



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety Administration**

901 Locust Street, Suite 480  
Kansas City, MO 64106

## **WARNING LETTER**

**VIA ELECTRONIC MAIL TO:** [jbenning@DuluthMN.gov](mailto:jbenning@DuluthMN.gov)

October 29, 2020

Jim Benning  
Director  
City of Duluth Public Works & Utilities  
City Hall, Room 274  
411 West First Street  
Duluth, MN 55802

**CPF 3-2020-1010W**

Dear Mr. Benning:

Between August 6 and 8, 2019, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected the 10-inch natural gas transmission pipeline, which is operated and maintained by the City of Duluth, and runs from the Great Lakes Gas transmission interconnect in Douglas County, WI to the City of Duluth's regulator station in St. Louis County, MN.

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

**1. §192.931 How may Confirmatory Direct Assessment (CDA) be used?**

**An operator using the confirmatory direct assessment (CDA) method as allowed in §192.937 must have a plan that meets the requirements of this section and of §§192.925 (ECDA) and §192.927 (ICDA).**

(a)...

**(b) External corrosion plan. An operator's CDA plan for identifying external corrosion must comply with §192.925 with the following exceptions.**

**(1) The procedures for indirect examination may allow use of only one indirect examination tool suitable for the application.**

**(2) The procedures for direct examination and remediation must provide that—**

**(i) All immediate action indications must be excavated for each ECDA region; and**

**(ii) At least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region.**

The City of Duluth failed to comply with § 192.931 because its confirmatory direct assessment (CDA) plan for external corrosion did not comply with the requirements in § 192.925. Section 192.925 delineates requirements for using the ECDA process. Specifically, § 192.925(b) states that “[a]n operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this section, in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 6.4, and in NACE SP0502 (incorporated by reference, *see* § 192.7).” During the inspection, the City of Duluth provided a 2017 CDA report that was prepared by its contractor and identified multiple external corrosion direct assessment (ECDA) regions, which included above grade piping at the regulator station in St. Louis County. However, NACE SP0502-2010 is only applicable to buried onshore ferrous pipeline systems. Therefore, any assessments performed on above grade piping are not considered valid using ECDA.

Furthermore, the 2017 CDA report deemed any excavations to below grade pipe section were unnecessary based on the results of the indirect inspection surveys. According to Sections 5.1.3 and 5.3.1.1 of NACE SP0502-2010 at least one excavation or direct examination is required.

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 the City of 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 3-2020-1010W**. 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,

Gregory A. Ochs  
Director, Central Region, OPS  
Pipeline and Hazardous Materials Safety Administration