



CITY OF RICHMOND

DEPARTMENT OF PUBLIC UTILITIES

GAS AND WATER DISTRIBUTION

OPERATIONS CENTER

Mr. Byron E. Coy  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration  
820 Bear Tavern Road, Suite 103  
West Trenton, NJ 08628

June 8, 2011

**RE: Notice of Probable Violation and Civil Penalty  
CPF 1-2011-0001**

Dear Mr. Coy,

We received your Notice of Probable Violation and Proposed Civil Penalty (Reference CPF 1-2011-0001) dated May 9, 2011 and received May 12, 2011.

As you stated in the document, the 4 items identified in the Notice of Probable Violation and Proposed Civil Penalty were identified by the Virginia SCC between February 24, 2009 and September 14, 2010. For the record, these were communicated to the City of Richmond in Notice of Investigation Reports NOI-192, NOI-203, and NOI-245. The SCC numbering system indicates that these 4 items were identified over the course of 53 separate inspections during this 19 month time frame.

Three of the items (#1, 2, and 4) have been categorized as "Warning Items". We have completed all corrective actions for these items.

We are respectfully requesting a hearing regarding item #3:

### #3

#### **§192.465(a) External corrosion control: Monitoring**

**(a) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission line, not in excess of 100 feet (30 meters), or separately protected service line, these pipelines may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.**

The City failed to monitor separately protected short sections of main pursuant to §192.465(a). During the inspection, the VA SCC inspector reviewed the City's leak record. The leak record showed that there were leaks on steel drips. The City indicated that the steel drips were installed throughout the plastic gas system; which meant the steel drip were separately protected isolated sections of the pipeline. The City said the steel drips in the pipeline were not recognized as part of the 10% sampling requirement since their installation in 1993, and they did not perform any survey on the identified 2,406 steel drips.

In 2009, the City monitored the steel drips for adequate cathodic protection as prescribed in §192.465(a). As a result, the City discovered 206 of the 2,406 steel drips with low potential readings which have been scheduled for further protection or removal.

### **Response**

We agree that we failed to identify these steel drips as “separately protected short sections of mains” and did not monitor them appropriately.

We are requesting the hearing to discuss the proposed civil penalty amount. Specifically we are seeking to:

- 1) have the amount reduced in recognition of our aggressive corrective actions, and
- 2) understand the process by which the \$59,000 was derived and
- 3) discuss a reconsideration of the civil penalty leveled pursuant to the other considerations (besides our corrective actions) enumerated in 49 U.S.C. 60122.

#### **Corrective actions:**

This issue was first raised by our SCC inspector during an inspection on February 24-27, 2009 and reported as a violation on March 3, 2010. We immediately took corrective action that included surveying 100% of the steel drip structures in 2009. We did not just “monitor the steel drips for adequate cathodic protection as prescribed in 192.465(a)” which would have been 10% of the drips, as stated in the finding. Recognizing that we had not previously monitored these structures before, we went beyond those requirements to check them all within that 10 month period. They are now incorporated in our annual 10% monitoring program.

The total estimated cost of our corrective efforts is:

Monitor all of the 2,406 drips	\$ 50,068
Protect 206 drips with low potential readings	\$ 35,898
Remove 56 Drips (located in hard to read areas) not including paving costs	\$ 97,836
<b>TOTAL</b>	<b>\$183,802</b>

In the interest of safety, we have expended over three times the proposed penalty going well above and beyond merely the 10% monitoring of the drips that is required.

**Derivation of the amount of the penalty and the considerations for imposing a civil penalty enumerated in 49 U.S.C. 60122:**

49 U.S.C. 60122 states in pertinent part:

In determining the amount of a civil penalty under this section - (1) the Secretary shall consider - (A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment; (B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business; and (C) good faith in attempting to comply; and (2) the Secretary may consider - (A) the economic benefit gained from the violation without any reduction because of subsequent damages; and (B) other matters that justice requires.

It is the City's contention, in addition to the corrective action discussed in the previous section, that the nature, circumstances, and gravity of this violation, coupled with the minor if not non-existent impact on the environment require a significant downward correction in the amount of the penalty.

Additionally, we would request an opportunity to discuss the City's history and its ability to pay this fine as well as the impact this fine will have on the City's ability to be proactive in the business of remediating other gas issues (e.g. Copper and Bare Steel Renewal).

Finally, the City would like to understand how this civil penalty was derived. We have two other outstanding civil penalties that are on appeal with PHMSA, and we would like an accounting of whether these were included in the consideration of this civil penalty. Furthermore, the City believes that the interests of Justice lean heavily in favor of a reduction of this civil penalty.

**HEARING REQUEST**

Therefore the City of Richmond – DPU requests a hearing in accordance with 49 CFR 192.211 (a) for the purpose of discussing the proposed penalty amount. The City of Richmond – DPU will be represented by counsel at the hearing.

Thank you for your consideration.

Sincerely,



Michael R. Bellman  
Deputy Director – Gas & Light  
City of Richmond – DPU  
400 Jefferson Davis Highway  
Richmond, VA 23224  
(804) 646-8301

cc. Gregory O'Halloran, Esq.  
Robert Steidel  
Carl James