

September 24, 2018

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

Re: CPF No. 1-2017-0004

Dear Mayor Stoney:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$41,400. 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 Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Rosemary Green, Interim Director, City of Richmond Department of Public Utilities,
900 East Broad Street, Room 115, Richmond, VA 23219
Mr. Alfred Scott, Deputy Director II, Gas Maintenance and Streetlighting, DPU, 900 E.
Broad St., Room 115, Richmond, VA 23219
Mr. Sang Yi, Engineer III, Gas and Lights, Richmond Gas Works (formerly City of
Richmond Department of Public Utilities (DPU) Energy Services Division), 730 E
Broad Street, Richmond, VA 23219

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. 1-2017-0004
a municipal corporation,)	
)	
Respondent.)	
)	

FINAL ORDER

On February 24, 2017, pursuant to 49 U.S.C. § 60117, a representative of the Virginia State Corporation Commission (VA SCC), 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, Virginia (City or Respondent) at Whitemont Drive in Henrico County, Virginia. The City of Richmond is a municipally-owned gas distribution system consisting of about 1,923 miles of main and 97,563 services.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 10, 2017, 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. § 192.605(a) and proposed assessing a civil penalty of \$41,400 for the alleged violation.

The City responded to the Notice by letter dated November 3, 2017 (Response). Respondent did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Respondent did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192.605(a), as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which states:

§ 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 Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own manual of written procedures for conducting operations and maintenance activities and for emergency response. Specifically, the Notice alleged that the City failed to follow its own coating procedures during a repair on February 24, 2017, at Whitemont Drive in Henrico County, Virginia.

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(a) by failing to follow its own manual of written procedures for conducting operations and maintenance activities and for emergency response.

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.¹ 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 \$41,400 for the violation cited above.

¹ 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).

Item 1: The Notice proposed a civil penalty of \$41,400 for Respondent's violation of 49 C.F.R. § 192.605(a), for failing to follow its own manual of written procedures for conducting operations and maintenance activities and for emergency response. As noted above, I found that the City had failed to follow its coating procedures during a repair on February 24, 2017, at Whitemont Drive in Henrico County, Virginia.

In its Response, the City requested that the proposed civil penalty be reduced because the violation had been corrected immediately after it was discovered by VA SCC, and because the City is generally engaged in a good-faith effort to improve its training and operations to avoid violations in the future. While these efforts are commendable, they are ones that would be expected from any prudent operator who has learned of a pipeline safety violation. I would also note that the City has been found in violation of PHMSA's safety regulation on five previous occasions within the past five years.² Accordingly, having reviewed the record and considered the assessment criteria, I find Respondent's arguments do not warrant a reduction of the proposed civil penalty for Item 1. With regard to *culpability and good faith*, OPS noted in the Violation Report that the City failed to comply with a requirement that was clearly applicable. Although Respondent did not direct its arguments in support of a reduced penalty to any single factor, Respondent's arguments relate to its culpability. Respondent argued for a reduced civil penalty because it corrected the probable violation after a PHMSA state partner discovered it, retrained its employees, implemented a new computerized material audit system to ensure field crews have the necessary materials and tools for repair jobs, and opened a new training facility for its employees and contractors.³ I am not persuaded by the City's argument for a reduced penalty. The City bases its argument for a reduced penalty on corrective actions taken after PHMSA's state partner discovered the violation, and therefore do not warrant a reduction of the penalty.⁴

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$41,400** for violation of 49 C.F.R. § 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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169.

² Pipeline Safety Violation Report (Violation Report), (October 10, 2017) (on file with PHMSA), at 2.

³ Response, at 2 (available at www.phmsa.dot.gov/pipeline/enforcement).

⁴ See e.g., *In the Matter of Texas Eastern Transmission, LP, a subsidiary of Spectra Energy Corp.*, CPF No. 1-2015-1003, 2016 WL 1426021, at 4 (Feb. 26, 2016) ("Respondent's assertion of a general good-faith effort to continuously improve is based on corrective actions taken after PHMSA learned of the violation, and therefore does not warrant a reduction in the proposed penalty.") (available at www.phmsa.dot.gov/pipeline/enforcement).

The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$41,400 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, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief 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. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

September 24, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued