

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

VIA E-MAIL TO MR. GARRETT EVANS

October 16, 2020

Mr. Garrett Evans
City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

CPF 5-2020-004-NOPV

Dear Mr. Evans:

On February 24 through 28, 2020, representatives of the California Public Utilities Commission (CPUC) on behalf of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected the City of Pittsburg, California natural gas distribution system (Island Energy) on Mare Island in Vallejo, California.

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. **§192.616 Public awareness.**
 - (a) . . .
 - (d) **The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:**

- (1) Use of a one-call notification system prior to excavation and other damage prevention activities;**
- (2) Possible hazards associated with unintended releases from a gas pipeline facility;**
- (3) Physical indications that such a release may have occurred;**
- (4) Steps that should be taken for public safety in the event of a gas pipeline release; and**
- (5) Procedures for reporting such an event.**

The Island Energy Public Awareness Program procedures do not identify dredging companies as individual stakeholders. Island Energy operates a pipeline main that passes under the Napa River ship channel. This issue was cited by Western Region in CPF 5-2017-0012M, Item 4.

2. §192.616 Public awareness.

(a) . . .

(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.

Island Energy failed to deliver materials and messages to the Coast Guard in 2019. Table 2-1 of API RP 1162 requires an annual frequency to Emergency Officials.¹

3. §192.616 Public awareness.

(a) . . .

(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.

Island Energy was not able to provide documentation that it had conducted an effectiveness review of the Public Awareness Program, nor was able to provide justification in its program or procedural manual as to why compliance with this effectiveness review was not practicable and not necessary for safety. An Effectiveness review is required by API RP 1162 Section 8.4.

Proposed Compliance Order

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.

¹ See CPF No. 5-2017-0012M, Operator Response at 2 (Sept. 8, 2017) (on file with PHMSA) (noting that “[t]he U.S Coastguard has also been added to the list of local safety agencies to receive annual emergency response information as detailed in our public awareness plan”) and Attachment (updated procedures).

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to Items 1-3 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to the City of Pittsburg, California. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2020-004-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible. Please copy the California Public Utilities Commission on all correspondence.

Sincerely,

Dustin Hubbard
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: PHP-60 Compliance Registry
PHP-500 J. Dunphy (#20-173118)
Terrence Eng, Program Manager, Gas Safety and Reliability Branch, California Public Utilities Commission
Doug Buchanan, General Manager Island Energy, 995 Walnut Ave., Vallejo, CA 94592

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Island Energy a Compliance Order incorporating the following remedial requirements to ensure the compliance of Island Energy with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to failure to identify dredging companies in the excavator list of the Public Awareness Program (PAP), Island Energy must revise the PAP to specifically list those dredging companies active in the area of the Island Energy main passing under the Napa River within **60** days of receipt of the Final Order.
- B. In regard to Item 2 of the Notice pertaining to the failure to deliver Public Awareness Program (PAP) materials to the Coast Guard, Island Energy must deliver the requisite materials within **30** days of receipt of the Final Order.
- C. In regard to Item 3 of the Notice pertaining to the failure to conduct an effectiveness review of the PAP, Island Energy must complete an effectiveness review of the PAP within **180** days of receipt of the Final Order.
- D. It is requested (not mandated) that Island Energy maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.