

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

In the Matter of)	
)	
City of Danville, Virginia, a municipal corporation,)	CPF No. 1-2013-0010
)	
Respondent.)	
)	

CONSENT AGREEMENT AND ORDER

On May 8, 2013, pursuant to Chapter 601 of 49 United States Code, inspectors from the Virginia State Corporation Commission (VA SCC), acting as agents for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the City of Danville’s (City or Respondent) pipeline facilities in Danville, Virginia. The City’s pipeline facilities consist of approximately 359 miles of distribution mains, 26 district regulators to supply gas at necessary pressures, and gas-storage capacity.

As a result of this inspection, the Director, Eastern Region, Office of Pipeline Safety (Director), issued to Respondent, by letter dated December 23, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205, a copy of which is attached hereto as Appendix A. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$18,700 for one of the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation.

The City responded to the Notice by letter dated January 23, 2014 (Response), and requested a hearing, which was held on September 11, 2014. Respondent has proposed, as part of this proceeding and two unrelated enforcement actions, CPF No. 1-2012-0006 and CPF No. 1-2013-0009, to resolve these matters via administrative consent agreements.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Respondent and PHMSA (collectively, the Parties), the Parties hereby agree as follows:

A. General Provisions.

1. Respondent acknowledges that its pipeline system is subject to the jurisdiction of the federal Pipeline Safety Laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative

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 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.

8. 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.

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

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

B. Additional Work to be Performed.

11. 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 Proposed Action Description) and will adhere to the schedule set forth in Part 3 of the Work Plan (Project Schedule).

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. PHMSA agrees to withdraw the civil penalty for Item 1, proposed in the Notice, in exchange for completion of the Project Schedule outlined in Part 3 of the Work Plan.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. This Agreement will terminate upon the completion of all terms set forth in 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
and
PROPOSED CIVIL PENALTY**

OVERNIGHT EXPRESS MAIL

December 23, 2013

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

CPF 1-2013-0010

Dear Mr. Saum:

On May 8, 2013, 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 violation(s) are:

1. **§ 192.483 Remedial measures: General.**
(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe that is required to be repaired because of external corrosion must be cathodically protected in accordance with this subpart.

The City of Danville (City) failed to cathodically protect, in accordance with Subpart I, each segment of buried or submerged pipe that is required to be repaired because of external corrosion. Specifically, the City repaired a segment of externally corroded buried pipe and failed on one occasion to cathodically protect the pipe as required by §192.483(c) after corrosion was found.

On 11/15/2011, the City repaired a corrosion leak on a 2 inch bare steel service line with a leak clamp. On 5/23/2013, after the finding was identified during the 5/8/2013 VA SCC inspection, the City replaced the service line with plastic pipe.

2. **§ 192.727 Abandonment or deactivation of facilities**
(d) Whenever service to a customer is discontinued, one of the following must be complied with:

- (1) The valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those authorized by the operator.**
- (2) A mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly.**
- (3) The customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed.**

The City failed on one occasion to secure a deactivated service line as required by §192.727(d)(1) through §192.727(d)(3).

Specifically, the City did not secure the deactivated service line when the City removed a meter from a service line at 321 Moffett Street on 12/12/2011. The supply valves on the inlet and outlet of the pressure regulator were shutoff, however the valves were not locked and the end of the service line was open to the atmosphere.

The City deactivated the service line at 321 Moffett Street incorrectly on 12/12/2011. The City correctly secured the deactivated service 5/8/2013, after the finding was discovered during the 5/8/13 VA SCC inspection.

The City did not have a work order on the meter removal, nor did the City know the names of the City personnel who removed the meter.

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 \$18,700 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$18,700

Warning Items

With respect to item 2, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

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 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 1-2013-0010**, 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. 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

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

APPENDIX B

Work Plan for the development and implementation of a plan for replacement or abandonment of bare steel customer services.

**City of Danville, Virginia
CPF 1-2013-0010**

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 Proposed Action Description

PHMSA's Notice of Probable Violation in CPF 1-2013-0010 identified two items of probable violation and included a proposed civil penalty for the first item. In the first item, PHMSA alleged that the City failed to cathodically protect each segment of buried or submerged pipe that is required to be repaired because of external corrosion, in violation of 49 C.F.R. § 192.483(c). The probable violation was identified at one location (101 Marshall Terrace) and included a proposed civil penalty of \$18,700. The second item resulted in a warning to correct its failure to secure, on one occasion at one location (321 Moffett Street), a deactivated service line as required by 49 C.F.R. § 192.727(d)(1) through (3).

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 development and implementation of a training program for all construction and maintenance personnel in the City's Water and Gas Engineering Department. The training program will focus on the repair of steel customer-service pipeline segments and the evaluation and considerations for cathodic control measures on these pipeline segments. The Water and Gas Engineering Department and the Corrosion Department will be responsible for coordination, development and implementation of the training program. All training will be performed on-site in a classroom setting. Records of attendance and training content will be documented.

In addition to development and implementation of a training program, the City will replace remaining bare steel services in the City's natural gas system and provide training for the City's personnel.

The City's Water and Gas Engineering Department, with the assistance of a qualified outside consultant, will develop a formal risk-based plan for the replacement or abandonment of all bare steel customer service pipeline segments. The risk-based analysis and prioritization will be

correlated to the pipe age, leak history, type of structure serviced, status of service, and other factors. The plan shall include a replacement schedule that is anticipated to be completed within three (3) years with a replacement ratio of 50% (year 1), 25% (year 2) and 25% (year 3). Replacement or abandonment of bare steel services for years 2 and 3 will be performed outside of the proposed action for development of the Consent Agreement. The City plans to utilize the services of RK&K of Richmond, Virginia, to assist in preparing the plan.

3. Project Schedule

Replacement Program

Estimated schedule:

Program Development:	July 1, 2016 through August 1, 2016
Year 1 Replacement:	September 1, 2016 through June 30, 2017
Year 2 Replacement:	July 1, 2017 through June 30, 2018
Year 3 Replacement:	July 1, 2018 through June 30, 2019

Training Program

Estimated schedule **:

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

4. Estimated Project Costs

The estimated costs for work associated with the replacement program are as follows:

Development of Replacement Program Plan	
Consultant (RK&K)	\$2,500
City Personnel	\$9,600
Service Replacement (labor and materials)	\$60,000
	<u>Subtotal Estimated Cost</u>
	\$72,100

The estimated costs for work associated with personnel training are as follows:

Training program development	\$3,610
City personnel training	\$3,000
	<u>Subtotal Estimated Cost</u>
	\$6,610
	Total Estimated Cost
	\$78,710

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