

**AUGUST 13, 2014**

Mr. Maurice Jones  
City Manager  
City of Charlottesville  
305 4<sup>th</sup> Street NW  
Charlottesville, VA 22903

**Re: CPF No. 1-2012-0007**

Dear Mr. Jones:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation, makes other findings of violation, assesses a reduced civil penalty of \$79,300, and specifies actions that need to be taken by the City of Charlottesville to comply with the pipeline safety regulations.

The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Eastern Region, this enforcement action will be closed. 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, P.E., Director, Eastern Region, OPS  
Joshua L. Menter, Esq., Miller, Balis & O-Neil, PC, Counsel for City of Charlottesville  
Ms. Lauren Hildebrand, P.E., Director of Public Utilities, City of Charlottesville

**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 Charlottesville, Virginia, a municipal corporation,</b>	)	<b>CPF No. 1-2012-0007</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

Between January 24 and March 9, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Virginia State Corporation Commission (VA SCC), 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 Charlottesville (Charlottesville, City, or Respondent) in Charlottesville, Virginia. The City operates a municipally-owned natural gas distribution system, consisting of 316 miles of main and 17,828 service lines.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated December 13, 2012, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Charlottesville had committed various violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$88,500 for the alleged violations. The Notice also proposed that Respondent be required to take certain measures to correct the alleged violations.

Charlottesville responded to the Notice by letter dated January 14, 2013 (Response). The City contested four of the eight allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a), which states:

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<sup>1</sup> <http://www.charlottesville.org/> (last accessed May 2, 2013)

**§ 192.739 Pressure limiting and regulating stations: Inspection and testing.**

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is —

- (1) In good mechanical condition . . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a) by failing to demonstrate that each pressure regulating station and its equipment had been inspected and tested at intervals not exceeding 15 months, but at least once each calendar year.<sup>2</sup> Specifically, the Notice alleged that Charlottesville could not provide inspection records to demonstrate that the Rt. 29 North, Rutledge, and McIntire Park pressure regulating stations had been inspected and tested at the required intervals.

The Notice provided the following chart of violations:

Station	Inspection Date	Inspection Date	Calendar Year Missed	Number of Days Late
Rt. 29 North	12/2/2008	1/8/2010	2009	8
Rutledge	12/2/2008	1/8/2010	2009	8
McIntire Park	12/8/2009	1/5/2011	2010	5

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. § 192.739(a) by failing to demonstrate that each pressure regulating station and its equipment had been inspected and tested at intervals not exceeding 15 months, but at least once each calendar year.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.161(c), which states:

**§ 192.161 Supports and anchors.**

(a) ...

(c) Each support or anchor on an exposed pipeline must be made of durable, noncombustible material and must be designed and installed as follows:

(1) Free expansion and contraction of the pipeline between supports or anchors may not be restricted.

(2) Provision must be made for the service conditions involved.

(3) Movement of the pipeline may not cause disengagement of the support equipment.

The Notice alleged that Respondent violated 49 C.F.R. § 192.161(c) by failing to install supports on an exposed pipeline that were made of durable, noncombustible material. Specifically, the

<sup>2</sup> Pipeline Safety Violation Report (December 13, 2012) (Violation Report), Exhibit A4.

Notice alleged that Charlottesville had installed wooden blocks that were not fastened to the building as support for an exposed roof main.

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. § 192.161(c) by failing to install supports on an exposed pipeline that were made of durable, noncombustible material.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.317(b), which states:

**§ 192.317 Protection from hazards.**

(a) ....

(b) Each aboveground transmission line or main, not located offshore or in inland navigable water areas, must be protected from accidental damage by vehicular traffic or other similar causes, either by being placed at a safe distance from the traffic or by installing barricades.

The Notice alleged that Respondent violated 49 C.F.R. § 192.317(b) by failing to protect an aboveground transmission line or main from accidental damage by vehicular traffic, either by placing the line at a safe distance from traffic or by installing barricades. Specifically, the Notice alleged that Charlottesville did not protect an aboveground regulator station from accidental vehicular damage by placing it either at a safe distance from traffic or by installing barricades at East Market Street and Old Preston Avenue in Charlottesville. According to the Notice, inspectors photographed the regulator sitting 12 feet from the edge of the road, where the road curves at East Market Street and Old Preston Avenue.

In its Response, Charlottesville raised three defenses. First, it argued that the regulator station had been located at a safe distance from traffic since its initial installation, as the station was located 12 feet from the road's concrete curb line, the road had a six-inch-high curb, the area had a 25 miles per hour (mph) speed limit, and the regulator was located on the inside of a curve in the road. Respondent further argued that because of the angle of the road, a speeding car might miss the curve but would travel *away* from the regulator station. Second, Respondent argued that the VA SCC had never before suggested that the regulator station was not at a safe distance. The City pointed out that the regulator station had been inspected in November 2007, and the VA SCC had not communicated any concerns regarding its safe distance from traffic at that time.

Third, Charlottesville argued that, in an effort to be proactive and ensure compliance with 49 C.F.R. § 192.317(b), the Chief Gas Engineer of Charlottesville had made repeated requests, over a three-year period, for guidance or an interpretation of the phrase "at a safe distance from the traffic." Respondent stated that after three years with no response, the City provided the VA SCC with its interpretation, suggesting that "safe distance" should be a function of the speed limit, the road edge construction (i.e., concrete curb versus edge of pavement), and other considerations. Still, Charlottesville received no response from the VA SCC until it received the Notice alleging this violation.

In response to Respondent's arguments, PHMSA asserted that it was unaware of any verbal or written requests by Charlottesville to the VA SCC for guidance or an interpretation of 49 C.F.R. § 192.317(b). PHMSA also asserted that Respondent could have searched PHMSA's public

website for enforcement guidance or sought informal guidance and interpretive assistance, in accordance with 49 C.F.R. § 190.11. The agency further argued that Respondent could have obtained commercially available software such as WinDOT, industry standards, or industry association information as sources of pipeline safety guidance and regulation interpretations.

Moreover, PHMSA explained that the agency had issued an informal interpretation of the phrase “at a safe distance from traffic.” The agency interpretation of 49 C.F.R. § 192.317(b), dated October 9, 1995, states, in relevant part:

As to §192.317(b), we have not adopted criteria to judge the safety of distances separating aboveground gas pipeline facilities from vehicular traffic. So a safe distance would be whatever a reasonable and prudent operator would conclude is safe under the circumstances, considering relevant factors such as the speed limit, the direction of traffic, the terrain, and any natural barriers.

Considering the arguments and evidence, I find that the regulation does not provide a “bright line” test, but the 1995 interpretation of 49 C.F.R. § 192.317(b) does provide useful clarification of the phrase “at a safe distance from traffic.” In fact, the 1995 interpretation addresses the very question that the City had asked the VA SCC: “What criteria can be used to determine if the pipeline is a ‘safe distance from the traffic’ under §192.317(b)?” by providing a description of the relevant factors that need to be considered.<sup>3</sup> While barricades can provide additional protection from vehicular traffic, I find that under the particular factual scenario here, Charlottesville reasonably considered the relevant factors, such as the speed limit (25 mph), the direction of traffic (angle of the road slowing the traffic), and any natural barriers (12 feet from the road’s concrete curb line and a six-inch high curb). Based upon the foregoing, I hereby order that Item 3 of the Notice be withdrawn.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 192.353(c), which states:

**§ 192.353 Customer meters and regulators: Location.**

(a) ...

(c) Each meter installed within a building must be located in a ventilated place and not less than 3 feet (914 millimeters) from any source of ignition or any source of heat which might damage the meter.

The Notice alleged that Respondent violated 49 C.F.R. § 192.353(c) by failing to install a meter within a building in a ventilated place and at a distance not less than three feet from any potential source of ignition or heat which might damage the meter. Specifically, the Notice alleged that Charlottesville had installed a meter in a location without proper ventilation, near a wood storage area, and less than three feet from electrical equipment inside a building in the 1730 block of Allied Street in Charlottesville.

In its Response, Respondent raised two defenses. First, the City argued that the Notice

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<sup>3</sup> On file with PHMSA.

incorrectly alleged that the City had installed the meter less than three feet from electrical equipment inside a building. Charlottesville explained that there was no electrical equipment inside the building when it installed the meter and that the electrical equipment was installed later. Charlottesville acknowledged that the electrical equipment had been installed 2.5 feet from the meter but argued that the distance was only slightly less than three feet. Second, Respondent argued that, given the size of the room, PHMSA incorrectly concluded that the space was not sufficiently ventilated. Respondent also questioned any suggestion by PHMSA that wood, as a source of ignition, would interact with leaking gas to trigger an immediate combustion.

PHMSA acknowledged that there was some exchange of air in the room, but argued it was neither adequate to ensure natural venting nor adequate enough to consider the large space properly ventilated. The agency also noted that the spontaneous combustion of wood in the building was not the issue but that the wood could be ignited by some other event or activity. Any such ignition would have the potential to cause fire damage to the gas meter, the rapid release of natural gas, and an explosion inside the building.

The regulation requires that each meter installed within a building be located in a ventilated place not less than three feet from any source of ignition. When the meter was installed, there was no source of ignition or any source of heat within three feet of the meter. However, the later installation of the electrical equipment by the operator, less than three feet from the meter, and a wood storage area created the condition cited in the Notice. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.353(c) by failing to have a meter in a ventilated place within a building and less than three feet from any source of ignition.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 192.357(a), which states:

**§ 192.357 Customer meters and regulators: Installation.**

(a) Each meter and each regulator must be installed so as to minimize anticipated stresses upon the connecting piping and the meter.

The Notice alleged that Respondent violated 49 C.F.R. § 192.357(a) by failing to install a meter so as to minimize anticipated stress upon the connecting pipeline and meter. Specifically, the Notice alleged that during the audit, VA SCC inspectors observed and photographed a meter inside a building in the 1730 block of Allied Street, but the meter had no supports to limit the possible horizontal movement of the pipe and the meter.

In its Response, Charlottesville did not contest this allegation of violation but described the City's post-inspection corrective measure of moving the meter outside the building so that it had proper supports to minimize stresses. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.357(a) by failing to install a meter to minimize anticipated stress upon the connecting pipeline and meter.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 192.479(a), which states:

**§ 192.479 Atmospheric corrosion control: General.**

(a) Each operator must clean and coat each pipeline or portion of

pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 192.479(a) by failing to clean and coat each pipeline or portion of pipeline exposed to the atmosphere. Specifically, the Notice alleged that during the audit, VA SCC inspectors observed and photographed (1) approximately 320 feet of inadequately coated two-inch main secured to a row of buildings and feeding eight meters to various commercial customers at North Wing Barracks Road, and (2) a two-inch main on the side of and across the roof of a building in the 1730 block of Allied Street in Charlottesville.

Respondent did not contest these allegations of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.479(a) by failing to clean and coat each pipeline or portion of its pipeline exposed to the atmosphere.

**Item 7:** The Notice alleged that Respondent violated 49 C.F.R. § 192.707(c), which states:

**§ 192.707 Line markers for mains and transmission lines.**

(a) ...

(c) *Pipelines aboveground.* Line markers must be placed and maintained along each section of a main and transmission line that is located aboveground in an area accessible to the public.

The Notice alleged that Respondent violated 49 C.F.R. § 192.707(c) by failing to place and maintain line markers along exposed sections of main lines at two aboveground locations at North Wings Barracks Road and in the 1730 block of Allied Street. Specifically, the Notice alleged that during their audit, VA SCC inspectors observed and photographed two locations that did not have line markers: (1) a two-inch main secured to a row of buildings feeding eight meters to various commercial customers at North Wing Barracks Road; and (2) a two-inch main on the side of the building in the 1730 block of Allied Street.

In its Response, Charlottesville contested both alleged violations, arguing that neither pipe segment was a transmission or main line. Instead, the City argued that they constituted service lines, for which no line markers were required, according to the definition of “service line” found at 49 C.F.R. § 192.3. In both cases, the City asserted that the pipeline segments distributed gas at the same pressure at which the gas was delivered to the customer. Thus, Respondent argued, each pipe segment should be considered a service manifold, i.e., part of a service line.<sup>4</sup>

Charlottesville cited an e-mail from the Virginia SCC in support of its argument that the pipe segment at Barracks Road could not be considered a service line because it was upstream of a service regulator that reduced the pressure to the same pressure at which the gas was delivered to the customer. Charlottesville argued that the VA SCC’s interpretation, as reflected in the e-mail, also supported the City’s argument that the Allied Street pipeline segment must also be considered part of a service line because it was located downstream of a service regulator that reduced the pressure of that segment to the level at which the gas was delivered to a small

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

number of small commercial customers.

First, I disagree with the City's interpretation as to what constitutes a "main" versus a "service line" at both locations. The City relies too heavily on whether a pipe segment lies downstream or upstream of a regulator. The real crux of the issue is the pressure at which gas is ultimately delivered to the customer. Section 49 C.F.R. § 192.3 defines "service line" as follows:

*Service line* means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. . . .

The "common source of supply" in the service line definition is the same "common source of the supply" found in the definition of a "main" in 49 C.F.R § 192.3:

*Main* means a distribution line that serves as a common source of supply for more than one service line.

A key aspect of the definition of a "main" is that it serves as a common source of supply for more than one service line. As shown on page 3 of Exhibit B03 in the Violation Report for the Barracks Road location, there is more than one meter set and therefore more than one service line along the common source of the supply identified as a main line on pages 1 and 2 of Exhibit 3. The main lines were correctly identified in the Exhibits. Each of the respective service lines starts from the tap off the common source of supply through the meter set. Since each customer is served through a line that has its own meter and service regulator that reduces the pressure to a particular customer, the line serving that group of customers must be a main line.

Additionally, the City mischaracterized the regulators at each location as "service regulators." A service regulator is defined in 49 C.F.R § 192.3 as follows:

*Service regulator* means the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

Specifically, the City argued that the Fischer 627R at the Barracks Road location could be considered a service regulator. As such, according to Charlottesville, any portion of the pipeline segment downstream of that regulator could be considered service line.

This is an incorrect interpretation. As mentioned by both the operator and VA SCC, the Fischer 627R regulator reduces the pressure from about 90 to 30 psig. Each of the meters off the taps in Exhibit B3 are then further reducing pressure from the common source of supply (or main) running at 30 psig to the customer pressure 7" W.C. Even though the Fischer 627R is controlling pressure from a higher pressure (i.e. 90 psig), it is not a service regulator since the 30 psig is not the pressure at which gas is ultimately delivered to the customer(s). As correctly stated by the VA SCC, if the customers were taking 30 psig directly, the Fischer 627 R would be considered a service regulator. However, the customers are taking a pressure of 7" W.C., so the

Fischer 627 R cannot be considered a service regulator. The meter sets that reduce the pressure to the customers' pressure of 7" W.C. are considered service regulators. The same type of analysis holds true for the main line at Allied Street.

The segment of two-inch pipe running up the building in the 1730 block of Allied Street (shown on pg. 3 in Exhibit B 08), also operates at about 30 psig. The evidence indicates that this line provides a common source of supply for more than one service line, which aligns with the definition of a main. The service lines begin at the point where they branch off from the main as each of the service lines feed from the main. The main has a separate customer meter and regulator to further reduce the gas to inches of water column pressure provided to the customers. The two-inch pipeline is not a service line, as the City contends, since the pressure in the line is not the same as the pressure at which gas is provided to the customers. The regulator shown on page 3 of Exhibit B 08 is not a service regulator since it simply reduces pressure from approximately 90 psig to approximately 30 psig. If the 30 psig were fed directly to a customer, the line running up the building could be considered a service line and the regulator could be considered a service regulator; however, the 30 psig is not the pressure provided to the customers and the regulator is not reducing the pressure to a level provided to the customers. Each of the other regulators on the respective service lines that reduce the 30 psig pressure to the inches of water column pressure provided to customers is considered a service regulator.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.707(c) by failing to place and maintain line markers along exposed sections of main lines at two aboveground locations, North Wings Barracks Road and in the 1730 block of Allied Street.

**Item 8:** The Notice alleged that Respondent violated 49 C.F.R. § 192.805(a), which states:

**§ 192.805 Qualification program.**

Each operator shall have and follow a written qualification program.  
The program shall include provisions to:  
(a) Identify covered tasks...

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(a) by failing to have and follow a written operator qualification (OQ) program that identified the calibration and maintenance of field transmitters used in the City's telemetry system as a covered task. Specifically, the Notice alleged that the VA SCC staff reviewed the City's OQ program and found no evidence of a qualification program for City employees who calibrate and maintain pressure transducers used in the City's telemetry system.

In its Response, Charlottesville contested the allegation of violation on a number of grounds. The City argued that the calibration of telemetering equipment is not a covered task because calibration is not required anywhere in Part 192. Additionally, the City asserted that after the OQ regulations were promulgated, it met with the VA SCC to identify and define what activities conducted by its personnel should be included as covered tasks. Calibration of telemetering equipment was not one of them. Since the OQ program was developed over 10 years ago, neither PHMSA nor the VA SCC had ever indicated that the City's written qualification program was not in compliance with § 192.805. The City conceded that § 192.741 requires an operator in

certain circumstances to install telemetering, but argued that it does not require that such equipment be calibrated.

I disagree. Section 192.801(b) defines a covered task as any activity that (1) is performed on a pipeline facility, (2) is an operations or maintenance task, (3) is performed as a requirement of Part 192, and (4) affects the operation or integrity of the pipeline. Section 192.741(c) states that if there are indications of abnormal pressure, the regulator and auxiliary equipment must be inspected and the unsatisfactory operating conditions corrected. Since the calibration of telemetering equipment is performed on a pipeline facility, is part of the operation of the pipeline system, is performed as a requirement of Part 192 and affects the operation of such pipeline, it is a covered task.

Covered tasks not only include those activities that are specifically prescribed by Part 192 but also include ones undertaken as part of performance-based requirements. Subpart N of Part 192 gives each operator the opportunity to identify the covered tasks for all of its operations and maintenance activities that are required by Part 192, even if an activity isn't specifically prescribed. In this case, calibration of the City's telemetry equipment is a necessary and integral part of insuring satisfactory operating conditions under § 192.741 and should therefore be included in the City's written qualification program. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(a) by failing to have and follow a written qualification program that identified the calibration and maintenance of field transmitters used in its telemetry system as a covered task.

These findings of violation will be considered prior offenses 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 \$88,500 for the violations cited above.

The City contended generally in its Response that the "very high level of penalties proposed" in the Notice were not justified or appropriate under the penalty assessment criteria set forth in 49 C.F.R. § 190.225. The City cited two mitigating factors that should serve to eliminate or greatly reduce the penalty amounts. The first was that the City's "past conduct" demonstrated a "consistent attitude of compliance," as reflected by the fact that each time City received notifications of possible non-compliance from the VA SCC, it promptly complied with the

inspectors' requests and that the City had been "proactive" in asking questions about the intent of the various regulations.<sup>5</sup> According to the City, the Notice in this case assumed just the opposite, namely, that Charlottesville had made no efforts to comply since the date of the inspection and therefore a compliance order was needed.

This is incorrect. Neither the Notice nor the underlying Violation Report assumed that the City had failed to take corrective actions nor was the proposed penalty higher because of any perceived recalcitrance or inaction by the City. PHMSA does not assess higher penalties because of the length of time that occurs after an inspection before a violation has corrected or whether it's been corrected at all. PHMSA expects any reasonable and prudent operator to correct violations once they have occurred and been brought to its attention. For this reason, PHMSA does not apply any sort of "good faith" credit for actions taken by an operator to correct a violation *subsequent* to a regulatory inspection or accident investigation. Such a credit only applies where an operator's actions *prior* to the commission of a violation were based on a reasonable interpretation of the regulatory requirement and the operator had a credible belief that its approach to achieving compliance was faithful to its duty to meet the regulatory obligation.<sup>6</sup>

Second, the City argued that its good compliance record should warrant a reduction in the proposed penalties, noting that "since 2005 until the NOPV issued in this docket, there has not been one NOPV sent to Charlottesville with respect to any regulation"<sup>7</sup> It is accurate to say that the City has not been found in violation of any Federal pipeline safety regulation by PHMSA within the five years prior to the 2011 inspection. This consideration was noted in the Violation Report and was the reason why PHMSA did not propose an enhanced penalty based on prior violations. If there had been prior violations, the proposed penalties would have been higher.

**Item 1:** The Notice proposed a civil penalty of \$10,300 for Respondent's violation of 49 C.F.R. § 192.739(a), for failing to demonstrate that the Rt. 29 North, Rutledge, and McIntire Park pressure regulating stations had been inspected and tested at intervals not exceeding 15 months, but at least once each calendar year annually. As discussed above, I found that the City had missed timely inspections at three regulator stations. The City acknowledged that three violations had occurred but argued that they were "technical" or "de minimis" violations that dictated either no penalty at all or a reduced one.

I disagree. Regular inspection of all pressure limiting stations, relief devices, and pressure regulating stations—as well as any associated equipment—is necessary to prevent overpressure at compressor stations. Overpressure at these stations can lead to pipeline failures and safety risks to the public. The regulation sets a specific minimum inspection interval to ensure safety and the City missed that deadline at three different stations. In addition, the nature and reduced gravity of the violations were already taken into consideration by the agency, as reflected in *Section C-2 – Consequences of an Accident/Incident* of the Violation Report.<sup>8</sup> If the violations

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<sup>5</sup> Response, at 1-2.

<sup>6</sup> E.g., *See* Violation Report, at 6.

<sup>7</sup> *Id.*

<sup>8</sup> Violation Report, at 5.

had involved more stations or had threatened the integrity or safe operation of the pipeline, the proposed penalty would have been higher. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,300 for violation of 49 C.F.R. § 192.739.

**Item 2:** The Notice proposed a civil penalty of \$16,200 for Respondent's violation of 49 C.F.R. § 192.161(c), for failing to install supports on an exposed pipeline that were made of durable, noncombustible material. The City did not contest the allegation of violation but argued that the violation did not present any significant safety risk since the wooden pipe support in question, if it failed, would only result in the pipe falling 3.5 inches to the flat surface of the building roof. It further argued that, according to past practice of the VA SCC, such a violation had not given rise to the assessment of any penalty at all.<sup>9</sup>

I find these arguments unpersuasive. First, the risks inherent in an exposed pipe segment being supported only by a loose wooden block relate not only to the combustible nature of the wooden support but also to the instability of a support not properly fastened to the building. The City failed to take proper precautions to protect its facilities from the risks of both fire and instability. Second, the decision and authority to seek civil penalties for this violation rests not with the VA SCC but with PHMSA and is made in accordance with Federal statutes and the agency's own penalty assessment criteria. The penalty here is far less than the statutory maximum authorized by Congress and is consistent with penalties currently being assessed in other cases by PHMSA. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,200 for violation of 49 C.F.R. § 192.161(c).

**Item 4:** The Notice proposed a civil penalty of \$13,700 for Respondent's violation of 49 C.F.R. § 192.353(c), for failing to have a meter in a ventilated place within a building and less than three feet from any source of ignition. As discussed above, the regulation requires that each meter installed within a building must be located at least three feet away from any source of ignition. When the meter was originally installed in this case, there was no ignition source within three feet of the meter, but Respondent was still responsible for the subsequent installation of the electrical equipment after the meter was installed. Respondent did not argue that it was impossible or even difficult to install the meter at the minimum required distance from the electrical equipment.

The City further argued that under 49 C.F.R. § 190.225, it was "culpable, at most, of a technical violation, and there was no intent to violate its substance."<sup>10</sup> I disagree that the violation here was only "technical" in nature, since the proximity of ignition sources is a well-known hazard associated with all gas facilities and § 192.353 clearly specifies the minimum distance required between gas meters and potential ignition sources such as electrical panels. I would also note that according to the Violation Report, this violation only minimally affected the safe operation of the pipeline and therefore the proposed penalty was lower than it otherwise could have been. Accordingly, based upon the foregoing, I assess Respondent a civil penalty of \$13,700 for

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<sup>9</sup> Response, at 4.

<sup>10</sup> Response, at 7.

violation of 49 C.F.R. § 192.353(c).

**Item 6:** The Notice proposed a civil penalty of \$32,100 for Respondent's violation of 49 C.F.R. § 192.479(a), for failing to clean and coat each pipeline or portion of its pipeline exposed to the atmosphere. As discussed above, I found that the City failed to properly coat two different sections of pipe at North Wing Barracks Road and in the 1730 block of Allied Street. The City did not contest the violations but objected to the proposed penalty for the reasons discussed above, including that it had promptly corrected the violations after being alerted by the VA SCC. As discussed in Item 4, PHMSA does not take into account post-inspection actions to achieve compliance as a basis for lowering a proposed penalty.

The City also argued that there was no rationale provided in the Notice to justify the proposed penalty. I would note that the Violation Report, not the Notice, sets forth the rationale for a proposed penalty. In this case, the Violation Report indicated that the violations of § 192.479(a) potentially compromised the integrity or safe operation of these sections of pipe located in a populated area or other high-risk area. Proper cleaning and coating of each pipeline is essential to the prevention and control of corrosion; the failure to protect the pipe surface exposed to the atmosphere could result in a release and the possible ignition of natural gas from a breach in the pipeline wall. Accordingly, based upon the foregoing, I assess Respondent a civil penalty of \$32,100 for violation of 49 C.F.R. § 192.479(a).

**Item 7:** The Notice proposed a civil penalty of \$16,200 for Respondent's violation of 49 C.F.R. § 192.707(c), for failing to place and maintain line markers along exposed sections of main lines in two locations aboveground, North Wings Barracks Road and in the 1730 block of Allied Street. As discussed above, I found that the pipe segments in question were mains and not service lines and therefore required line markers. The City argued that even if it were in violation of § 192.707(c), it had promptly replaced a marker that had been stolen and promptly installed the second one following the VA SCC inspection. Line markers play an important role in identifying mains and transmission lines and reducing the possibility of damage to, or interference with, pipeline facilities. Although I found that the City's interpretation of whether the lines at the Barracks Road and Allied Street locations should be classified as mains was incorrect, I believe a penalty reduction is warranted because the City had, in fact, installed a line marker at the Barracks Road location before it was apparently stolen. Accordingly, based upon the foregoing, I assess Respondent a reduced civil penalty of \$7,000 for violation of 49 C.F.R. § 192.707(c).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$79,300**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$79,300 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.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 2, 3, 4, 5, 6, 7 and 8 in the Notice for violations of 49 C.F.R. §§ 192.161(c), 192.317(b), 192.353(c), 192.357(a), 192.479 (a), 192.707(c) and 192.805(a), respectively. Because I ordered that Item 3 be withdrawn, the compliance terms proposed for that item are not included in this order. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director has indicated that Respondent has taken the following actions to address some of the cited violations:

**Item 2** (49 C.F.R. § 161(c)): Charlottesville has installed a non-combustible support on an exposed pipeline in the 1730 block of Allied Street;

**Item 4** (49 C.F.R. § 192.353(c)): Charlottesville has relocated the meter inside a building in the 1730 block of Allied Street to comply with § 192.353(a);

**Item 5** (49 C.F.R. § 192.357(a)): Charlottesville has installed additional meter supports to limit the possible horizontal movement of the pipe and meter in the 1730 block of Allied Street;

**Item 6** (49 C.F.R. § 192.479(a)): Charlottesville has cleaned and coated the exposed piping facilities at North Wing Barracks Road and in the 1730 block of Allied Street;

**Item 7** (49 C.F.R. § 192.707(c)): Charlottesville has installed line markers along each section of main and transmission line located above ground and in an area accessible to the public near North Wing Barracks Road, and near the 1730 block of Allied Street, as required by § 192.707(c).

Accordingly, the compliance terms proposed in the Notice for Items 2, 4, 5, 6, and 7 are not included in this Order.

As for the remaining compliance terms, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.805(a) (**Item 8**), Respondent must have and follow a written qualification program that identifies a covered task for the calibration and maintenance of field transmitters used in the City's telemetry system. Specifically, the City must identify that covered task and incorporate the

identified task in the City's qualification program.

2. Charlottesville must submit the related documentation for Items 2, 4, 5, 6, and 7 within 30 days of receipt of this Order to demonstrate full compliance. When the documents have been submitted, the terms of the compliance order for the above items have been fully achieved, as determined by the Director, Eastern Region.
3. Within 90 days from receipt of the Final Order, the City of Charlottesville must complete the compliance actions specified above for Item 8. All documentation demonstrating compliance with each of the items outlined in this Order must be submitted for review to Byron E. Coy, P.E., Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Suite 103, Bear Tavern Road, West Trenton, NJ 08628.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties, not to exceed \$200,000 for each violation for each day the violation continues, or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a 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 this 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. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order [CPF No. 1-2012-0007] 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