

MAY 2, 2014

Mr. Robert Steidel
Director, Department of Public Utilities
City of Richmond
730 E Broad Street, 6th Floor
Richmond, VA 23219

Re: CPF No. 1-2013-0001

Dear Mr. Steidel:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a reduced civil penalty of \$12,000. 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 effective upon the date of mailing as 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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
City of Richmond, Virginia,)	CPF No. 1-2013-0001
)	
Respondent.)	
_____)	

FINAL ORDER

On December 8, 2011, pursuant to 49 U.S.C. §§ 60106 and 60117, a representative of the Virginia State Corporation Commission (VA SCC), as agent for the Pipeline and Hazardous Materials Safety Administration’s Office of Pipeline Safety (OPS), conducted an inspection of the pipeline facilities and associated written procedures of the City of Richmond, Virginia (City or Respondent).¹

As a result of the inspection, the Director, Eastern Region, OPS (Director) issued a Notice of Probable Violation and Proposed Civil Penalty (Notice) to the City on May 2, 2013. In accordance with 49 C.F.R. § 190.207, the Notice alleged the City committed a violation of the natural gas pipeline safety regulations and proposed a civil penalty of \$33,700.

The City responded to the Notice on May 31, 2013, and requested a hearing. The City also submitted supplemental information on August 12, 2013. In accordance with § 190.211, a hearing was held on August 20, 2013, in Washington, D.C., before the Presiding Official from the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration (PHMSA). After the hearing, Respondent submitted a post-hearing brief dated September 20, 2013.

FINDING OF VIOLATION

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

¹ The City operates approximately 1,900 miles of natural gas distribution pipeline and approximately 97,800 services, as reported by the City for calendar year 2013 pursuant to 49 C.F.R. § 191.11.

§ 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

The Notice alleged that Respondent violated § 192.605(a) by failing to follow its manual of written procedures while conducting maintenance activities on a natural gas pipeline. Specifically, the Notice alleged that on December 8, 2011, the City’s contractor was using a “squeeze-off tool” to stop the flow of gas on a 6-inch main when an uncontrolled release of gas occurred.² The Notice further alleged the release was due to the worker failing to install two saddle clamps as specified by Respondent’s operations and maintenance (O&M) procedures and the tool manufacturer’s instructions.

At the hearing and in its written submissions, the City acknowledged that the release of gas was caused by the worker failing to install two saddle clamps as required by the City’s O&M procedures and the tool manufacturer’s instructions. Although the City did not contest these facts, the City provided additional information and argued the civil penalty should be withdrawn or reduced. The City’s arguments concerning the penalty are discussed below in the Assessment of Penalty section.

Having reviewed the evidence in the record, PHMSA finds that Respondent’s O&M manual included provisions requiring personnel to use the squeeze tool “in accordance with the manufacturer’s instructions.”³ The manufacturer’s instructions for the tool required two saddle clamps to be installed.⁴ On December 8, 2011, a worker failed to follow these procedures when he installed only one saddle clamp, which resulted in an uncontrolled release of gas when the squeeze tool relieved. Based on these facts, I find Respondent violated § 192.605(a) as alleged.

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.⁵

² A squeeze-off tool is an apparatus designed to stop the flow of gas by squeezing the plastic pipe closed.

³ OPS Pipeline Safety Violation Report at 2 (May 2, 2013).

⁴ Violation Report at 3.

⁵ Subsequent to issuance of the Notice, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a), 125 Stat. 1905, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day up to a maximum of \$2,000,000 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 good faith of Respondent in attempting to comply with the pipeline safety regulations; and the effect on Respondent's ability to continue in business. In addition, I may consider the economic benefit gained from violation without any reduction because of subsequent damages, and such other matters as justice may require.

The Notice proposed a civil penalty of \$33,700 for the violation of § 192.605(a). The amount of the proposed penalty was based on certain factual assertions in the Violation Report, which were relevant to each of the above-listed penalty assessment considerations. The City contested some of these facts and provided additional information that it believed warranted elimination or reduction of the proposed civil penalty.

Nature and Circumstances of the Violation. With regard to the nature and circumstances of the violation, the proposed penalty was based, in part, on a statement in the Violation Report that the violation was discovered by VA SCC during an inspection.⁶

In its written submission and at the hearing, Respondent stated that the violation was actually discovered by the City. Respondent explained that the release of gas occurred on December 8, 2011, at approximately 2:55pm. Respondent notified VA SCC of the event at approximately 3:40pm, and an inspector from VA SCC arrived at the site sometime thereafter. When the inspector arrived, the City had already started its investigation of the event and had determined that a worker neglected to install one of two required saddle clamps. The City communicated these findings to the VA SCC inspector.

At the hearing, the VA SCC inspector's account of events was in substantial agreement with the explanation provided by the City. Based on these facts, PHMSA finds there is sufficient justification to reduce the penalty because Respondent discovered the violation and communicated its findings to the inspector.

Gravity of the Violation and Consequences. With regard to the gravity of the violation, the proposed penalty was based on an assertion in the Violation Report that pipeline integrity and safe operation was "potentially compromised in a populated area."⁷

Respondent argued this assertion did not fairly reflect the risk posed by the 6-inch distribution pipeline operating at only 22 psi. Respondent presented a map showing that the maximum potential impact of the pipeline was small enough to be contained almost entirely within the excavation site without approaching or touching any nearby structures. Respondent contrasted its 6-inch distribution pipeline to a large diameter, high pressure transmission pipeline that would present a much higher potential gravity.

⁶ Violation Report at 4.

⁷ Violation Report at 4.

Having reviewed the record, PHMSA finds that even a worst case scenario involving Respondent's pipe at this location could not have affected the public or any structures outside of the excavation. Accordingly, PHMSA finds sufficient reason to reduce, but not eliminate, the penalty. Since the uncontrolled release of gas potentially compromised safety, a penalty is still warranted.

While the "consequences of a violation" is not listed as a penalty assessment factor in § 190.225, there is a section of the Violation Report used by OPS to document the consequences of an incident. In this case, OPS selected "Other" among the list of consequences.⁸ OPS included a note that the event was not a reportable incident and the City notified VA SCC as a courtesy.

Respondent argued that OPS incorrectly selected "Other" and should have selected instead the option "There was no accident/incident."

PHMSA agrees the event that occurred on December 8, 2011, was not an incident as defined in § 191.3. While it would have been accurate for OPS to select the statement suggested by Respondent, OPS included an equivalent note in the Violation Report that no reportable incident occurred. The proposed penalty was not based on any assertion that a reportable incident had occurred. Therefore, no adjustment is necessary.

Degree of Culpability. Respondent did not contest the penalty with regard to the consideration of culpability. Consistent with the Violation Report, PHMSA finds that Respondent was cognizant of the regulatory requirement to have and follow written procedures and that Respondent had taken some steps to address the issue by having procedures for the use of a squeeze-off tool.

Good Faith in Attempting to Comply. With regard to good faith, the Violation Report did not recommend any penalty reduction because Respondent did not act in accordance with its duty to ensure that work was carried out in compliance with its procedures.⁹

In its written submission and at the hearing, Respondent contended that it demonstrated good faith in several ways. The City stated that it showed a high level of good faith by carrying out its safety responsibilities in general. More specifically, the City contended that it had detailed written procedures that went beyond the minimum regulatory requirements. The City also argued that it had demonstrated good faith by giving notification of the event even though it was not required.

Were a penalty to be assessed, the City argued, the penalty would have a "chilling effect" on operators who may choose to have such detailed procedures or who may take proactive steps in the future.¹⁰ Finally, the City contended that the pipeline safety regulations permit or at least anticipate operator errors by establishing requirements to prevent reoccurrence.¹¹

⁸ Violation Report at 5.

⁹ Violation Report at 6.

¹⁰ Post-hearing brief at 4.

¹¹ Respondent cited to §§ 192.617, 192.631, 192.805, and 192.1009.

When considering the good faith of a respondent, PHMSA looks at the attempt to comply with the cited regulation prior to the occurrence of the violation.¹² Having reviewed the facts of this case, PHMSA finds there is not sufficient reason to reduce the penalty under the good faith consideration. PHMSA does not agree a reduction is warranted for exceeding regulatory obligations. The requirement to have written procedures for safely stopping the flow of gas on its pipeline is mandated under § 192.605(a). If an operator's written procedures do not have sufficient detail to ensure safety, the operator may be subject to enforcement under 49 C.F.R. part 190.¹³

With regard to the City's voluntary notification to VA SCC, these facts are already considered above under *circumstances*. Circumstances takes into account an operator's conduct following the violation, whereas good faith considers an operator's attempt to comply prior to the occurrence of the violation. As noted above, PHMSA is reducing the proposed penalty to reflect the circumstances of Respondent's voluntary notification.

Finally, with regard to whether operator errors are anticipated by the pipeline safety regulations, PHMSA agrees that certain regulations cited by Respondent require operators to investigate the cause of failures and to take appropriate action to minimize the possibility of recurrence. Respondent's good faith effort to investigate the cause of this failure and to make sure it does not repeat is noted, but Respondent is already expected to comply with these regulations to prevent reoccurrence. These actions are not a reason to reduce the penalty.

Other Considerations. Respondent has two prior violations, including a previous violation of § 192.605(a).¹⁴ Respondent did not assert that the penalty would have an effect on its ability to continue doing business.

In summary, having reviewed the record and considered each of the assessment criteria, PHMSA assesses a reduced civil penalty of **\$12,000** for the violation of § 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 (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.

¹² Kinder Morgan Liquids Terminals LLC, CPF No. 1-2011-5001, at 11, 2012 WL 6184429 (Oct. 17, 2012). Final orders can be viewed on PHMSA's website at <http://www.phmsa.dot.gov/pipeline/enforcement> (follow link for enforcement since 2002 and then for final orders issued by year).

¹³ See, e.g., §§ 190.206 and 190.207.

¹⁴ CPF 1-2011-0002, 2012 WL 2521044 (May 11, 2012) (failing to follow procedures for installing plastic service tees); and CPF 1-2011-0001, 2012 WL 4846325 (Aug. 1, 2012). Enforcement actions can be viewed on PHMSA's website at <http://www.phmsa.dot.gov/pipeline/enforcement> (follow link for enforcement since 2002 and then links for final orders issued by year).

Failure to pay the \$12,000 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. § 190.243 (formerly § 190.215), Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued