

WARNING LETTER

OVERNIGHT EXPRESS DELIVERY

November 12, 2020

Calvin Farr Jr.
Director – City of Richmond DPU
City of Richmond
730 East Broad Street
Richmond, VA 23219

CPF 1-2020-016-WL

Dear Calvin Farr Jr.:

On June 04, 2019 to January 7, 2020, an inspector from the Virginia State Corporation Commission, Division of Pipeline Safety (VA SCC), acting as Agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected City of Richmond's (the City) records and procedures near Old Osborne Turnpike's exposed creek crossing and Jefferson Davis Highway, Richmond, VA

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 items inspected and the probable violations are:

1. **§ 192.721 Distribution systems: Patrolling**
 - (a) ...
 - (b) **Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled–**
 - (1) ...
 - (2) **Outside business districts, at intervals not exceeding 7½ months, but at least twice each calendar year.**

The City failed to patrol its distribution system mains outside business districts, at intervals not exceeding 7 ½ months, but at least twice each calendar year. Specifically, the City failed to patrol

a distribution system main located at Old Osborne Turnpike at the required intervals.

During the inspection, the VA SCC inspector reviewed the City's *Procedures Manual, Patrolling, Effective 01/16/15* and electronic tracking records of patrolling history for exposed pipe for calendar years 2017, 2018, and 2019. The records did not contain an exposed eight-inch steel main located at Old Osborne Turnpike. The steel main, which became active on December 20, 2016, crosses a creek and is located outside of a business district. The City's September 30, 2019 response to VA SCC's Notice of Investigation – Report No. 2019-046410, stated in part: “The City of Richmond, Richmond Gas Works, has failed to patrol the 8” steel main located at Old Osborne Turnpike for almost three years since the main was installed and made active on 12/20/2016.”

Therefore, the City failed to patrol a distribution system main located outside a business district at intervals not exceeding 7 ½ months, but at least twice each calendar year.

2. § 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) ...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;**

The City failed to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the City's employee performed annual corrosion survey while not qualified to perform the covered task.

During the inspection, the VA SCC requested “all applicable OQ [operator qualification] tasks an employee must possess to perform annual monitoring for cathodic protection.” The City responded by providing a list of four qualifications, one of which was Cathodic Protection System Testing: General.

VA SCC also reviewed the City's Employee History Report records which document the qualification history for individual City employees who perform covered tasks. The Employee History Report showed that the City's technician ‘DH’ did not possess OQ qualification for PEF192-0505.01 Cathodic Protection System Testing: General between 12/13/2016 and 1/23/2017. Additionally, the Employee History Report showed that technician ‘RC’ was not qualified for PEF192-0505.01 Cathodic Protection System Testing: General until 5/23/2017.

VA SCC reviewed Corrosion Survey records. Table 1 below, created by PHMSA based on the information City provided in its Corrosion Survey records, lists dates the City's technicians performed a covered task while not qualified.

Table 1: Date Covered Task Performed by Un-Qualified Technician.

Date	Technician(s)	Location-Area	Test Station(s)
1/4/17	DH	Parham Rd	TS9 TS10 TS11 TS12 TS13 East TS13 West
1/6/17	DH RC	London	1 2 3 City 4 1-KT 4 2-KT
1/6/17	DH	Westshire Apts	1 1-knot 1 2-knot 2 3 1-knot

Therefore, the City failed to ensure through evaluation that individuals performing covered tasks are qualified.

3. § 199.5 DOT procedures

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

The City failed to conduct, according to the requirements of DOT Procedures, anti-drug and alcohol programs required by Part 199. Specifically, the City failed to check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties, as required by § 40.25, referenced in §§ 199.101(a) and 199.202.

During the inspection, the VA SCC inspector reviewed the City’s Substance Abuse Policy, dated September 1, 2006 (SAP). The SAP failed to maintain a written anti-drug plan and alcohol misuse plan that included provisions to ensure the City check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties, as required by §§ 199.101(a), 199.202, and 40.25. Additionally, the City’s September 5, 2019 response to VA SCC’s Notice of Investigation – Report No. INS-2019-043115, stated in part:

“While preparing for the State Corporation Commission Audit of the PHMSA Drug & Alcohol Plans, it came to the attention of the Department of Human Resources that the required Alcohol and Drug History pre-employment check for prospective PHMSA staff in the Department of Public Utilities was not being conducted.”

Therefore, the City failed to conduct, according to the requirements of DOT Procedures, anti-drug and alcohol programs required by Part 199.

PHSMA encourages self-reporting of code violations. The City's transparency was taken into consideration during the selection of administrative enforcement actions.

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. 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 City of Richmond 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 1-2020-016-WL** 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. 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