

April 5, 2018

Hon. Levar M. Stoney, Mayor
City of Richmond
730 East Broad Street
Richmond, VA 23219

Re: CPF No. 1-2016-0006

Dear Mayor Stoney:

Enclosed please find the Final Order issued in the above-referenced case. It makes one finding of violation and assesses a civil penalty of \$36,200. 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,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Steidel, Director, Department of Public Utilities, City of Richmond
Director, Eastern Region, Office of Pipeline Safety, PHMSA

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. 1-2016-0006
a municipal corporation,)	
)	
Respondent.)	
)	

FINAL ORDER

On May 16, 2016, pursuant to 49 U.S.C. § 60117, a representative of the Virginia State Corporation Commission (VA SCC) acting 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 Richmond’s Department of Public Utilities (City or Respondent) in Henrico County, Virginia. The City operates five gas distribution utilities and serves more than 500,000 residential and commercial customers in Richmond and the surrounding metropolitan region.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated November 10, 2016, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that the City had violated 49 C.F.R. § 192.303 and proposed assessing a civil penalty of \$36,200 for the alleged violation.

Respondent failed to respond within 30 days of receipt of service of the Notice. Under 49 C.F.R. § 190.208(d), such failure to respond constitutes a waiver of the City’s right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this case, the Notice was mailed to Respondent by certified mail on November 10, 2016, but Respondent did not answer until March 22, 2017 (Response). In that Response, the City neither admitted nor denied the violation alleged in the Notice, but stated that the City “has chosen not to contest the allegations and has determined to pay the proposed civil penalty of \$36,200 for Item 1.”² Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.

¹ See <http://www.richmondgov.com/publicutilities/>. Current as of July 20, 2017.

² See Respondent’s March 22, 2017 response.

FINDING OF VIOLATION

In its Response, the City did not contest the allegation 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. § 192.303, which states:

§ 192.303 Compliance with specifications or standards.

Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part.

The Notice alleged that Respondent violated 49 C.F.R. § 192.303 by failing to construct each transmission line or main in accordance with comprehensive written specifications or standards that are consistent with this part. Specifically, the Notice alleged that the City had failed to follow its own construction procedures for coating application on a 12-inch-diameter steel main on Hungry Road in Henrico County, Virginia. During the May 12, 2016 inspection, the VA SCC inspector witnessed a construction crew performing a non-destructive inspection of a weld, followed by the use of a rag and water to clean the couplant gel used during the non-destructive testing. The crew then mixed and applied a two-part Powercrete F1 coating to the girth weld.

The VA SCC subsequently reviewed the City's Pipeline Construction procedures (*Natural Gas Procedures Manual, Chapter 3 / II Pipeline Construction*³). Section 4 of those procedures requires that coating materials should be used in accordance with practices/materials as recommended by the manufacturer, which requires that the pipe surface be prepared by sandblasting before coating is applied.⁴ The City confirmed that in one instance the Powercrete coating was applied to an inspected weld without proper cleaning, sandblasting, or reestablishing a proper surface profile, and, in another instance, a weld was in the process of being coated without proper cleaning, sandblasting or, establishing a proper surface profile. The City acknowledged the error in a response to VA SCC's Notice of Investigation on May 18, 2016.⁵

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. § 192.303 by failing to construct each transmission line or main in accordance with comprehensive written specifications or standards that are consistent with Part 192.

³ Effective date 5/15/2015, revised 3/12/2015.

⁴ See Manufacturer's Manual Application Guide for Powercrete R65-F1 PC-AG-R65-F1-Manual-Rev4-0208, Steps 4 and 5.

⁵ See City's response to VA SCC Notice of Investigation, dated May 18, 2016. Pipeline Safety Violation Report, (November 10, 2016) (on file with PHMSA), Exhibit A-4, at 2.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁶ 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; 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 \$36,200 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$36,200 for Respondent's violation of 49 C.F.R. § 192.303, for failing to construct each transmission line or main in accordance with comprehensive written specifications or standards that are consistent with this part. The City stated that it would pay the proposed penalty and neither contested the allegation nor presented any evidence or argument justifying elimination of the proposed penalty. Given the clarity of the procedural requirement, the inspection circumstances, and Respondent's acknowledgement of the violation, there is no reason to adjust the penalty proposed in the Notice.

Accordingly, having reviewed the record and considered the assessment criteria for violation of 49 C.F.R. § 192.303, I assess Respondent a total civil penalty of **\$36,200**.

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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$36,200 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.

⁶ These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

April 5, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued