.R. § 192.285 (Item 3) — Respondent’s alleged failure to re-qualify two individuals making plastic pipe points under an applicable procedure.

If the VA SCC or PHMSA finds a violation of either of these Items in a subsequent inspection, Respondent may be subject to future enforcement action.

## **III. Penalties**

12. PHMSA hereby withdraws the proposed civil penalty of \$49,700 for the alleged violation of Item 1 in the Notice.

13. If the City fails to comply with any of the terms of this Agreement, the City will be liable for stipulated penalties, according to the following provisions:

- a. The City will pay a stipulated penalty to the United States in the amount of the original proposed civil penalty of \$49,700; and
- b. Nothing in this Agreement shall be construed as prohibiting, altering or otherwise limiting the ability of PHMSA to seek any other remedies or sanctions available to the agency by virtue of the City's violation of this Agreement or of any statutes and regulations upon which it is based, or any other applicable provision of law.

#### **IV. Miscellaneous**

14. This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions between the Parties, whether oral or written, with respect to the subject matter herein. The terms of this Agreement shall control in the event of any inconsistency with the record in this proceeding.

15. In the event of any transfer of ownership or operating responsibility of any portion of the City's pipeline system during the term of this Agreement, the City will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the Director.

16. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. PHMSA is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out any actions required by this Agreement.

17. Respondent may request written confirmation from PHMSA when this Agreement is terminated. Except as otherwise provided herein, this Agreement may be modified only by the mutual agreement of the Parties and set forth in writing and signed by both Parties.

18. Each undersigned representative of the Parties certifies that he is fully authorized by the party represented to enter into the terms and conditions hereof and to execute and legally bind that party to it.

19. The Effective Date of this Agreement is the date on which this Agreement is signed by both Respondent and PHMSA.

The Parties hereby agree to all conditions and terms of this Agreement:

For PHMSA:

For Respondent:

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Jeffrey D. Wiese  
Associate Administrator for  
Pipeline Safety

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Christopher L. Beschler  
Deputy Chief Administrative Officer for  
Operations,  
City of Richmond, Virginia

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Date

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Date

**APPENDIX ONE**

**[INSERT COPY OF NOTICE]**



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

820 Bear Tavern Road, Suite 306  
West Trenton, NJ 08628  
**609.989.2171**

**NOTICE OF PROBABLE VIOLATION  
and  
PROPOSED CIVIL PENALTY**

**EXPRESS OVERNIGHT MAIL**

May 06, 2010

Mr. Christopher L. Beschler  
Director Department of Public Utilities  
Deputy Chief Administrative Officer  
City of Richmond  
Department of Public Utilities  
730 East Broad Street, 6<sup>th</sup> Floor  
Richmond, VA 23219

**CPF 1-2010-0001**

Dear Mr. Beschler:

Between March 26 and May 27, 2009, a State Inspector from the Virginia State Corporation Commission (VA SCC), acting as Agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code, inspected your pipeline facilities in Richmond, VA.

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. **§192.375 Service lines: Plastic.**

**(a) Each plastic service line outside a building must be installed below ground level, except that –**

**(2) It may terminate above ground level and outside the building, if-**

**(i) The above ground level part of the plastic service line is protected against deterioration and external damage;**

The City of Richmond (City) failed to install a plastic service line in a manner to protect the above ground level part of the plastic service line from deterioration and external damage at lots 20 & 21 on Ginter Street in Henrico County, Virginia.

On March 26, 2009, the VA SCC inspector performed a site visit on Ginter Street in Henrico County and found two "stubbed up" plastic gas services located above ground on lots 20 & 21. Two City representatives arrived at the site and confirmed that both of the above ground plastic service stubs were pressurized with natural gas.

The VA SCC inspector took photographs during the site visit, and observed the condition of the service stubs.

2. **§192.303 Compliance with specifications or standards.**

**Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part.**

On April 28, 2009, the VA SCC inspector observed a City contractor failing to use a weak link (as required by City O&M procedure Volume II, Chapter 3, Section II), while in the process of pulling 2 inch plastic pipe through a directionally drilled bore hole. The City contractor was constructing a gas main on Cottrell Road in Henrico County, VA. The VA SCC inspector immediately notified City representatives of this finding. The subject section of plastic pipe was removed. The following day a new section of plastic pipe was installed using the required weak link in the pulling process.

The VA SCC inspector took photographs during the site visit, and observed the condition of the plastic pipe installation process. The VA SCC inspector also witnessed the new installation on April 29, 2009.

**3. §192.285 Plastic pipe: Qualifying persons to make joints.**

**(c) A person must be requalified under an applicable procedure, if during any 12-month period that person:**

**(1) Does not make any joints under that procedure; or**

On May 9, 2009, the VA SCC inspector observed a City contractor using two unqualified individuals to install mechanical joints on plastic pipe. The contractor crew was working at 133 Belt Blvd, in the City of Richmond on that date. The unqualified individuals' joining cards had expired as of September 18 and 19, 2008, respectively. These findings were brought to the attention of City representatives, and the fittings were promptly removed and re-installed by a qualified individual.

The VA SCC inspector took photographs during the site visit, and checked the qualification cards of the individuals installing the mechanical joints.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$49,700 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$49,700

Warning Items

With respect to items 2 and 3, 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.

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 all your correspondence on this matter, please refer to **CPF 1-2010-0001** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

cc: Jim Hotinger, VA SCC