

## WARNING LETTER

### OVERNIGHT EXPRESS DELIVERY

September 13, 2019

Kelly P. Kinnett, P.E.  
Water and Gas Director  
City of Danville  
1040 Monument Street.  
Danville, VA 24540

**CPF 1-2019-0013W**

Dear Mr. Kinnett:

From July 19, 2017 to November 9, 2017, inspectors 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) procedures.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The item(s) inspected and the probable violation(s) are:

**1. §192.616 Public Awareness**

- (a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).**

The City failed to implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162.

Specifically, the City failed to obtain management commitment and support for the City’s Baseline and Supplemental Public Awareness Programs.

API RP 1162, Public Awareness Programs for Pipeline Operators, 1st edition, December 2003, incorporated by reference, stated in part:

“2.6 Baseline and Supplemental Public Awareness Programs

...

Step 2. Obtain Management Commitment and Support

- Develop a company Policy and “statement of support” for the Public Awareness Program. This should include a commitment of participation, resources, and funding for the development, implementation, and management of the program.”

During the inspection, VASCC inspector reviewed the City’s Public Awareness Plan, revised December 2013 (Plan). Appendix E Supplement 1 Statement of Support of the Plan was unsigned and undated by the Mayor and City Manager lines.

Per the City’s Response to Notice of Investigation, dated September 20, 2017, the City acknowledged that no record of a signed Statement of Support was found. The City attached an updated Statement of Support, signed by the Director of Utilities and the Division Director of Water & Gas on 9/18/2017.

Therefore, the City failed to implement a written continuing public education program that followed the guidance provided in API RP 1162.

**2. §192.616 Public Awareness**

- (a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).**

The City failed to implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162. Specifically, the City failed to complete and document annual reviews of its program implementation in accordance with Section 2.3 of the City’s Public Awareness Plan, revised December 2013 (Plan).

API RP 1162, Public Awareness Programs for Pipeline Operators, 1st edition, December 2003, incorporated by reference, stated in part:

### “8.3 Measuring Program Implementation

The operator should complete an annual audit or review of whether the program has been developed and implemented according to the guidelines in this RP.”

During the inspection, VASCC inspector reviewed the City’s Plan. The Plan stated in part:

#### “2.3 Program Effectiveness Review

The PA Program Administrator or his designee is responsible for periodic review of the performance of the Public Awareness Program. ... Form 2.2-Annual Review will be populated annually. Form 2.2 is to be placed in Appendix E after completion. ...”

The VA SCC inspector requested Form 2.2-Annual Review for 2014, 2015, and 2016. The City provided records of activities that occurred in 2014, 2015, and 2016, but not the completed Form 2.2-Annual Review.

Therefore, the City failed to implement its written continuing public education program that followed the guidance provided in API RP 1162 by failing to complete and document an annual review of its Plan implementation using Form 2.2-Annual Review during 2014-2016.

### 3. §192.616 Public Awareness

- (c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.**

The City failed to follow the general program recommendations, including baseline and supplemental requirements of American Petroleum Institute's (API) Recommended Practice (RP) 1162. Specifically, the City failed to measure program effectiveness for excavating companies, local government, and local first responder agencies in accordance with API RP 1162, Public Awareness Programs for Pipeline Operators, 1st edition, December 2003 (RP 1162), Section 8.4.

RP 1162 stated in part:

#### “8.4 Measuring Program Effectiveness

Operators should assess progress on the following measures to assess whether the actions undertaken in implementation of this RP are achieving the intended goals and objectives:

- Whether the information is reaching the intended stakeholder audiences
- If the recipient audiences are understanding the messages delivered
- Whether the recipients are motivated to respond appropriately in alignment with the information provided
- ...

The following four measures describe how the operator should evaluate for effectiveness:

8.4.1 Measure 1 – Outreach: Percentage of Each Intended Audience Reached with Desired Messages

This is a basic measurement indicting whether the operator’s public awareness messages are getting to the intended stakeholders... excavating companies, local government, and local first responder agencies.

...

8.4.2 Measure 2 – Understanding of the Content of the Message

This measure would assess the percentage of the intended stakeholder audience that understood and retained the key information in the message received.

...

8.4.3 Measure 3 – Desired Behaviors by the Intended Stakeholder Audience

This measure is aimed at determining whether appropriate prevention behaviors have been learned and is taking place when needed and whether appropriate response or mitigation behaviors would occur and have taken place...”

During the inspection, VASCC inspector reviewed the City’s Public Awareness Plan, Revision December 2013 (PAP). The PAP stated in part:

“The City of Danville hereby adopts the APGA GOAL Program to evaluate their Public Awareness Program for the Affected Public.”

The American Public Gas Association (APGA) Gas Overall Awareness Level (GOAL), included in the PAP, stated in part:

“Effectiveness assessments must also be done for excavators, public officials and emergency responders - the three other target audiences listed in RP 1162. These are not included in APGA GOAL.”

The VA SCC inspector reviewed records of the City’s program evaluation which consisted of meeting roster sheets and questionnaires. The City was unable to provide suitable records to demonstrate that the City had evaluated the measures found in sections 8.4.1-8.4.3 of API RP 1162 for excavating companies, local government and local first responder agencies.

On September 1, 2017, the VA SCC issued a Notice of Investigation (NOI) to the City. The City’s September 20, 2017 response to the NOI stated in part:

“The City has evaluated its programs effectiveness and understandability of its messages that have been sent out to all stakeholder groups and have attempted to evaluate the effectiveness through APGA phone surveys, direct mailings with feedback questionnaires, damage prevention meetings (quarterly) and meetings with Local Emergency Planning Commissions (six times a year). We have not received the desired responses nor confirmation of the desired behavior changes. The City is reassessing its methods for confirming message delivery effectiveness concerning public safety and knowledge of natural gas so that they are thoroughly understood by all of its stakeholders.”

In an additional response to the NOI on November 2, 2017, the City provided outreach statistics from November 2014. However, statistics for excavator companies were not provided.

Therefore, the City failed to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162.

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$213,268 per violation per day the violation persists, up to a maximum of \$2,132,679 for a related series of violations. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. 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 correct the item(s) identified in this letter. Failure to do so will result in the City of Danville being subject to additional enforcement action.

Be advised that all material you submit in response to this enforcement action is subject to being 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).

No reply to this letter is required. If you choose to reply, please submit all correspondence in this matter to Robert Burrough, Director, PHMSA Eastern Region, 840 Bear Tavern Road, Suite 300, West Trenton, NJ 08628. Please refer to **CPF 1-2019-0013W** on each document you submit, and whenever possible provide a signed PDF copy in electronic format. Smaller files may be emailed to [robert.burrough@dot.gov](mailto:robert.burrough@dot.gov). Larger files should be sent on USB flash drive accompanied by the original paper copy to the Eastern Region Office.

Sincerely,

Robert Burrough  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration