

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

March 5, 2019

Mr. Terry Roberts
President
Sturgeon Electric, Inc.
1301 E. 64th Ave.
Anchorage, AK 99518

CPF 5-2019-0004E

Dear Mr. Roberts:

On April 23, 2018, 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 (U.S.C.) investigated circumstances surrounding the August 9, 2017 damage to a natural gas pipeline located near 291 Sky Haven Circle in Anchorage, Alaska.

Background

On August 9, 2017, Sturgeon Electric Company Inc. (excavator) was installing electrical conduit underground by trenching with a tractor when they struck a 2-inch plastic main owned and operated by ENSTAR Natural Gas, causing a release of gas without ignition. Sturgeon did not request underground utility locates prior to the excavation. Sturgeon Electric was a subcontractor to Cruz Construction (Prime contractor). Sturgeon Electric did not request a locate ticket until after it damaged the 2-inch plastic main.

Based on excavation activities investigated, it is alleged that you have committed probable violations in Part 196 of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (C.F.R.). The items investigated and the probable violations are:

- 1. § 196.103 What must an excavator do to protect underground pipelines from excavation-related damage?**

Prior to and during excavation activity, the excavator must:

(a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation;

Sturgeon Electric Company Inc. (Sturgeon) did not use the available one-call system (the Alaska Digline) before excavating on August 9, 2017. Sturgeon personnel stated in an interview with PHMSA that Sturgeon was excavating without a locate ticket when it struck a 2-inch underground natural gas line. Sturgeon notified ENSTAR of damage to the pipeline on August 9, 2017 at approximately 2:55 PM. Sturgeon requested a locate ticket with the Alaska Digline on August 9, 2017, at 3:30 PM.

2. § 196.109 What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?

If damage to a pipeline from excavation activity causes the release of any PHMSA regulated natural and other gas or hazardous liquid as defined in part 192, 193, or 195 of this chapter from the pipeline, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number.

Sturgeon Electric failed to promptly report the release of natural gas by calling the 911 emergency telephone number. Sturgeon Electric called ENSTAR after hitting the line, and ENSTAR prompted Sturgeon to call 911.

Proposed Civil Penalty

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 violations 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. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$12,100 as follows:

<u>Item number</u>	<u>Proposed Penalty</u>
1	\$12,100

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Third Party Excavators in Enforcement Proceedings*. Please refer to this document and note the response options. All material submit in response to this enforcement action may be 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 C.F.R. § 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 the 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 5-2019-0004E** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Chris Hoidal
Acting Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Third Party Excavators in Enforcement Proceedings*

cc: Bob Peters, Outside line Division Manager, Sturgeon Electric, Inc.
PHP-60 Compliance Registry
PHP-500 J. Gano (#163982)