



orders issued thereunder. As used in this Consent Agreement and Order (Agreement), the terms “pipeline system” and “pipeline facility” shall be defined as in 49 C.F.R. Part 192. Respondent acknowledges that it received proper notice of PHMSA’s action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent consents to the issuance of this Agreement and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice or the validity of this Agreement, including all rights to administrative or judicial hearings, reviews, or appeals.

3. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all City officers, employees, agents, and successors-in-interest whose duties might reasonably include compliance with this Agreement.

4. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement and its appendices.

5. Nothing in this Agreement affects or relieves the City of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA’s right of access, entry, inspection, and information-gathering or its authority to bring any enforcement action against Respondent pursuant to the federal Pipeline Safety Laws, the regulations and orders issued thereunder, or any other provision of federal or state law.

6. This Agreement does not waive or modify any federal, state, or local laws or regulations that are applicable to the City or its pipeline system. This Agreement is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations and permits.

7. This Agreement neither affects the terms of the Proposed Compliance Order contained in the Notice, attached hereto as Appendix A, nor relieves Respondent from its responsibility to complete the remedial actions described therein. Except as expressly provided under this Agreement, the Parties agree that the City will perform all of the corrective actions set forth in the Proposed Compliance Order and that the Parties will have all their respective rights and responsibilities under the terms set forth in the Proposed Compliance Order and under 49 C.F.R. Part 190 relating to the implementation and enforcement of that Proposed Compliance Order.

8. This Agreement does not create rights in, or grant any cause of action to, any third party not a party to this Agreement. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent

or its officers, employees, agents, or successors-in-interest in carrying out the work required by this Agreement. The City agrees to hold harmless DOT, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out the work required by this Agreement.

9. The Parties agree that the facts as alleged in each item of the Notice are true and correct and that each item may be considered by PHMSA to be a prior offense in any future PHMSA enforcement action taken against the City.

10. Respondent agrees to complete the corrective actions specified in Section B (Additional Work to be Performed) of this Agreement.

11. Respondent agrees that the activities described in Section B of this Agreement, and in all work plans and schedules incorporated thereunder, are not required by any federal, state, or local law or regulation and do not include actions which Respondent would likely be required to perform:

- a. under the Proposed Compliance Order contained in the Notice;
- b. as injunctive relief, including as a mitigation project, in the instant case;
- c. as injunctive relief in any other existing legal action initiated by PHMSA or any other regulatory agency against Respondent;
- d. as part of an existing settlement or order in another legal action; or
- e. under any other federal, state, or local requirement.

**B. Additional Work to be Performed.**

12. Respondent agrees to perform the actions set forth in the Work Plan, incorporated herein as Appendix B to this Agreement. Respondent will complete the actions described in Part 2 of the Work Plan (General Information and Completed Remedial Actions) and will adhere to the schedule set forth in Part 3 of the Work Plan (Project Schedule).

13. Respondent agrees to revise the Work Plan as necessary to incorporate new information obtained during the evaluations and remedial activities performed under the Work Plan. Respondent shall submit any such plan revisions to the Director for prior approval. The Director may approve Work Plan revision elements incrementally.

14. The Director may grant an extension of time for completion of any of the work to be performed under this Section B (Additional Work to be Performed) upon Respondent's timely, written request that demonstrates both good cause for an extension and provides sufficient detail to enable the Director to evaluate Respondent's request.

15. Respondent agrees to maintain documentation of the costs associated with implementation of the Work Plan and agrees to make this information available to PHMSA upon request.

### **C. Review and Approval Process.**

16. With respect to any submission by the City under Section B (Additional Work to be Performed) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) disapprove the submission on specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. In the event of approval in whole, in part, or upon conditions, the City will proceed to take all actions required by the submission as modified by the Director, subject to Respondent's right to invoke the procedures in Section D (Dispute Resolution) with respect to any conditions identified by the Director. In the event that the Director does not approve all or any portion of a submission, the Director will provide the City with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for acceptance. If Respondent fails to correct the specified deficiencies, the Director may invoke the dispute resolution process provided in Section D below.

### **D. Dispute Resolution.**

17. Except as otherwise provided in Paragraph 7 above, the Director and Respondent will attempt to informally resolve any disputes arising under this Agreement. If the City and the Director are unable to informally resolve the dispute within 15 business days, Respondent may request in writing, within 10 business days, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Respondent will provide the Associate Administrator with all information Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a written determination that shall constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Regional Director or the Associate Administrator in writing.

### **E. Enforcement.**

18. This Agreement, including all plans and schedules incorporated by reference, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$200,000 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. All other work plans and associated schedules developed under Section B shall be automatically incorporated into this Agreement and are enforceable in the same manner.

### **F. Civil Penalties.**

19. PHMSA agrees to withdraw the two civil penalties, proposed in the Notice, in exchange for completion of the Project Schedule outlined in Part 3 of the Work Plan.

20. If the Work Plan is not implemented within the timeframe contemplated in the Project Schedule, subject to any extensions approved by the Director, PHMSA reserves the right to take further enforcement action, including assessment of the civil penalties proposed in the Notice.

#### **G. Miscellaneous.**

21. Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. PHMSA and the VA SCC will have the right to inspect the records and facilities of the City, or any contractor, agent, or successor-in-interest thereof, upon reasonable notice, to confirm that the compliance terms of this Agreement are being undertaken in conformity with the terms of this Agreement.

22. Except as otherwise provided herein, this Agreement may be modified only by the mutual agreement of the Parties as set forth in writing and signed by the Parties.

23. Each undersigned representative of the Parties certifies that he is fully authorized by the party represented to enter into the terms and conditions hereof and to execute and legally bind that party to it.

24. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activities described in this Agreement, including all activities described in the Work Plan or any other incorporated plan or schedule. Respondent further certifies that it has inquired of City departments and of any parties acting on the behalf of the City whether they are a party to any open federal financial assistance transaction that is funding or could fund the same activities described in this Agreement, and has been informed by said parties that they are not subject to such a transaction.

#### **H. Effective Date and Term.**

25. The "Effective Date," as used herein, is the date on which this Agreement is signed by both Respondent and PHMSA. Unless otherwise specified, all deadlines for actions required by the Agreement run from the Effective Date.

#### **I. Termination.**

26. This Agreement will terminate upon the completion of all terms set forth in the Proposed Compliance Order and Section B (Additional Work to Be Performed), as determined by the Director. Respondent may request, and PHMSA will provide, written confirmation of the termination of this Agreement. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

The Parties hereby agree to all conditions and terms of this Agreement:

For PHMSA:

For City of Danville, Virginia:

\_\_\_\_\_  
Alan K. Mayberry  
Acting Associate Administrator for  
Pipeline Safety, PHMSA

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
City of Danville, Virginia

**APPENDIX A**

**NOTICE OF PROBABLE VIOLATION  
PROPOSED CIVIL PENALTY  
and  
PROPOSED COMPLIANCE ORDER**

**OVERNIGHT EXPRESS MAIL**

December 23, 2013

Mr. Steve Saum, Dir. Of Utilities  
City of Danville, VA  
1040 Monument St.  
Danville, VA 24541

**CPF 1-2013-0009**

Dear Mr. Saum:

On March 19 through 22, 2012, an inspector from the Virginia State Corporation Commission (VA SCC) acting as Agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected the City of Danville's (City) pipeline facilities in Danville, VA.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

**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 City of Danville (City) failed to follow City procedure, Chapter 2, Part G-6, Table II.G-6.1 Titled Grade 1 Leaks. The procedure provides action criteria for Grade 1 leaks. It states that any gas above 80% LEL in a confined space, or 80% LEL or greater in a small substructure from which gas would likely migrate to the outside wall of a building is a Class 1 leak.

During an inspection of the City's leak records, the VASCC inspector discovered that a leak at 164 Martin Avenue was called in at 12:02 pm, on 09/03/2011.

- a. The leak, according to Work Order ID 106346, was a Class 2



- b. The field notes indicated that City personnel found 11% gas in air in a manhole
- c. Typically, natural gas has an LEL of 4-5%, and an 80% LEL equates to approximately 4% gas in air.
- d. Since the 11% gas in air measurement found in the manhole exceeded the 4% criteria specified in the City's procedures, the leak should have been classified as a Class 1 leak. This was not done.

Therefore, the City failed to follow their procedure for classifying leaks.

During an exit interview with the City, no explanation was offered to address the VA SCC inspector concerns. The repairs were documented as being completed on 09/07/2011.

## 2. § 192.725 Test requirements for reinstating service lines

**(b) Each service line temporarily disconnected from the main must be tested from the point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. However, if provisions are made to maintain continuous service, such as by installation of a bypass, any part of the original service line used to maintain continuous service need not be tested.**

The City of Danville (City) failed to test each service line temporarily disconnected from the main from the point of disconnection to the service line valve, in the same manner as a new service line, before reconnecting.

During an inspection of the City's leak records, the VASCC inspector discovered that the City failed to pressure test service lines from the point of disconnection to the service line valve connection on 12 occasions. The records indicate that repairs were made to the service lines and the lines were soap tested at the point of repair prior to returning them to service. The City could not produce records to show that a pressure test was performed on the lines prior to their return to service.

The VASCC inspector observed records stating "soap test" as the only test performed after repairing a damaged service line at the following locations and dates:

1. WO 106170 29 Old Farm Road 8/24/2011
2. WO 104324 Piney Forest and Deer Run Road 6/14/2011
3. WO 106634 543 Rosemary Lane 9/14/2011
4. 151 Tollives Place 9/26/2011
5. WO 101821 449 Winstead Drive 3/22/2011
6. WO 105647 111 Winston Court 8/4/2011
7. WO 100383 159 Kirkwood Drive 12/29/2011
8. WO 103064 Kings Court and Princess Drive 5/5/2011
9. WO 101313 100 Joanis Drive 2/18/2011
10. WO 104505 131 James Road 6/22/2011
11. WO 106178 Colquhoun Street and Craighead Street 8/25/2011
12. WO 108288 319 Girard Street 12/4/2011.

During an exit interview with the City, no explanation was offered to address the VA SCC inspector's concerns. The City stated that the operator used pretested pipe in the repair.

### Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per

violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$55,400 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$25,900
2	\$29,500

Proposed Compliance Order

With respect to Item 2 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to City of Danville, VA. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 1-2013-0009**, and for each document you submit, please provide a copy in electronic format whenever possible, and please whenever possible provide a signed PDF copy in electronic format. Smaller files may be emailed to [Byron.Coy@dot.gov](mailto:Byron.Coy@dot.gov). Larger files should be sent on a CD accompanied by the original paper copy to the Eastern Region Office.

Additionally, if you choose to respond to this (or any other case), please ensure that any response letter pertains solely to one CPF case number.

Sincerely,

Byron Coy, PE  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration

Cc: James Hotinger VA SCC

Enclosures: *Proposed Compliance Order*  
*Response Options for Pipeline Operators in Compliance Proceedings*

**PROPOSED COMPLIANCE ORDER**

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to City of Danville, Virginia (City) a Compliance Order incorporating the following remedial requirements to ensure the compliance of City with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to the City's failure to test each service line temporarily disconnected from the main from the point of disconnection to the service line valve, the City must amend its procedures regarding pressure testing to address this requirement.
2. The City shall have 60 days from the receipt of a Final Order to complete the requirements for Item Number 2 of the Notice.
3. It is requested (not mandated) that the City maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, PE, 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.

**APPENDIX B**

**Work Plan for the personnel training related to  
leak classification and service line repairs and testing.  
City of Danville, Virginia  
CPF 1-2013-0009**

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## **1. Introduction**

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has allowed the City of Danville, Virginia (City), the opportunity to perform the following supplemental safety actions as an alternative to paying a proposed civil penalty for alleged violations of the pipeline safety regulations in 49 C.F.R. Part 192. The City is to perform these risk-mitigating actions relative to the violations, which improve the continued safe operations of the natural gas distribution and provide value that offsets the proposed civil penalties. Should PHMSA determine that the proposed actions provide safety and/or environmental value beyond the enforcement of the civil penalty, the City will enter into a Consent Agreement with PHMSA to perform the proposed actions within agreed-upon time frames.

## **2. General Information and Completed Remedial Actions**

### Notice of Probable Violation, Item 1

PHMSA's Notice of Probable Violation in CPF 1-2012-0009 identified two items of probable violation and included proposed civil penalties for both items. The notice also included a Proposed Compliance Order, requiring the City to take various remedial actions to correct the probable violations. In Item 1, PHMSA alleged that the City failed to follow City procedure for classifying leaks, in violation of 49 C.F.R. § 192.605(a). The probable violation was identified from a leak at 164 Martin Avenue that was improperly classified as a Class 2 leak, while the records and criteria indicate that it was a Class 1 leak. Item 1 included a proposed civil penalty of \$25,900.

The City has reviewed potential remedial actions which could be performed by the City and used in the development of a Consent Agreement with PHMSA. Following consideration, it has been determined that the best remedial action aligned with the probable violation is training of personnel by outside subject matter experts.

The City has contacted Heath Consultants, headquartered in Houston, Texas, to develop and implement an on-site training program for responding to natural gas leaks and grading leaks found. The training program will be based on the leak investigation and leak grading procedures found in the City's Operations and Maintenance (O&M) plan. All of the City's Water and Gas Engineering Department personnel who are responsible for responding to natural gas leaks will be included in the training program. All content of the training program, as well as attendance for the training program, will be documented by the Water and Gas Engineering Department. The City is reviewing available training topics for consideration of additional formal O&M related training opportunities.

Notice of Probable Violation, Item 2

In Item 2, PHMSA alleged that the City failed to test each service line temporarily disconnected from the main from the point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. The probable violation was identified at 12 locations:

1. WO 106170 29 Old Farm Road 8/24/2011
2. WO 104324 Piney Forest and Deer Run Road 6/14/2011
3. WO 106634 543 Rosemary Lane 9/14/2011
4. 151 Tollives Place 9/26/2011
5. WO 101821 449 Winstead Drive 3/22/2011
6. WO 105647 111 Winston Court 8/4/2011
7. WO 100383 159 Kirkwood Drive 12/29/2011
8. WO 103064 Kings Court and Princess Drive 5/5/2011
9. WO 101313 100 Joanis Drive 2/18/2011
10. WO 104505 131 James Road 6/22/2011
11. WO 106178 Colquhoun Street and Craighead Street 8/25/2011
12. WO 108288 319 Girard Street 12/4/2011

Item 2 included a proposed civil penalty of \$29,500. The total proposed civil penalty for both items is \$55,400.

The City has reviewed potential remedial actions which could be performed by the City and used in a Consent Agreement with PHMSA. Following consideration, it has been determined that the best remedial action aligned with the probable violation is training of personnel. The City has already completed the requirements of the Proposed Compliance Order.

The City's Water and Gas Engineering Department shall be responsible for developing and implementing a training program in accordance with the revised testing procedures for repairing natural gas services and general test procedures for all new and repaired pipeline segments. The City may expand this training program to include various O&M-related topics. It is anticipated that the initial two-day training program shall consist of classroom education. The Water and Gas Engineering Department shall also be responsible for reviewing the City's Operator Qualification (OQ) plan for pressure and leak testing to determine compliance with the City's O&M plan and modifying the plan, as required. The Water and Gas Engineering Department will also review the requalification period for the OQ task to determine if more frequent requalification is required. All of the City's Water and Gas Engineering Department personnel who are responsible for either construction and maintenance of pipeline segments or providing engineering and inspection services will be included in the training program. This is expected to include approximately 40 persons.

All content of the training program, revisions to the City's OQ plan, and attendance for the training program will be documented by the City's Water and Gas Engineering Department.

### 3. Project Schedule

#### Item 1

Timing for the development of the training program and implementation of the training program are largely dependent on the consultant, Heath Consultants. It is anticipated that the consultants, in cooperation with the City's Water and Gas Engineering Department, can develop a training program within 90 days and provide two days of on-site training within 30 days thereafter.

Estimated Schedule\*\*:

Training Program Development:	July 1, 2016 through September 30, 2016
On-Site Training:	October 1, 2016 through November 30, 2016

*\*\* The City plans to compress the schedule for training program development and implementation and the City reserves the right to adjust the actual schedule to accommodate this goal.*

#### Item 2

The City expects to compress timing for development of a training program and review and modification of the O&M plan and OQ plan to accommodate this Project Schedule, since all work is being performed by City personnel.

Estimated Schedule\*\*:

Review and Revision of OQ Plan:	July 1, 2016 through August 31, 2016
Training Program Development:	September 1, 2016 through September 30, 2016
On-Site Training:	October 1, 2016 through November 30, 2016
Personnel OQ Requalification:	October 1, 2016 through November 30, 2016

*\*\* The City plans to compress the schedule for the training program development and implementation and the City reserves the right to adjust the actual schedule to accommodate this goal.*

### 4. Estimated Project Costs

The estimated cost for work associated with Item 1 includes:

Administration and coordination of training with Heath Consultants	\$8,000
Consultant's Labor	\$2,400
Consultant's Travel Expenses	
Airfare	\$670
Vehicle Rental	\$280
Lodging	\$500
Meals	\$390
City Personnel Training	
Labor	\$11,520
Meals	\$500
<b>Subtotal Estimated Cost</b>	<b>\$24,260</b>

The estimated cost for work associated with Item 2 includes:

Training Program Development	\$4,930
Associated Operator Qualification Training Modules	
Review	\$2,250
Modification	\$4,950
City Personnel Training	
Labor	\$11,520
Meals	\$500
<b><u>Subtotal Estimated Cost</u></b>	<b><u>\$24,150</u></b>
<b>Total Estimated Cost</b>	<b>\$48,410</b>