

**MAY 11 2012**

Mr. Robert Steidel  
Director  
Department of Public Utilities  
City of Richmond  
900 East Broad Street  
Richmond, VA 23219

**Re: CPF No. 1-2011-0002**

Dear Mr. Steidel:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$25,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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, Director, Eastern Region, OPS  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, 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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<b>In the Matter of</b>	)	
	)	
<b>City of Richmond, Virginia,</b>	)	<b>CPF No. 1-2011-0002</b>
<b>a municipal corporation,</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

On March 21, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Virginia State Corporation Commission (VSCC), as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of the City of Richmond, Virginia (City or Respondent). The City operates a municipal gas distribution system with approximately 1,786 miles of natural gas pipeline and related facilities in Richmond, Virginia.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 25, 2011, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that the City had violated 49 C.F.R. § 192.605(a) and proposed assessing a civil penalty of \$25,000 for the alleged violation.

The City responded to the Notice by letter dated November 23, 2011 (Response). Respondent did not contest the allegation of violation, but asked that the proposed civil penalty be reduced or eliminated. The City did not request a hearing and therefore has waived its right to one.

**FINDING OF VIOLATION**

In its Response, the City did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which states:

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<sup>1</sup> Pipeline Safety Violation Report, dated October 25, 2011 (Violation Report) at 1.

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

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own written procedures for installing plastic service tees. Specifically, the Notice alleged that the City's procedures<sup>2</sup> required that City personnel follow the manufacturer's specifications when joining pipe with the fusion or mechanical fitting method. The Notice further alleged that the manufacturer's instructions for the particular type of plastic service tee used in this case called for the hand-tightening of the cap but a VSCC inspector had observed a City contractor using a pipe wrench to tighten it.

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. § 192.605(a) by failing to follow its written procedures for installing a plastic service tee.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

**ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$25,000 for the violation cited above.

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<sup>2</sup> Violation Report, Exhibit A-5.

**Item 1:** The Notice proposed a civil penalty of \$25,000 for Respondent’s violation of 49 C.F.R. § 192.605(a), for failing to follow its own written procedures for installing plastic service tees. In its Response, the City did not contest the allegation but asked that the proposed penalty be reduced or eliminated in light of the nature, circumstances, and gravity of the violation and for such reasons as justice may require.

First, the City argues that the contractor’s use of a wrench to tighten the service tee in this particular situation was actually in accordance with the operator’s specifications. The City provided documentation that it had contacted the manufacturer of the plastic service tee after the VSCC inspection occurred, and that the manufacturer responded as follows:

Under certain circumstances (for example: if the installer is in a tight position or does not have the leverage to complete the cap installation by hand), the installer may use a wrench to complete the cap installation. The installer may do so as long as the cap is initially started by hand and as long as the cap is not tightened beyond the cap stop.<sup>3</sup>

Citing to the above statement, the City contends that the contractor’s actions were consistent with the manufacturer’s specifications, and that the installation would be fully compliant with its written procedures if completed today. Respondent argues that this case is really a matter of timing (i.e., the violation only occurred because the manufacturer was not contacted until after the contractor finished the installation). According to the City, “[T]his clearly demonstrates that the contractor’s actions were appropriate, even if the timing of contact with the manufacturer should have been prior to and not after using the wrench to tighten the cap to the stop.”<sup>4</sup>

I disagree. Whether the City’s contractor used the proper or “appropriate” method for installing the tee is not the issue. Instead, the City was cited for failing to follow its *own* procedures, which required City or contractor personnel to follow the manufacturer’s specifications in installing the service tee. The contractor in this particular situation chose to proceed with an alternative method of installing the tee that may or may not have been appropriate or safe. In fact, it seems likely that if the VSCC inspector had not personally observed the violation and brought it to the City’s attention, the contractor would have simply continued to ignore the manufacturer’s specifications and installed other service tees in a manner that could have jeopardized safety.

Second, the City argues that the violation was not “particularly grave” because the actions of the contractor were “not egregious or dangerous” in that they were subsequently ratified by the manufacturer’s letter.<sup>5</sup> This belated information, according to Respondent, mitigates the nature, circumstances, and gravity of the offense and shows that justice would be served by reducing the penalty.

However, the Violation Report demonstrates that OPS considered all of these issues and other

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<sup>3</sup> Response (Attachment).

<sup>4</sup> Response at 2.

<sup>5</sup> *Ibid.*

relevant assessment criteria in arriving at the proposed penalty amount. It describes the nature of the violation as a failure by the contractor to follow the City's written procedures, and lists the circumstances as involving a one-day offense discovered by PHMSA's agent. On the issue of gravity, it notes that the violation potentially compromised pipeline integrity or safe operation in a populated area, where a release of natural gas could adversely affect public safety.

On the issue of culpability, the Violation Report reflects a lessened degree of culpability on the part of the City insofar as it was aware of the applicable regulatory requirements and took some steps to achieve compliance (i.e., Respondent included the manufacturer's installation instructions in its procedures), but the contractor failed to follow those procedures. It notes, on the other hand, that OPS' policy on culpability precludes mitigation of a penalty based upon "good faith" actions taken by an operator *after* a violation has already been discovered. Finally, the report takes into account that the City had no history of prior offenses within the past five years, which would have served to increase the penalty.

Therefore, I find that the Violation Report and Notice properly considered all the relevant facts and assessment criteria used to calculate penalties and that the City has failed to provide any additional information that would warrant a further reduction of the penalty. Accordingly, I assess Respondent a civil penalty of **\$25,000** for violation of 49 C.F.R. § 192.605(a).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$25,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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