

**DECEMBER 31, 2012**

Mr. Michael P. McMasters, President  
Chesapeake Utilities Corporation  
909 Silver Lake Blvd.  
Dover, Delaware 19904

**Re: CPF No. 1-2012-1002**

Dear Mr. McMasters:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$34,600, withdraws one of the allegations of violation and specifies actions that need to be taken by Eastern Shore Natural Gas 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. William Zipf, Jr., Vice President, Eastern Shore Natural Gas Company, 1110 Forrest Ave, Suite 201, Dover, Delaware 19904  
Byron Coy, Eastern Region Director, 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>Eastern Shore Natural Gas Company,</b>	)	<b>CPF No. 1-2012-1002</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

During the week of May 16, 2011, pursuant to 49 U.S.C. § 60117, a representative of 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 Eastern Shore Natural Gas (ESNG or Respondent) in Dover, Delaware. ESNG is the interstate natural gas pipeline subsidiary of Chesapeake Utilities Corporation. It operates 428 miles of natural gas pipeline transmission pipeline for distribution to the Delmarva Peninsula.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated April 4, 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 ESNG had committed various violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$34,600 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

ESNG responded to the Notice by letter dated April 30, 2012 (Response). The company did not contest the allegations of violation but provided information concerning the corrective actions it had taken and submitted copies of its revised procedures. Respondent did not request a hearing and therefore has waived its right to one.

**FINDING[S] OF VIOLATION**

In its Response, ESNG did not contest the allegations 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. § 192.616(g), which states:

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<sup>1</sup> <http://www.esng.com/> (last visited December 20, 2012).

**§ 192.616 Public Awareness.**

(a) ...

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(g) by failing to conduct its public awareness program in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area. Specifically, the Notice alleged that ESNG failed to evaluate the size and groups of non-English speakers in its service territory. 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. § 192.616 by failing to conduct its public awareness program in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a):

**§ 192.465 External Corrosion: 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.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline under cathodic protection once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463. Specifically, the Notice alleged that ESNG failed to perform annual monitoring at seventeen test stations for a total of twenty-nine missed readings. 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. § 192.465(a) by failing to test each pipeline under cathodic protection once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(1):

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

(a) ...

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and Subpart M of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(1) by failing to include in its maintenance and normal operations manual procedures to operate, maintain, and repair the

pipeline in accordance with each of the requirements of Subpart L and Subpart M of Part 192. Specifically, the Notice alleged that the operator required its facilities to be patrolled on foot or by aerial surveillance 4 times per year. However, there are no procedures to look for missing line markers, canopy coverage, or missing casing vents. The procedures direct the patroller to simply seek out leaks and construction activity. 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(b)(1) by failing to include in its maintenance and normal operations manual procedures to operate, maintain, and repair the pipeline in accordance with each of the requirements of Subpart L and Subpart M of Part 192.

These findings of violation will be considered 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 \$34,600 for the violations cited above.

**Item 2:** The Notice proposed a civil penalty of \$34,600 for Respondent's violation of 49 C.F.R. § 192.465, for failing to test each pipeline under cathodic protection once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463. ESNG neither contested the allegation nor presented any evidence or argument justifying a reduction or elimination in the proposed penalty. By failing to conduct tests to determine whether cathodic protection was adequate, Respondent increased the risk of harm to the public, property and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$34,600 for violation of 49 C.F.R. § 192.465.

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 **\$34,600**.

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 \$34,600 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 1 and 3 in the Notice for violations of 49 C.F.R. §§ 192.616(g) and 192.605(b)(1), respectively. 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:

With respect to the violation of § 192.605(b)(1) (Item 3), Respondent provided a revised procedure. The revised written procedures for Subsection 10, Paragraph 312 satisfy the requirements in the Proposed Compliance Order.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 3 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 § 192.616(g) (**Item 1**), Respondent must identify and establish threshold levels of non-English speaking individuals in proximity to the pipeline, and establish a means to communicate with them with respect to the requirements of § 192.616. ESNG must establish a procedure and frequency to conduct a demographic analysis within 90 days of execution of the Final Order to determine the numbers and language groups of non-English speakers in its present Public Awareness areas. If the numbers of non-English speakers in a given group exceed threshold levels, the operator must establish a procedure to incorporate them into the Public Awareness Program within 120 days of execution of the Final Order. Within 180 days of execution of the Final Order, Eastern Shore must have the revisions to the Public Awareness in effect. Within 10 days of each of the above three benchmark deadlines, Eastern Shore must provide PHMSA-Eastern Region with documentation to confirm its compliance.

2. It is requested (not mandated) that Eastern Shore maintain documentation of the

safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

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 \$100,000 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.

### **WARNING ITEMS**

With respect to Items 4-6, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warning(s) were for:

49 C.F.R. § 192.605 (**Item 4**) — Respondent's alleged failure to prepare and follow for each pipeline a written procedure to verify the training of appropriate operating personnel, to assure that they are knowledgeable of the procedures in the emergency plan and to verify that the training is effective;

49 C.F.R. § 192.709 (**Item 5**) — Respondent's alleged failure to maintain a record that it had operated its valves that might be used in an emergency at the Delaware City Compressor Station; and

49 C.F.R. § 192.605a (**Item 6**) — Respondent's alleged failure to follow its procedures which state that it will perform electrical tests annually during the annual cathodic protection surveys to assure that electrical isolation is adequate.

ESNG presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items, Respondent may be subject to future enforcement action.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 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.

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