

## WARNING LETTER

### CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 13, 2014

Mr. Jim Benning  
Director, Public Works  
City of Duluth Public Works and Utilities  
City Hall, Room 211  
411 West 1st Street  
Duluth, Minnesota 55802

**CPF 3-2014-1004W**

Dear Mr. Benning:

On August 22-23, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected the City of Duluth Public Works and Utilities' (Duluth's) Public Awareness Program in Duluth, Minnesota.

As a result of the inspection, it appears that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation is:

**1. § 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.**

Duluth did not provide baseline messaging to any public or emergency officials from Wisconsin that invited them to attend the Community Awareness Emergency Response (CAER)-sponsored meetings in 2010, 2011, or 2012, in accordance with API RP 116.

Duluth was reportedly providing a listing of officials to the organization, but CAER was not mailing anything to entities located outside of Minnesota. In accordance with API RP 1162, Duluth should have identified during its annual implementation reviews or in the effectiveness evaluation that the CAER was not inviting excavators, emergency officials, or public officials from Wisconsin to its meetings. Excavators in Wisconsin were, however, included in the Digger's Hotline breakfast meetings attended by Duluth representatives. Duluth needs to ensure that the appropriate entities located along the Wisconsin portion of the pipeline are identified and contacted as required.

Duluth has not been annually reviewing the implementation of its program, as required by API RP 1162. In addition, the surveys that formed the basis of its effectiveness evaluation were only conducted on the affected public audience. The annual implementation reviews and periodic effectiveness evaluations should apply to each stakeholder audience and should be specific to the Duluth public awareness program.

Under 49 United States Code, §60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 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 items identified in this letter. Failure to do so will result in Duluth being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 3-2014-1004W**. 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).

Sincerely,

Linda Daugherty  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*