U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of	)	
Williams Gas Pipeline Company, LLC,	)	**CPF No. 1-2005-1007**
Respondent.	)	

CONSENT AGREEMENT AND ORDER

WHEREAS, the Pipeline and Hazardous Materials Safety Administration (PHMSA), initiated the above-captioned proceeding against Williams Gas Pipeline Company, LLC (Williams or Respondent), for enforcement of the Pipeline Safety regulations, 49 C.F.R. Part 192, specifically including requirements for preventing excavation-related damage to natural gas pipeline facilities; and

WHEREAS, the enforcement action arose out of PHMSA's investigation of an October 3, 2005, incident in which a backhoe operated by a Williams contractor struck Williams' active 36-inch gas transmission pipeline in Chantilly, Virginia, thereby causing a release of natural gas and requiring the evacuation of a nearby school and homes; and

WHEREAS, PHMSA issued a Notice of Probable Violation (Notice), dated December 29, 2005, alleging that Williams violated various provisions of 49 C.F.R. Part 192 and proposing (1) the assessment of civil penalties totaling $600,000; and (2) the entry of a compliance order requiring Williams to take certain measures to bring its safety procedures and operations into compliance with PHMSA regulations; and

WHEREAS, Williams requested an administrative hearing, which was held on June 13, 2006, pursuant to 49 C.F.R. § 190.211, at which Williams and PHMSA (collectively, Parties) presented evidence and legal argument in response to the Notice; and

WHEREAS, on July 30, 2007, PHMSA issued a Final Order, pursuant to 49 U.S.C. § 60101, et seq., and 49 C.F.R. § 190.213, finding that Williams violated 49 C.F.R. §§ 192.605, 192.614, and 192.805(b), assessing civil penalties in the sum of $590,385.00, and ordering Williams to take various corrective actions (Final Order); and

WHEREAS, on August 29, 2007, pursuant to 49 C.F.R. § 190.215, Williams filed a petition for reconsideration with PHMSA (Petition); and

WHEREAS, Williams has satisfactorily completed all corrective actions required under the Final Order, including requirements related to its damage prevention program; and

WHEREAS, Williams is taking additional actions on a voluntary basis (independently of requirements in this or any other enforcement action) to prevent excavation-related damage to its pipeline systems and to promote nationwide damage prevention efforts, including: (1) preparing and disseminating educational materials to inform Williams employees of the October 3, 2005, incident and the company's commitment to improving its damage-prevention efforts; (2) developing and implementing a school-based damage prevention outreach campaign targeting communities in proximity to Williams' pipelines; (3) developing and pilot-testing a three-part "Adopt a Community" program in one or more Virginia jurisdictions, to enhance communication among Williams, builders, first responders, and other local officials about development and excavation near pipelines and to enhance communication during emergencies; and (4) actively participating in and supporting programs and damage prevention activities of the Common Ground Alliance, including the development and promotion of best practices; and

WHEREAS, in order to settle the above-captioned enforcement action, Williams is prepared to undertake specific additional projects (as described more fully below and in Appendix Three hereto), to reduce the risk of excavation-related damage to its pipeline facilities; and

WHEREAS, PHMSA has determined that the projects subject to this Consent Agreement and Order (as described in Appendix Three hereto) will improve Williams' damage prevention program and otherwise assist in reducing the risk of future excavation-related damage to Williams' pipelines; that said projects entail performance measures exceeding current requirements under 49 U.S.C. § 60101, et seq., and 49 C.F.R. Part 192; that said projects offer valuable public safety benefits over and above activities that could otherwise be mandated under the Pipeline Safety laws and regulations; and that this Consent Agreement and Order will otherwise advance PHMSA's enforcement goals; and

WHEREAS, Williams and PHMSA have agreed to the entry of this Consent Agreement and Order, without further administrative proceedings or litigation, in order to resolve this enforcement action;

NOW, THEREFORE, without further proceedings and upon the consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. General Provisions.

1. This Consent Agreement and Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

2. Respondent stipulates that PHMSA has jurisdiction over the subject matter alleged in the Notice and Final Order, a copy of said Final Order being incorporated herein by reference and attached hereto as Appendix One. Respondent waives any defenses that it may have as to jurisdiction and venue, and, without admitting or denying the allegations set forth in the Notice and the findings set forth in the Final Order, consents to the terms of this Consent Agreement and Order. By the entry of this Consent Agreement and Order, PHMSA neither vacates nor withdraws the Final Order issued herein. All provisions of the Final Order, except as modified by this Consent Agreement and Order, shall remain in full force and effect. Copies of both the Final Order and this Consent Agreement and Order shall be included among PHMSA's public enforcement documents. Nothing in this Consent Agreement and Order shall bar consideration of the findings of violations set forth in the Final Order as prior offenses in any future enforcement action brought by PHMSA against Williams.

3. This Consent Agreement and Order constitutes a settlement of the Petition filed in this proceeding. Respondent hereby waives its right to any further judicial or administrative hearing or appeal on any aspect of law or fact set forth in the Notice or Final Order.

II. Regulatory Compliance.

4. PHMSA has reviewed the actions taken and the information submitted by Respondent pursuant to the Compliance Order contained in the Final Order and attached hereto as part of Appendix One. PHMSA has determined that Williams has satisfactorily complied with all terms of the Compliance Order. Accordingly, the Compliance Order is now closed.

5. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, and local law, nor be construed to constitute a ruling on, or determination of, any issue related to any federal, state or local permit, nor constitute PHMSA approval of any equipment, test, or procedure installed or used by Williams in connection with any project or work undertaken pursuant to this Consent Agreement and Order.

6. Nothing in this Consent Agreement and Order shall limit or bar PHMSA from taking any action to address any future violation of 49 U.S.C. § 60101, et seq., any

regulation promulgated thereunder, or any hazardous situation that may arise with respect to pipeline facilities owned or operated by Respondent.

III. Civil Penalties.

7. Williams shall pay civil penalties totaling $190,385.00, corresponding as follows to the amounts assessed in the Final Order:

A. $90,385.00, as assessed in Item 1(A-D) of the Final Order, for violations of 49 C.F.R. § 192.605(a); and

B. $100,000.00, in lieu of the assessments in Items 2, 3, and 4 of the Final Order, for violations of 49 C.F.R. §§ 192.605, 192.614, and 192.805(b).

8. The terms of payment shall be the same as those set forth in the Final Order, except that the total civil penalty of **$190,385.00** shall be payable within twenty (20) days from the date of execution of this Consent Agreement and Order.

9. The total amount specified in Paragraph 8 above represents civil penalties assessed by PHMSA and shall not be deductible by Respondent or any of its affiliates or subsidiaries for purposes of Federal taxes.

IV. Safety Projects.

10. Williams shall undertake and complete the following two safety projects (collectively, Projects), which the parties agree are intended to improve the safety performance of Williams by reducing the risk of future excavation-related incidents along Williams' rights-of-way throughout the Commonwealth of Virginia:

A. Virginia GPS Cell Phone Locator Pilot Project (Virginia Phase I Project) – This large-scale pilot project will test the effectiveness of providing global positioning system (GPS)- enabled cell phones to Williams' employees and other excavators in 16 counties traversed by Williams' five gas transmission pipelines in Virginia. (See Appendix Two for map of jurisdictions affected by this project.) These cell-phone locators will be used to improve the accuracy of locate requests submitted by excavators to the Virginia One-Call center. Williams shall complete the Virginia Phase I Project in accordance with the Scope of Work and Schedule attached hereto as Appendix Three and incorporated herein by reference.

The total expenditure for the Virginia Phase I Project shall be not less than $300,000.00, and shall be spent in accordance with the specifications set forth in Appendix Three. Under no circumstances shall Williams receive credit toward its obligation to spend not less than $300,000.00 by charging for the labor of its own employees, equipment, overhead, or other similar internal costs. If the cost of completing the work described in Appendix Three exceeds $300,000.00, Williams

agrees to bear such additional costs and to complete all of the work as described therein.

B. Virginia GPS Locator Technology Pilot Project (Virginia Phase II Project) – The purpose of this project is to apply GPS technology to improve the facility-locating process and to improve the response and information resulting from facility locates. This technology will create an electronic manifest for excavators and utility operators, providing a site overview and correction data for utility mapping, along with immediate posting of positive response data. The project will employ technologies for precisely locating the pipeline in GPS coordinates and will evaluate the application of GPS and enhanced mapping technology to improve the underground facility locating process. Williams employees assigned to locate the company's underground facilities will participate in the project by using the GPS-enabled locators on the Williams pipeline right-of-way to precisely locate, map, and communicate the location of Williams' pipelines within the same geographic area as that described above. Williams shall complete the Virginia Phase II Project in accordance with the Scope of Work and Schedule attached hereto as Appendix Three and incorporated herein by reference.

The total expenditure for the Virginia Phase II Project shall be not less than $262,500.00, and shall be spent in accordance with the specifications set forth in Appendix Three. Under no circumstances shall Williams receive credit toward its obligation to spend not less than $262,500.00 by charging for the labor of its own employees, equipment, overhead, or other similar internal costs. If the cost of completing the work described in Appendix Three exceeds $262,500.00, Williams agrees to bear such additional costs and to complete all of the work as described therein.

11. The Scope of Work and Schedule for the Projects described in Paragraph 10 above are more fully described in a document submitted by Williams to PHMSA, dated January 9, 2009, entitled "*Project Proposal – Williams Gas Pipeline, Williams Gas Pipeline Sponsorship of Phase I and II Statewide Expansion of the Virginia Pilot Program*," which is incorporated herein by reference. In the event of any conflict between such document and this Consent Agreement and Order, the latter shall control.

12. The Manager, as identified in Paragraph 13 below, shall have the authority, after consultation with Williams and the Director, Eastern Region, PHMSA Office of Pipeline Safety (OPS), to require any reasonable modifications to the Projects that the Manager deems necessary to accomplish the purposes and intent of this Consent Agreement and Order.

V. Documentation and Verification of Work and Expenses.

13. Commencing ninety (90) days after the execution date of this Consent Agreement and Order and continuing every ninety (90) days thereafter until the Projects

Completion Report has been filed and accepted by PHMSA, Williams shall submit quarterly progress reports to PHMSA describing all work that has been performed pursuant to Appendix Three during the preceding quarter and the safety impacts and implications of the Projects to date. All reports, including the Projects Completion Report described in Paragraph 14 below, shall be submitted to Mr. Sam Hall, Senior Program Manager (Manager), Office of Pipeline Safety, PHMSA, 2180 Adventure Lane, Maidens, Virginia 23102, by first class mail. As the person responsible for monitoring Respondent's compliance with the terms of this Consent Agreement and Order, the Manager may request any additional documentation, studies, or reports reasonably necessary to verify compliance with the terms hereof.

14. Within ninety (90) days after completion of all the work specified in Appendix Three, Williams shall file a Projects Completion Report with the Manager. Said report shall contain, at minimum, the following information:

i. A detailed description of the Projects, as implemented;
ii. A description and analysis of the benefits of, and problems encountered during, the Projects (including a quantification of the damage prevention benefits, if feasible);
iii. The itemized costs of each Project;
iv. Certification that the Projects have been implemented pursuant to the provisions of this Consent Agreement and Order;

15. In submitting all reports under this Section V, Williams shall provide acceptable documentation for all eligible Project costs. If the Projects Completion Report includes costs not eligible for credit under this Consent Agreement and Order, such costs shall be clearly identified as non-eligible expenses. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

16. PHMSA shall have the right to inspect the records and facilities of Williams or any contractor or agent thereof upon reasonable notice, to confirm that the Projects are being undertaken in conformity with the terms of this Consent Agreement and Order.

17. Williams shall maintain legible copies of all documentation of the underlying research and data for any and all documents or reports submitted to PHMSA pursuant to this Consent Agreement and Order and shall provide the documentation of any such underlying research and data to PHMSA within seven (7) days of any written request from PHMSA. Such documentation shall be retained for a period of at least five (5) years from the date of submission of the Projects Completion Reports required under Paragraph 14 above. All reports required under this Consent Agreement and Order shall include a certification signed by Williams' president or other executive officer, verifying, under

penalty of law, that the information and representations contained in such report are true, accurate, and complete. Such certification shall include the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

VI. PHMSA Acceptance of Projects Completion Report.

18. Upon review of the Projects Completion Report described in Paragraph 14 above, PHMSA shall provide Respondent with written notice of its determination whether to accept the report, stating either: (1) that there are certain deficiencies in the Projects Completion Report and that Respondent will be afforded additional time to correct them; (2) that the Projects have been satisfactorily completed; or (3) that the Projects have not been satisfactorily completed and that PHMSA seeks stipulated penalties in accordance with Paragraph 19 below.

In the event PHMSA exercises option (1) above (i.e., if it determines that the Projects Completion Report is deficient), Respondent may file a written objection to the deficiency determination within ten (10) days from receipt of the notice. Thereafter, PHMSA and Respondent shall have an additional thirty (30) days to reach agreement on changes necessary to the Projects Completion Report. If agreement cannot be reached on any such issue within this 30-day period, PHMSA shall provide a written statement of its decision on adequacy of completion of the Projects Completion Report to Respondent, which decision shall be final and binding upon Respondent. Williams agrees to comply with any requirements imposed by PHMSA as a result of Williams' failure to comply with the terms of this Consent Agreement and Order.

VII. Stipulated Penalties.

19. If Williams fails to comply with any of the terms of this Consent Agreement and Order relating to the performance of the Projects, as described above, Williams shall be liable for stipulated penalties according to the following provisions:

> A. For failure to complete the Safety Projects pursuant to this Consent Agreement and Order, Williams shall pay a stipulated penalty to the United States in the amount of the difference between the total amount of the Projects (i.e., $562,500.00) and the amount of money actually spent by Williams on the Projects and verified by PHMSA; such stipulated penalty shall be in addition to the total civil penalty payments (i.e., $190,385.00) due and payable under Paragraph 7 above. For purposes of this Paragraph, the determination of whether the Projects,

or any portion thereof, have been satisfactorily completed shall be in the sole discretion of PHMSA.

B. For failure to submit any quarterly progress report or the Projects Completion Report described in Paragraphs 13 and 14 above, Williams shall pay a stipulated penalty in the amount of $300.00 for each day after such report was originally due until the report is submitted.

C. Stipulated penalties under this Paragraph shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of completion of the activity.

D. Respondent shall pay any stipulated penalties not more than fifteen (15) days after receipt of written demand by PHMSA for such penalties. Method of payment shall be the same as those set forth in the Final Order.

E. Nothing in this Consent Agreement and Order shall be construed as prohibiting, altering or otherwise limiting the ability of PHMSA to seek any other remedies or sanctions available to the agency by virtue of Williams' violation of this Consent Agreement and Order or of any statutes and regulations upon which this Consent Agreement and Order is based, or any other applicable provision of law.

VIII. Representations by Williams.

20. Williams makes the following representations and promises concerning this Consent Agreement and Order:

A. Williams certifies that it is not required to perform or develop the Projects, or any portions thereof, set forth in this Consent Agreement and Order by any federal, state or local law or regulation, nor is Williams required to perform or develop the Projects by any other agreement, contract, grant, or as injunctive relief in this or any other proceeding. Williams further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the Projects outlined above.

B. Williams hereby agrees not to claim any funds expended in performance of the Projects as a deductible business expense for purposes of Federal taxes.

IX. Release; Miscellaneous.

21. This Consent Agreement and Order constitutes a settlement by PHMSA of all pending claims for civil penalties arising out of violations of the Federal pipeline safety laws and regulations, as set forth in the Notice and Final Order. Nothing in this Consent Agreement and Order is intended, nor shall be construed, to operate in any way

to resolve any criminal liability of Williams. Compliance with this Consent Agreement and Order shall not be a defense to any action subsequently commenced by PHMSA pursuant to the Federal pipeline safety laws or regulations, and it is the responsibility of Williams to comply with such laws and regulations at all times.

22. Each undersigned representative of the Parties certifies that he is fully authorized by the party represented to enter into the terms and conditions hereof and to execute and legally bind that party to it.

23. This Consent Agreement and Order constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions between the Parties, whether oral or written, with respect to the subject matter herein. The terms of this Consent Agreement and Order control in the event of any inconsistency with the record in this proceeding.

24. Except as otherwise specifically provided herein, this Consent Agreement and Order shall terminate upon PHMSA's written acceptance and approval of the Projects Completion Report submitted pursuant to Paragraph 14 above.

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

_____ _____

Jeffrey D. Wiese Date
Associate Administrator for Pipeline Safety

_____ _____

Phillip Wright, President Date
Williams Gas Pipeline Company, LLC

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

1200 New Jersey Ave., S.E.
Washington, DC 20590

JUL 30 2007

Mr. Randy Barnard
Vice President, Operations and Gas Control
Williams Gas Pipeline-Transco
2800 Post Oak Boulevard
Houston, TX 77056

RE: CPF No. 1-2005-1007

Dear Mr. Barnard:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, requires certain corrective actions, and assesses a civil penalty of $590,385.00. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5. At such time that the civil penalty is paid and the terms of the compliance order completed, as determined by the Director, Eastern Region, this enforcement action will be closed.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

cc: Mr. Donald E. Hockaday, III, Senior Attorney
Byron Coy, Director, OPS Eastern Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
	)	
WILLIAMS GAS PIPELINE - TRANSCO,	)	**CPF No. 1-2005-1007**
AKA Transcontinental Gas Pipe Line Corporation,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

Between October 4-17, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety ("OPS"), Eastern Region, conducted an on-site investigation of the pipeline facilities of Williams Gas Pipeline - Transco ("Williams" or "Respondent") in Chantilly, Virginia, in response to an incident occurring on October 3, 2005, during the excavation and physical inspection of one of Respondent's pipelines. The incident occurred in a populated area near an elementary school, located in a Class 3, High Consequence Area. During the excavation work, Respondent's contract backhoe operator struck and punctured an active 36-inch gas transmission line, resulting in the evacuation of more than 850 schoolchildren and area residents. No fatalities, injuries, or property losses were reported.

Pursuant to the subsequent OPS inspection and investigation, the Director, Eastern Region, OPS, issued to Respondent, by letter dated December 29, 2005, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order ("Notice"). In accordance with 49 C.F.R. § 190.207, the Notice proposed (1) finding that Respondent had committed violations of 49 C.F.R. Part 192, (2) assessing a total civil penalty of $600,000 for the alleged violations, and (3) ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated, January 27, 2006 ("Response"). Respondent contested several allegations, submitted information and exhibits in support of its position, and requested mitigation of the proposed penalty. Respondent also requested a hearing. A hearing was subsequently held on June 13, 2006, in Washington, D.C., with Renita K. Bivins of the Office of Chief Counsel, PHMSA, presiding. Respondent provided a post-hearing submission dated July 20, 2006.

FINDINGS OF VIOLATION

Item 1(A) in the Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which provides:

> **§192.605. Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

Item 1(A) alleged that Respondent failed to follow a portion of its own operations and maintenance manual entitled, "Onshore Pipeline Construction Specification 90.05.00: Subpart 5.2.2, Ditching Existing Pipelines." That procedure states:

> *Side-cutting teeth shall be removed from buckets of excavating equipment. A steel bar shall be welded across the digging teeth.*

The Notice alleged that Respondent failed to cover or remove the side-cutting teeth of the backhoe bucket and that such failure contributed to the puncture of the pipeline ("Line C"), which was in service at the time of the incident and operating at about 600 psig. On the date of the incident, an OPS inspector took photos of the backhoe and submitted them into the record. The photos show the backhoe bucket with no steel bar across the digging teeth and teeth marks on Line C. Respondent neither disputed this allegation nor provided evidence to demonstrate mitigating factors. Accordingly, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow for each pipeline, a manual of written procedures for conducting operations and maintenance and for emergencies.

Item 1(B) in the Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), as quoted above, by failing to follow another section of its operations and maintenance manual entitled, "Onshore Pipeline Construction Specification 90.05.00, Subpart 5.2.3, Ditching Existing Pipelines," which states:

> *Machine excavation of in-service pipelines shall not be permitted within 5 feet of the staked location until the pipeline has been physically located by hand unless otherwise approved by the Company. After locating the pipeline facility by hand, machine excavation within 2 feet shall not be permitted. Final excavation shall be by hand.*

Item 1(B) alleged that on the date of the accident, Respondent failed to follow Subpart 5.2.3 by not hand digging within two feet of another of Respondent's pipelines, known as "Line A," which had been "blown down" for inspection purposes and was out of service at the time. A suspected anomaly had been identified near the bottom (6 o'clock position) of Line A. As the backhoe dug below the bottom of Line A, it punctured Respondent's in-service pipeline, Line C. OPS alleged that Respondent's failure to follow its own procedures prohibiting machine excavation within two feet of an in-service pipeline resulted in the puncture of Line C.

During the hearing and in its Post-Hearing Brief, Respondent acknowledged that it did not hand dig within two feet of Line A but contended that Specification 90.05.00, Subpart 5.2.3, applied only to lines that were *in service* at the time of excavation. Therefore, because Line A was *out of service* at the time, Respondent contended that it had not violated its own procedures or 49 C.F.R. § 192.605(a).

Respondent is technically correct in stating that the first sentence of Item 1(B) alleged a failure to excavate by hand within two feet of Line A and that Line A was *out of service* when Line C was struck. Item 1(B) further alleged that "as the backhoe dug below the bottom level of line 'A,' line 'C' was punctured by one of the backhoe teeth." This means, of course, that Respondent had failed to hand dig within two feet of the *in-service* Line C. Respondent has admitted failing to excavate by hand within two feet of this in-service line.

Proceedings under 49 C.F.R. Part 190 do not require strict pleading as at English common law. There is no question but that the facts alleged in Item 1(B), when read as a whole, constitute a violation of Respondent's own procedures requiring hand digging within two feet of an in-service line. Just because the in-service line that was struck happened to be Line C, rather than Line A, makes no difference for purposes of this proceeding. Respondent has still violated its own procedures for hand digging within two feet of an in-service pipeline.

Based upon the foregoing, I find that Respondent violated its own manual of written procedures, "Onshore Pipeline Construction Specification 90.05.00, Section 5.2 Existing Pipelines," and specifically, Section 5.2.3, which prohibits machine excavation within two feet of an in-service line. I find that the backhoe operator hired by Respondent excavated by machine within two feet of both Line A and Line C, the latter being an active line, that the operator struck Line C multiple times, and that he eventually punctured Line C. Accordingly, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

Item 1(C) in the Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), as quoted above, by failing to follow the operator's own procedures entitled, "As-Built Survey Specification 75.0503.01, Subpart 2.9.3," which states:

> *It will be the responsibility of construction inspectors to assist the construction Contractor in verifying the survey party's staked location of the Company's existing facilities.*

Item 1(C) alleged that Respondent's inspectors violated this specification by failing to review the company's as-built drawings with the construction contractor, by failing to verify the existence of the crossover of Line A and Line C, and by failing to make the as-built drawings available to the contractor on site, either prior to or during the excavation activity leading up to the October 3, 2005 accident.

During the hearing and in its Post-Hearing Brief, Respondent took the position that neither "the more specific regulation § 192.605(b)(3) nor the company specifications requires the drawings to be located on site, only that they be 'made available' to the appropriate operating personnel."[1] Respondent contended that it made the drawings available at its construction job office for use by appropriate operating personnel, thereby satisfying its specification. Respondent further contended that the specification in question "should not be read as requiring as-built drawings to be provided to equipment operators, as suggested by OPS at the hearing. Rather, the company's standard practice is:

> "to provide as-built drawings to the surveyor, who is responsible for marking the pipeline, but not to the equipment operator. The equipment operator is expected to rely on the surveyor's markings, not to attempt to interpret the drawings himself. In this case, the surveyor was provided with the drawings, but failed to mark line 'C.'"[2]

The real issue presented by Item 1(C) is not whether Respondent's procedures required the as-built drawings to be located on site but, rather, whether Respondent's inspectors failed to "assist the construction Contractor in verifying the survey party's staked location of the Company's existing facilities." There is virtually no evidence in the record to show that Respondent's inspectors did anything to aid or assist the construction contractor in any meaningful way to verify the location of the company's facilities.

Respondent missed several opportunities to provide meaningful assistance to the contractor. OPS testified that the backhoe operator never attended the pre-construction meeting. Respondent acknowledged that none of its personnel, including inspectors, had provided the contractor with a set of as-built drawings. The Respondent's own internal investigation report[3] concluded that there were no temporary markings for Line C or the other pipelines within the right-of-way, that Respondent's inspectors did not have as-built drawings on site at the time of the accident, and that the inspectors took no other steps to help the contractor in verifying the location of the lines.

Lastly, OPS staff testified that it is standard industry practice for a pipeline operator's foreman to carry the applicable as-built drawings with him on site during excavation work and to assist the excavation crew leader in reviewing and confirming that the lines are properly marked. Respondent took none of these measures to assist the excavation contractor.

Based upon the foregoing, I find that Respondent violated its own procedure entitled, "As-Built Survey Specification 75.0503.01, Subpart 2.9.3," by failing to assist the construction contractor in verifying the staked location of Respondent's facilities. Respondent is responsible for the acts and omissions of its employees, agents, and contractors, including surveyors and inspectors. Accordingly, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow for each pipeline, a manual of written procedures for conducting operations and maintenance and for emergencies.

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[1] This defense is discussed more fully below. See Item 2.
[2] Post-Hearing Brief, at p. 3.
[3] "Williams Gas Pipeline Pennsboro Incident, October 3, 2005," at pp. 1-11.

Item 1(D) in the Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), as quoted above, by failing to follow its own procedure entitled, "Construction Manual, Section 90.05.00, Subpart 10, Welding Qualification 10.1.5," which states:

> *The radiographic acceptance standard for welder re-qualification and for production work shall be API 1104 (latest DOT approved edition) unless otherwise specified by the Company.*

Subsection 10.3.27 of the same specification further provides:

> *Company shall have the final decision on weld acceptability. Each weld not meeting the acceptability standard shall be repaired or replaced.*

Item 1(D) alleged that one of the welds on the repaired Line C did not pass inspection by one of the Respondent's Non-Destructive Testing (NDT) contract technicians. Nevertheless, one of the Respondent's contract welding inspectors overruled the technician and, without proper authority, accepted the weld and allowed the pipeline to go back into service with a defective weld. OPS alleged that the weld did not meet the Company's radiographic acceptance standard (API Standard 1104) and that the noncompliant weld was placed in service for thirteen (13) days before being repaired by the Respondent.

Respondent did not dispute the foregoing allegations and confirmed that its welding inspector did not have the authority to overrule the NDT technician without providing weld information to Respondent's welding engineers in Houston, who would normally resolve any disputed welds. Respondent further advised that on October 12, 2005, as soon as it discovered the defective weld, the operator reduced the operating pressure to 560 psig (41.33% SMYS), isolated the line, and determined that the line was safe to operate under the reduced pressure. Unfavorable atmospheric conditions prevented the line from being blown down until October 17, at which time the weld was finally repaired.

I find that the Respondent violated its own Construction Manual, Section 90.05.00, Subpart 10, Welding Qualification 10.1.5, which requires all welds to meet API Standard 1104 and the operator to make final decisions on weld acceptability. I further find that the noncompliant weld was allowed to remain in service for 13 days, but that Respondent took reasonable measures to ensure public safety from the time it discovered the defective weld on October 12 until the weld was ultimately repaired on October 17. Based upon such facts, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

Item 2 in the Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(3), which states:

> **§192.605 Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General.* Each operator shall prepare and follow for each

> pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.....
> (b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.....
> (3) Making construction records, maps, and operating history available to appropriate operating personnel.

Item 2 alleged that Respondent violated 49 C.F.R. §192.605(b)(3) by failing to follow its own procedures regarding the availability of as-built drawings. The Notice alleged that Respondent's own personnel had informed PHMSA that the company's procedures called for the drawings to be located on site during excavation activities.

According to Respondent's O&M Policy 10.12.01.05, "Maintaining and Reviewing Construction Records and Maps," Subpart 3.3.1, it was the responsibility of the operator's District Manager to

> *[e]nsure the latest revision of maps and drawings are available to operating personnel for reference when accomplishing day-to-day tasks.*

During the hearing and in its post-hearing submission, Respondent contended that neither 49 C.F.R. § 192.605(b)(3), nor Respondent's own procedure, as quoted above, required such drawings to be located on site. On the contrary, Respondent asserted that its procedures required "only that they be made available to the appropriate operating personnel."[4] Respondent argued that the drawings were in fact "readily available" for review by the construction personnel in Respondent's field construction job office located "a short distance" from the work site, but that the construction personnel failed to review them.

Respondent's procedures clearly designate the company's District Manager as being responsible for ensuring that accurate maps and drawings are available to appropriate operating personnel "for reference when accomplishing day-to-day tasks." This is a duty that cannot be shifted to a contract surveyor or inspector, but is a direct responsibility of Respondent's own employee.

The purpose of this procedure is manifest. Accurate maps and drawings are needed not only by surveyors who are marking the location of lines but also by spotters and construction personnel if questions arise in the field about the accuracy of the line markings, cover depth, or other issues. It does little good for maps to be located miles away in an office if they are not readily available "for reference when accomplishing day-to-day tasks" such as excavation. The record clearly shows that the contractor's personnel, who were actually involved in the excavation work, did not have as-built drawings or alignment sheets available to them "for reference" when they were "accomplishing their day-to-day tasks."

[4] Post-Hearing Brief, at p. 3.

OPS contended that Respondent's O&M Policy 10.12.01.05, Subpart 3.3.1, required that the as-built drawings be physically located or immediately accessible at the site of the excavation work in order to be used "for reference." In support of its position, OPS cited Respondent's own root cause analysis report, which concluded that " . . . the General Contractor, Welded Construction, was not provided with any alignment sheets. This is at variance with the requirements of the WGP Book Contract."[5] In other words, not only did Respondent's own procedures call for the drawings to be provided to the contractor but that they were also required to be provided under the company's contract with Welded Construction.

The evidence shows that the as-built drawings or alignment sheets were physically located in a construction field office located more than 10 miles from the excavation site. OPS cited PHMSA Advisory Bulletin (ADB-02-03) as recommending that pipeline location mapping information "be readily available to appropriate personnel." The agency further cited Merriam Webster's Collegiate Dictionary, Tenth Edition, as defining the word "available" to mean "present or readily available for immediate use." If a spotter or backhoe operator had to stop work and travel 10 miles to retrieve an as-built drawing in order to verify the location of a pipeline, then such drawing was not actually "available," as that term is commonly understood.

In this case, I find that Respondent failed to make its as-built drawings adequately "available to operating personnel for reference," as required by its own procedure, O&M Policy 10.12.01.05. Accordingly, I find that Respondent violated 49 C.F.R. § 192.605(b)(3) by failing to follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

Item 3(A) in the Notice alleged that Respondent violated 49 C.F.R. § 192.614(c)(5), which states:

> **§ 192.614 Damage prevention program.**
>
> (a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities.....
>
> (c) The damage prevention required by paragraph (a) of this section must, at a minimum:.....
>
> (5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

Item 3(A) alleged that Respondent violated this regulation by failing to adequately mark with stakes or flags the crossover of Lines A and C. Respondent did not contest this allegation. Accordingly, I find that Respondent violated 49 C.F.R. § 192.614(c)(5) by failing to provide for temporary marking of buried pipelines in the area of excavation activity before, as far as possible, the activity begins.

[5] *Ibid.*, Accident Investigation Report, dated November 28, 2005, at p. 5.

Item 3(B) in the Notice alleged that Respondent violated 49 C.F.R. § 192.614(c)(6)(i), which states:

> **§ 192.614 Damage prevention program.**
>
> (a) .....
>
> (c) The damage prevention required by paragraph (a) of this section must, at a minimum:.....
>
> (6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:
>
> (i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline;.....

Item 3(B) alleged that Respondent violated § 192.614(c)(6)(i) by failing to carry out a damage prevention program that included inspections carried out as "frequently as necessary.....to verify the integrity of the pipeline." The Notice alleged that on October 3, Respondent's inspector was not inspecting or spotting for the backhoe operator at the time of the accident and that he had even left the excavation area when the pipeline was struck.

The evidence shows that Respondent had assigned an inspector to identify the appropriate area to be excavated, to observe and monitor the excavation and backfilling work, and to communicate with the backhoe operator as the work progressed. Respondent does not dispute that it had reason to believe that Line A could be damaged by excavation activities. Respondent operates four in-service gas transmission lines (Lines A, B, C, and D) within the same right-of-way where the accident occurred. Furthermore, Respondent did not dispute the fact that its contract spotter was not in a position to assist the backhoe operator since he was not even physically present.

Rather, Respondent contended that it had complied with the regulation because both the spotter and the backhoe operator were on the *job site*, though not the *excavation site*, at all times during the work. According to Respondent, "[t]his provided the necessary inspection to insure that the excavation work would not damage the pipeline and met the requirement of the regulation."[6]

Respondent contended that the pipeline was damaged not because of inadequate inspection but because the personnel conducting the excavation were unaware of the location of the pipeline. OPS presented evidence showing that it is standard industry practice for backhoe operators to stop excavation work near a pipeline if spotters are not available to guide them. In other words, it is necessary for spotters to be physically present and to be inspecting work at the excavation site at *all times* in order to meet the "as frequently as necessary" standard of § 192.614(c)(6)(i) when at-risk pipelines are involved.

OPS testified that personnel from two large pipeline construction contractors, the Napp-Grecco Company and Miller Pipeline Corporation, informed PHMSA that they *never* allow backhoe operators to excavate without the presence of a spotter because equipment noise and visual obstructions typically make it difficult for backhoe operators to dig safely without a spotter

[6] Post-Hearing Brief, at p. 5.

guiding them. OPS also referenced Respondent's own root cause analysis report, which acknowledged that one of the causes of the accident was that "[t]wo Welded employees were on site..... Spotter had left immediate area of the dig just prior to the incident."[7]

I find that the backhoe operator, without the direct guidance of a spotter, was not in a position to see that he was hitting a pipeline and that, in fact, he did strike Line C numerous times before finally puncturing it. Accordingly, I further find that Respondent violated 49 C.F.R. § 192.614(c)(6)(i) by failing to carry out a damage prevention program that required inspections to be performed as frequently as necessary during and after the excavation of an at-risk pipeline in order to verify its integrity.

Item 4(A) in the Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which provides:

> **§ 192.805 Qualification program.**
> Each operator shall have and follow a written qualification program. The program shall include provisions to:
> (a) Identify covered tasks;
> (b) Ensure through evaluation that individuals performing covered tasks are qualified;.....

Item 4(A) alleged that Respondent failed to verify the qualifications of the contract surveyor who located and marked Line A, and that the surveyor did not, in fact, have the necessary qualifications required by Respondent's own policies to perform his particular task, as described in the document entitled, "Covered Task (CT) 605 – Locate Line/ Install Temporary Marking of Buried Pipeline." Respondent had contracted with Gullett & Associates for the latter to locate and mark Respondent's pipeline. Under that contract, the Gullett employee who marked the line was required to be qualified to perform CT-605.

Respondent did not contest the allegation that it failed to "ensure through evaluation" that Gullett's surveyor was actually qualified to perform CT-605. Instead, Respondent took the position that the surveyor was qualified to perform a covered task that was different from, but functionally equivalent to, CT-605 and that he had received such alternative qualification while working for a previous employer. The prior employer had failed to forward the documentation to Gullett by the time the surveyor performed the line location work for Respondent. Respondent argued that this sequence of events somehow relieved it of the responsibility, as operator, to verify the qualifications of its contract employees and that therefore it should not be found in violation of § 192.805(b).

Respondent submitted documentation showing that Gullett's surveyor was qualified to perform a functionally equivalent task, known as CT WGP00310. Unfortunately, this alternative task was not listed as a covered task in the Respondent's then-current Operator Qualification (OQ) Plan, Rev. III, June 10, 2005. In addition, having reviewed this documentation, I am of the opinion that CT WGP00310 had been replaced by Respondent's new standard, CT-605, at the time of the incident and that the new standard included enhanced requirements for Evaluation Criteria and

[7] Accident Investigation Report, dated November 28, 2005, at p. 3.

additional Abnormal Operating Conditions that were substantially different from CT WGP00310. Respondent's surveyor, therefore, was not properly qualified under Respondent's own criteria.

The evidence clearly indicates that this alternative qualification argument was an after-thought on the part of Respondent. The contract between Respondent and Gullett specifically required the surveyor to be qualified for CT-605.[8] Respondent apparently failed to do any investigation to determine the surveyor's actual qualifications *prior to the excavation work* to see if they met either Respondent's updated covered tasks or the parties' contract. In fact, the record shows that Respondent did not even discover that the surveyor was unqualified for CT-605 until months later, after receipt of the Notice.

I find that Respondent's contract surveyor was not qualified to perform CT-605 at the time of the incident and that Respondent failed to evaluate his qualifications before allowing him to locate and stake the pipeline. Accordingly, I find that Respondent violated 49 C.F.R. § 192.805(b) when it did not ensure through evaluation that individuals performing covered tasks were qualified.

Item 4(B) in the Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), as cited above, by failing to verify that the contract excavation inspector hired by Respondent to spot the line for the backhoe operator had the necessary qualifications to meet the Respondent's own policy, as described in the document entitled, "CT-607: Damage Prevention: Observation of Excavating and Backfilling." It further alleged that the spotter was not, in fact, qualified to perform CT-607.

Respondent did not contest this allegation but argued in its Post-Hearing Brief that under 49 C.F.R. § 192.805(c), an operator shall have and follow a procedure "allow[ing] individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified." Respondent argued that because the backhoe operator performing the excavation work *was* qualified to perform CT-607 and "was directing and observing the activities of the spotter," there was no violation of 49 C.F.R. § 192.805(b).[9]

There are several problems with this argument. First, in its Post-Hearing Brief, Respondent submitted documentation, entitled "Evaluation Guide, Covered Task 607,"[10] which describes the criteria by which Respondent considers a spotter to be qualified and by which such an individual will be evaluated. It says nothing, however, about Respondent's procedures by which a *qualified* individual may direct and observe the work of an *unqualified* individual.

In fact, the document describes the tasks that a spotter is expected to be able to perform. He must be able to:

> 2. *Identify considerations during excavation of pipelines:*

---

[8] Agreement No. 21-0024.

[9] Post-Hearing Brief, at p. 6.

[10] *Ibid.*, Document 6. Interestingly, this Evaluation Guide for CT-607 cites 49 C.F.R. § 192.614(c)(6), which calls for inspections "as frequently as necessary" during excavation to verify the integrity of the pipeline. See discussion under Item 3(B) above.

a. Ensure bucket teeth are barred and side cutters removed as applicable
b. Maintain clearance between bucket and pipeline according to operator guidelines
c. Hand excavate as required
d. Anticipate encountering unidentified foreign structures and pipeline appurtenances . . .

At the hearing, OPS staff contended that it is implausible, if not impossible, for a backhoe operator simultaneously to operate a large 320 CAT backhoe, effectively observe the excavation area, direct an unqualified spotter in the pipeline trench, and ensure that all the other duties of a spotter, as set forth in CT-607 and the Evaluation Guide, are actually being met.

I find that Respondent failed to present any documentation to support its argument that Respondent had and followed adequate procedures to allow unqualified individuals to perform covered tasks if they are directed and observed by an individual who is qualified. I further find that the role of an excavation spotter is to be in continual communication with the backhoe operator, to observe the excavation and backfilling work, and to identify appropriate measures to ensure that the backhoe operator does not hit or damage the pipeline(s). The spotter serves, in essence, as the "eyes and ears" of the backhoe operator by communicating, via hand signals or other means, what he is seeing on the ground. Safety is compromised when a backhoe operator must perform backhoe operations and also attempt to direct and observe a spotter who is charged with the responsibility for performing other duties, such as maintaining clearance between the bucket and the pipeline, calling for hand excavation as required, anticipating unidentified foreign structures and pipeline appurtenances, and ensuring that all the other requirements of CT-607 are fulfilled. In this case, Respondent failed to show that the qualified backhoe operator was able to observe and direct the work of the unqualified spotter.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.805(b) when it failed to ensure through evaluation that Respondent's contract spotter was qualified to perform Covered Task 607.

ASSESSMENT OF PENALTY

The Notice proposed a total civil penalty of $600,000 for various violations of 49 C.F.R. Part 192. Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed $100,000 per violation for each day of violation, up to a maximum of $1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of a civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, the good faith of Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

During the hearing, Respondent requested mitigation of the civil penalty because of its

cooperation during OPS' investigation of the incident. Respondent also questioned whether the amount of the civil penalty had been affected by a press release statement by Brigham A. McCown, PHMSA Acting Administrator. Respondent contended that the civil penalty proposed in the Notice was excessive and that language in the press release suggested that Respondent had been targeted for harsher treatment in order to set an example for other operators.

With regard to the first point, cooperation after an incident is expected of an operator. In this case, Respondent's cooperation after the October 3 incident was duly considered in the calculation of the proposed penalty. With regard to the claim of bias, Respondent presented no evidence other than the text of the Acting Administrator's press release[11] to demonstrate bias on the part of the agency.

The presiding official assured Respondent that full consideration would be given to all of the facts, statements, documents, testimony, evidence and arguments presented to make an independent recommendation for final action in this case. The presiding official further explained that the Notice proposed, but did not assess, a civil penalty and that the penalty may be reduced or eliminated should Respondent provide evidence to refute an allegation of probable violation or provide evidence of mitigating factors.

The proposed penalty for **Item 1(A-D)** of the Notice is $100,000 for the four violations of 49 C.F.R. § 192.605(a), which requires pipeline operators to prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities. I found, as stated above, that Respondent failed to follow four different company procedures dealing with the excavation and repair of its pipelines. Respondent's contract personnel failed to cover the teeth of the backhoe bucket that ultimately punctured Line C. They excavated within two feet of the active Line C. They failed to assist the excavation contractor in verifying the location of Respondent's facilities. They allowed a line with a defective weld to be placed into service for 13 days until it was discovered and repaired.

Respondent operates four gas transmission lines within the same right-of-way where Lines A and C were located, all being part of an active gas transmission system that has the capacity to cause catastrophic injury or damage if any one of them is punctured. This is precisely why the operator must exercise extreme caution when excavating near so many active lines.

Respondent did submit credible evidence in mitigation of the penalty for Item 1(D). Although the pipe with the defective weld was in service for 13 days (October 4-17, 2005), Respondent showed that as soon as it discovered the defective weld on October 12, it decided not to blow down and repair the weld immediately since weather conditions were unfavorable and might cause the public to smell gas and panic. Instead, Respondent reduced the pressure to 560 psig, isolated the line, and determined that it was safe to operate under the reduced pressure. Once the weather conditions improved, the weld was repaired on October 17. The Regional Director has recommended that Respondent be assessed a penalty for only eight days, from October 4 until the date the defective weld was discovered on October 12. and that the proposed penalty be reduced for Item 1(A-D) to $90,385. Based upon the foregoing facts and the Regional Director's recommendation, I hereby reduce the proposed penalty for Item 1(A-D) from $100,000 to $90,385.

[11] U.S. Department of Transportation,Office of Public Affairs, Washington, D.C.; www.dot.gov/affairs/briefing.htm.

The proposed penalty for **Item 2** of the Notice is $100,000 for violation of 49 C.F.R. § 192. 605(b)(3), which requires pipeline operators to prepare and follow procedures for making construction records and maps available to appropriate operating personnel. I found, as stated above, that Respondent's procedures required that the latest pipeline maps and drawings be made available on site in order that Respondent's personnel could have them available for reference when accomplishing day-to-day tasks.

The primary objective of the Federal pipeline safety standards is public safety. PHMSA has made it a national priority to reduce excavation damage to pipelines. The agency has supported this priority with state grant funds, research funds, educational activities and other initiatives. It has been encouraged in this effort by the National Transportation Safety Board's (NTSB) Safety Recommendation P-87-34, which found that a lack of accurate information on the underground piping system is a factor contributing to excavation-related accidents.

In this case, the alignment sheets clearly show the location of Line C intersecting with Line A at the site of the accident. If these drawings had been available on the job site for use by the spotter and the excavator, instead of being located in a construction office more than 10 miles away, it is unlikely that the accident would have occurred. Line C was operating at about 600 psig at the time it was hit. Under such circumstances, an ignition could have caused the death or serious injury of not only Respondent's own employees and contractors but the general public as well. This incident caused a potentially dangerous release of gas and the evacuation of more than 850 schoolchildren and area residents. Respondent is fortunate that no explosion occurred and there were no injuries or fatalities in this High Consequence Area. Accordingly, for the reasons previously cited and upon consideration of the assessment criteria, I hereby assess Respondent a civil penalty of $100,000 for violation of Item 2.

The proposed penalty for **Item 3(A)** in the Notice is $100,000 for violation of 49 C.F.R. § 192.614(c)(5), which requires pipeline operators to carry out a written damage prevention program that includes the temporary marking of pipelines in areas of excavation. Respondent did not contest the allegation that it failed to mark Line C. I found, as noted above, that Respondent failed to mark the crossover of Line A and Line C. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for violation of Item 3(A).

The proposed penalty for **Item 3(B)** in the Notice is $100,000 for violation of 49 C.F.R. §192.614(c)(6), which requires pipeline operators to carry out a written damage prevention program that includes, for pipelines at risk of excavation damage, inspections "as frequently as necessary" during excavation to ensure the integrity of the pipeline. I found, as noted above, that Respondent knew or should have known that Lines A and C were part of an active gas pipeline network that included four in-service gas pipelines in the vicinity of the excavation work. Obviously, with this many active pipelines in the same area, Respondent should have been on notice that the excavation was taking place in a particularly hazardous location. Respondent, however, not only failed to locate and mark Line C but also failed to ensure that the spotter, whose job it was to observe the excavation and make sure that the pipeline was not hit, was *physically present* at the excavation site at all times.

Taken together, Item 3(A-B) goes to the heart of the Notice and reflects a serious failure on the part of Respondent to adhere to its own damage prevention program and standard industry practices. The excavation of gas transmission lines is an inherently high-risk activity which necessitates great care on the part of all parties involved in order to ensure public safety. Respondent has not presented any evidence or information that would justify its failure to ensure that its contract spotter properly directed and supervised the excavation work. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for Item 3(B).

The proposed penalty for **Item 4(A)** in the Notice is $100,000 for violation of 49 C.F.R. § 192.805(b), which requires that operators ensure through evaluation that individuals performing covered tasks are properly qualified. I found, as stated above, that Respondent failed to ensure that its contract surveyor, who located and marked Line A, was properly qualified to perform CT-605 and that he was not, in fact, qualified to perform that task. Respondent has not shown any circumstance that would justify its failure to review, evaluate, or confirm the surveyor's qualification before he performed the covered task.

The operator qualification requirements set forth in § 192.805 are a vital link in the national system that has been established by PHMSA, in cooperation with industry and other stakeholders, to protect the public from accidents due to excavation damage. If surveyors, spotters, equipment operators, and other individuals working near high-pressure natural gas transmission pipelines are not properly qualified to perform their jobs and have not received adequate safety training, the results can be catastrophic. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for Item 4(A).

The proposed penalty for **Item 4(B)** in the Notice is $100,000 for a separate violation of 49 C.F.R. §192.805(b), which requires operators to ensure through evaluation that individuals performing covered tasks are properly qualified. I found, as set forth above, that (1) Respondent failed to ensure that its contract spotter was properly qualified to perform CT-607, (2) Respondent's spotter was not, in fact, qualified to perform that task, (3) Respondent failed to prove that it had procedures in place to allow a qualified individual to observe and direct an unqualified individual, and (4) the contract backhoe operator, who was qualified to perform CT-607, was not in a position to actually observe and direct the unqualified spotter.

The record reflects that when the backhoe operator struck the pipeline repeatedly, he thought he was hitting a large rock. If a qualified spotter had been present at the time to assist the backhoe operator, he would most likely have identified the object as a pipeline and signaled the backhoe operator to stop digging. Respondent has not shown any circumstance that would have justified its failure to evaluate, review, or confirm the spotter's qualifications before he performed the covered task. Neither has Respondent demonstrated that it had any procedures in place to allow a qualified individual to observe and direct an unqualified spotter's work, much less that it could be done by the backhoe operator. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for Item 4(B).

In summary, the violations and penalties described above present a veritable laundry list of

mistakes and flaws in the Respondent's damage prevention program. This incident could have easily resulted in serious injuries or deaths in a populated urban area. The pipeline that was struck one just one of four gas pipelines owned and operated by Respondent within the same right-of-way and should have been very familiar to the company and its operating personnel. For these reasons and those set forth more fully above, I hereby assess a total penalty for Item 1(A-D), Item 2, Item 3(A), Item 3(B), Item 4(A), and Item 4(B) of **$590,385.00**. I find that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the $590,385.00 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to **Items 1(A-D), 2, 3(A-B), and 4(A-B)** for violations of 49 C.F.R. Part 192.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217.

Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent shall:

1. Conduct an investigation to determine the cause of this incident, document Respondent's findings, and prepare a plan to improve the anomaly investigation process. The plan will become final upon approval of the Director, OPS, Eastern Region. The plan must include:
   - methods to improve the availability of as-built drawings and specifications for utilization by Williams' field inspection and construction personnel and to improve the temporary marking of buried pipelines during the anomaly investigation process, in accordance with 49 C.F.R. §§ 192.605 and 192.614(c)(5).

- methods to insure that only qualified individuals are utilized to perform covered tasks under 49 CFR Part 192 Subpart N that apply to the anomaly excavation, evaluation, and remediation process.

2. Review the records of each pipeline weld that Respondent previously put into service and that had been inspected by or involved the work of the contract welding inspector discussed in Item 1(D) of the Notice. Determine if any welds rejected by the NDT technicians were actually put into service and whether any such welds are still in service. Prepare and submit a report summarizing the findings, in accordance with 49 C.F.R. § 192.605.

3. All of the compliance items detailed above must be completed within 90 days of the date of this Final Order. Submit four (4) copies of all reports, documentation, and investigative findings to demonstrate completion of each Item detailed above to the Director, OPS, Eastern Region, 409 3rd Street, SW, Suite 300, Washington, D.C. 20024.

4. The Director, OPS, Eastern Region, may grant an extension of time for compliance with
5. any of the terms of this Final Order for good cause. A request for an extension must be in writing.

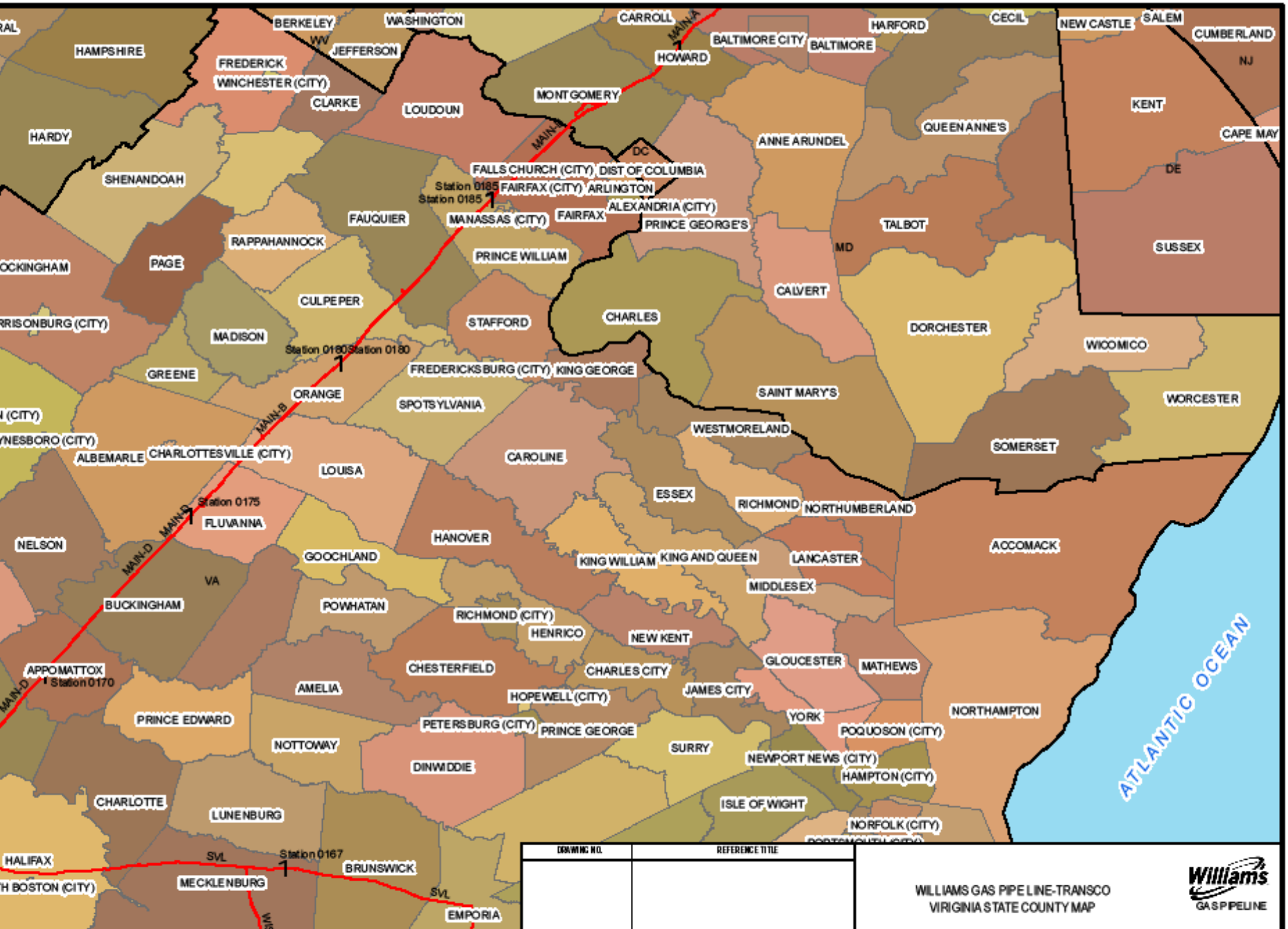
Failure to comply with this Final Order may result in the assessment of civil penalties of up to $100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of this Final Order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JUL 3 0 2007

Date Issued



DRAWING NO.	REFERENCE TITLE

WILLIAMS GAS PIPE LINE-TRANSCO
VIRIGINIA STATE COUNTY MAP

Williams
GAS PIPELINE

APPENDIX TWO-MAP OF AFFECTED VIRGINIA LOCALITIES

APPENDIX THREE

Williams Gas Pipeline Safety Projects

1. Virginia GPS Cell Phone Locator Pilot Project (Virginia Phase I Project)

Williams Gas Pipeline (WGP), in coordination with the Virginia Utility Protection Service (VUPS) One Call Center, will expand the VUPS' VA Pilot Phase I project to include all of the Virginia counties traversed by the WGP pipeline system. The project will involve providing global positioning system (GPS)-enabled cell phones (further described below) to WGP employees and other active excavators in the counties traversed by the WGP pipelines. There are four large-diameter natural gas transmission pipelines operated by WGP that are contained in one right-of-way crossing the state of Virginia. Also, the South Virginia Lateral crosses part of southern Virginia. The pipelines traverse 16 of Virginia's 95 counties (See Appendix Two). The identification of potential GPS-enabled phone users will also involve VUPS performing a data search to target excavators who perform work in geographic areas in proximity to the WGP right-of-way.

The project metrics will be identical to those used in the earlier VUPS pilot project, with one additional metric that will quantify the reduction in WGP damage prevention expenditures associated with large-scale implementation of the technology. It is anticipated that the cost reduction will be proportional to improvements in underground facility safety as quantified by all of the metrics..

WGP Safety Improvement: The Chantilly, Virginia incident root-cause analysis performed by WGP included several recommendations regarding damage prevention program improvements. The VA Pilot Project Phase I involves temporary marking through electronic white-lining[1] of excavation areas. The Chantilly incident root-cause analysis includes a recommendation for more precise temporary marking of excavation area boundaries and the outer limits of WGP's right-of-way. Training WGP employees and other excavators to implement the Phase I technology for electronic white-lining will improve marking accuracy and communication of the excavation area to the VUPS One Call center and other utility owners.

Project Cost Estimate: $300,000 for providing phones and related software to users.

Project Schedule:

Train and initiate usage with 28 users	6/01/2009
Train and initiate usage with an additional 28 users	2/01/2010
Train and initiate usage with an additional 28 users	10/01/2010
Production of quarterly progress reports	Various
Train and initiate usage for a total of 168 users	9/01/2011
Train and initiate usage for a total of 250 users	4/01/2012
Submission of Project Completion Report	12/01/2012

1 "White-lining" is the term used for the excavator's delineation of an excavation area through the painting of white lines on the ground. Electronic white-lining involves the delineation of the excavation area through the use of GPS and electronic mapping technology.

Background: In 2005, various stakeholders initiated the original Virginia Pilot Project, which focused on the application of GPS technology to improve the locational accuracy of locate requests submitted by excavators to the VUPS one-call center. The emphasis was on the development and use of enhanced electronic white-lining through the use of GPS technology and enhanced one-call processes. The Project Team utilized existing cell phone, Internet and GPS receiver technologies, combined with the development of specific software applications and enhanced one-call processes.

The primary goal of the project was to reduce the rate of over-notification by improving the quality and accuracy of locate notification tickets. Over-notification can affect from 40% to 60% of the total number of tickets issued and has a very significant impact on stakeholder resources and the efficacy of the one-call process. Contributing to over-notifications are vague and incorrect excavation site descriptions on locate requests submitted to the one-call center. Improving on the locational accuracy of locate requests and on the efficient communication of data was considered paramount to reducing over-notification.

The initial project results indicated significant improvements in the costs and efficiencies related to implementing one-call damage prevention programs. These, in turn, should lead to improvements in the benefits of such programs to all stakeholders and to significant improvements in underground facility safety.

Reference is made to the WGP proposal, entitled "Williams Gas Pipeline Sponsorship of Phase I and II Statewide Expansion of the Virginia Pilot Program," dated 1/9/2009, for a more complete description of the project work, budget and schedule.

2. Virginia GPS Locator Technology Pilot Project (Virginia Phase II Project)

Reducing excavation damage requires an effective process to communicate accurate and timely information among affected stakeholders, including the excavator, the one-call center, the facility owner/operator, and the locator. If this process can be made easier and more efficient to convey more accurate and timely information, the communication between the two main stakeholders (the excavator and the owner/operator) will be more effective in ensuring that facilities aren't damaged during the excavation process.

The focus of the Virginia Phase II Project will be the application of GPS technology to improve the facility locating process and to improve the response and information resulting from facility locates. This technology will be able to create an electronic manifest for excavators and utility operators, providing a site overview and correction data for utility mapping, along with immediate posting of positive response data.

WGP Safety Improvement: The Chantilly incident involved damage to an unlocated pipeline by a back hoe. The Virginia Phase II Project will employ technologies for precisely locating the pipeline in GPS coordinates. The project will evaluate the application of GPS and enhanced mapping technology to improvement of the underground facility locate process. WGP employees assigned to locate WGP underground facilities will participate in the project by using the GPS-enabled locators on the WGP pipeline right-of-way to gain the benefits of precisely locating, mapping, and communicating the pipeline location.

Project Cost Estimate: $262,500 for 35 GPS enabled locators at $7,500 each.

Project Schedule:

Evaluate hardware/software currently available that can capture multiple GPS points within a locate ticket request	Complete
Purchase GPS enabled locating instruments (35) at $7,500 each	2/01/2009
Develop software necessary to incorporate Global Positioning	

System (GPS) coordinates into Virginia one-call ticket archives	Complete
Develop software to allow an excavator to view its unique locate request as an electronic manifest	Complete
Develop software necessary to automatically transmit the electronic manifest to the respective facility operators	Complete
Production of quarterly progress reports	Various
Integrate locate instrument software with one-call software	Complete
Begin field training to contract locators	3/01/2009
Begin field testing of application	4/01/2009
Develop dual Storage Array Networks capable of the increased storage needs from the Virginia Pilot Project Phase II and data replication	5/01/2009
Three-month field testing of applications	7/01/2009
Submission of Project Completion Report	10/30/2009

Project Overview Details:

Reference is made to the WGP proposal, entitled "Williams Gas Pipeline Sponsorship of Phase I and II Statewide Expansion of the Virginia Pilot Program," dated 1/9/2009, for a more complete description of the project work, budget and schedule.