

September 26, 2019

Mr. Jeffry Householder  
President, Chief Executive Officer and Director  
Chesapeake Utilities Corporation  
909 Silver Lake Boulevard  
Dover, Delaware 19904

**Re: CPF No. 1-2018-1013**

Dear Mr. Householder:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Eastern Shore Natural Gas Company. It makes a finding of violation and assesses a civil penalty of \$24,100. 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 is effective 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  
Mr. Eric Pearson, Senior Manager, Eastern Shore Natural Gas Company, 500 Energy  
Lane, Suite 200, Dover, Delaware 19901

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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| <b>In the Matter of</b>                                  | ) |                            |
|  | ) |                            |
|  | ) |                            |
| <b>Eastern Shore Natural Gas Company,</b>                | ) | <b>CPF No. 1-2018-1013</b> |
| <b>a subsidiary of Chesapeake Utilities Corporation,</b> | ) |                            |
|  | ) |                            |
| <b>Respondent.</b>                                       | ) |                            |

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**FINAL ORDER**

From May 15 through June 22, 2017, pursuant to 49 U.S.C. § 60117, a representative of 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 Eastern Shore Natural Gas Company (ESNG or Respondent), a subsidiary of Chesapeake Utilities Corporation. ESNG owns and operates a 448-mile interstate pipeline system that transports natural gas from various points in Pennsylvania to consumers in Delaware, Maryland and Pennsylvania.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent two enforcement actions. First, by letter dated May 14, 2018, PHMSA issued a Notice of Amendment (NOA), alleging that certain ESNG procedures were inadequate, including ones involving the performance testing of gas-detection and alarm systems. Second, by letter dated July 13, 2018, and in accordance with 49 C.F.R. § 190.207, it issued a Notice of Probable Violation and Proposed Civil Penalty (Notice), alleging that ESNG had violated 49 C.F.R. § 192.736 by failing to conduct required testing of gas-detection units at two compressor stations, as discussed more fully below, and proposed assessing a civil penalty of \$24,100 for the alleged violation. ESNG responded to the NOA with revised procedures on June 12, 2018, and PHMSA concurred by letter on July 31, 2018, indicating that the procedural deficiencies had been corrected.

Respondent responded to the Notice by letter dated July 26, 2018 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced or eliminated. 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.

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<sup>1</sup> See [www.esng.com](http://www.esng.com) (last accessed February 7, 2019).

Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.736(c), which states:

**§ 192.736 Compressor stations: Gas detection.**

(a) . . . .

(b) Except when shutdown of the system is necessary for maintenance under paragraph (c) of this section, each gas detection and alarm system required by this section must—

(1) Continuously monitor the compressor building for a concentration of gas in air of not more than 25 percent of the lower explosive limit; and...

(c) Each gas detection and alarm system required by this section must be maintained to function properly. The maintenance must include performance tests.

The Notice alleged that Respondent violated 49 C.F.R. § 192.736(c) by failing to maintain proper function of each gas-detection and alarm system required by § 192.736, including the completion of performance tests in 2014, 2015, and 2016. Specifically, the Notice alleged that ESNG failed to conduct performance tests of the fixed gas-detection units at the company's Bridgeville and Delaware City compressor stations, to verify that alarms would be actuated at a gas concentration of not more than 25 percent of the lower explosive limit (LEL), in accordance with the requirements in § 192.736(b)(1). The Notice further alleged, on the contrary, that the testing of the fixed gas detectors was conducted at a concentration of 50 percent LEL.

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. § 192.736(c) by failing to maintain proper function of each gas detection and alarm system required by § 192.736, including the completion of performance tests.

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.<sup>2</sup> 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; 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

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<sup>2</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

penalty of \$24,100 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$24,100 for Respondent's violation of 49 C.F.R. § 192.736(c), for failing to maintain proper function of each gas-detection and alarm system required by § 192.736, including the completion of proper performance tests. In its Response, ESNG requested that PHMSA eliminate or reduce the proposed civil penalty for several reasons.<sup>3</sup> First, the company argued that PHMSA had conducted an inspection of ESNG's gas transmission system in May-June, 2017, and had issued both an NOA and a Notice. The company asserted that it had "proactively implemented" amended interim procedures, "pending any further comment from PHMSA,"<sup>4</sup> and implied that such corrective action warranted elimination or mitigation of the proposed penalty.

Second, the company argued that the penalty should be withdrawn or reduced because it had always conducted annual performance testing, but that its procedures needed to be updated in order to "effectively document its compliance" with the performance-testing requirements.<sup>5</sup> Third, Respondent argued that it had taken immediate corrective actions to address the "procedural deficiency that led to the documentation issue" that was the subject the Notice.<sup>6</sup> Finally, ESNG argued the penalty should be withdrawn or reduced because there had been no incident, abnormal operation, or impact to the community as a result of the violation.

I have reviewed the record and considered the assessment criteria, and find that Respondent's arguments do not warrant a reduction or elimination of the proposed civil penalty. With respect to the nature, circumstances and gravity of the violation, the Violation Report alleged that PHMSA, rather than the operator, had discovered the violation, that the violation concerned a failure to perform an activity and not merely a failure to keep records, and that pipeline safety had been "minimally affected."<sup>7</sup> Upon review of the record, I find that OPS appropriately classified the nature of the violation to be an activities, rather than a records, violation since performance tests of fixed gas detectors were not conducted in accordance with the code. The Violation Report also appropriately classified the gravity of the violation as having minimally impacted safety, even though a failure to conduct such testing presented a serious potential safety hazard. Accordingly, I find that a change to the assessment criteria for the nature, circumstances and gravity of the violation is not warranted.

With respect to culpability, the Violation Report alleged that Respondent failed to take appropriate action to comply with a requirement that was clearly applicable.<sup>8</sup> While Respondent's post-inspection corrective actions are duly noted and commendable, they do not

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<sup>3</sup> Response, at 3.

<sup>4</sup> *Id.*, at 2.

<sup>5</sup> *Id.* However, there is no evidence in the record showing that the company inspected and tested the gas detectors at a 25 percent LEL gas concentration for the years 2014-16.

<sup>6</sup> *Id.*

<sup>7</sup> Pipeline Safety Violation Report (Violation Report), (July 13, 2018) (on file with PHMSA), at 7-9.

<sup>8</sup> *Id.*, at 10.

constitute grounds to reduce or eliminate the penalty because they were taken after OPS had already identified the violation.

Finally, PHMSA recognizes Respondent's argument that it did not gain financially from the violation. The Violation Report does not designate an increase in the proposed penalty based on an alleged economic benefit, so no reduction is warranted based on this factor.<sup>9</sup>

Based upon the foregoing, I find a reduction in the proposed penalty is not warranted and I assess Respondent a total civil penalty of **\$24,100** for violation of 49 C.F.R. § 192.736(c).

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 \$24,100 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, 2<sup>nd</sup> 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 26, 2019

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued

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<sup>9</sup> *Id.*, at 11.