

November 30, 2018

Mr. Calvin D. Farr
Director of Public Utilities
City of Richmond
900 East Broad Street, Suite 400
Richmond, VA 23219

Re: CPF No. 1-2016-0005

Dear Mr. Farr:

Enclosed please find a copy of the fully-executed Consent Agreement and Order issued in the above-referenced case. It contains terms of settlement pursuant to 49 C.F.R. § 190.219 and includes a work plan for the development and implementation of a natural gas training program for the City of Richmond.

When the terms of the work plan have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. The effective date of this agreement is November 9, 2018, the date on which the City signed the agreement. You will note that our Office of Chief Counsel has stamped the "November 9, 2018" date on the signature page of PHMSA's executed original and has enclosed a photocopy of the stamped agreement for your files. Service of the Consent Agreement and Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. David B. Kearney, Senior Assistant City Attorney, City of Richmond
Mr. Alfred Scott, Deputy Director, Gas Maintenance and Streetlighting, City of Richmond

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

In the Matter of)	
)	
City of Richmond, Virginia, a municipal corporation,)	CPF No. 1-2016-0005
)	
Respondent.)	
)	

CONSENT AGREEMENT AND ORDER

On February 3, 2016, pursuant to Chapter 601 of 49 United States Code, inspectors from the Virginia State Corporation Commission (VA SCC), acting as agents for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the City of Richmond’s (the City or Respondent) pipeline facilities in Richmond, Virginia. The City’s pipeline facilities consist of more than 1900 miles of distribution mains and eight gate stations to supply gas at necessary pressures.

As a result of this inspection, the Director, Eastern Region, Office of Pipeline Safety (Director), issued to Respondent, by letter dated October 13, 2016, a Notice of Probable Violation and Proposed Civil Penalty (the Notice). A copy of the Notice is attached hereto as Appendix A. In accordance with 49 C.F.R. §190.207, the Notice proposed finding that Respondent had committed one violation of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$51,800 for the alleged violation.

The City responded to the Notice by letter dated November 14, 2016 (Response). The Response proposed to resolve this matter via an administrative consent agreement requiring the City to expend a minimum of \$110,000 to develop and implement a Natural Gas Training Program (Training Program), including development of training qualifications software.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Respondent and PHMSA (collectively, the Parties), the Parties hereby agree as follows:

A. General Provisions.

1. Respondent acknowledges that its pipeline system is subject to the jurisdiction of the federal Pipeline Safety Laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder. As used in this Consent Agreement and Order (Agreement), the terms “pipeline system” and “pipeline facility” shall be defined as in 49 C.F.R. Part 192. Respondent

acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent consents to the issuance of this Agreement and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice or the validity of this Agreement, including all rights to administrative or judicial hearings, reviews, or appeals.

3. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all City officers, employees, agents, and successors-in-interest whose duties might reasonably include compliance with this Agreement.

4. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement and its appendices.

5. Nothing in this Agreement affects or relieves the City of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information-gathering or its authority to bring any enforcement action against Respondent pursuant to the federal Pipeline Safety Laws, the regulations and orders issued thereunder, or any other provision of federal or state law.

6. This Agreement does not waive or modify any federal, state, or local laws or regulations that are applicable to the City or its pipeline system. This Agreement is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations and permits.

7. This Agreement does not create rights in, or grant any cause of action to, any third party not a party to this Agreement. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, agents, or successors-in-interest in carrying out the work required by this Agreement.

8. The Parties agree that the facts as alleged in the Notice are true and correct and may be considered by PHMSA to be a prior offense in any future PHMSA enforcement action taken against the City.

9. Respondent agrees to complete the corrective actions specified in Section B (Additional Work to be Performed) of this Agreement.

10. Respondent agrees that the activities described in Section B of this Agreement, and in all work plans and schedules incorporated thereunder, are not already required by any federal, state, or local law or regulation and do not include actions which Respondent would likely be required to perform:

- a. as injunctive relief, including as a mitigation project, in the instant case;
- b. as injunctive relief in any other existing legal action initiated by PHMSA or any other regulatory agency against Respondent;
- c. as part of an existing settlement or order in another legal action; or
- d. under any other federal, state, or local requirement.

B. Additional Work to be Performed.

11. Respondent agrees to perform the actions set forth in the Work Plan, incorporated herein as Appendix B to this Agreement. Respondent will complete the actions described in Part 2 of the Work Plan (General Information and Proposed Action Description) and will adhere to the schedule set forth in Part 3 of the Work Plan (Project Schedule).

12. Respondent agrees to revise the Work Plan as necessary to incorporate new information obtained during the evaluations and remedial activities performed under the Work Plan. Respondent shall submit any such plan revisions to the Director for prior approval. The Director may approve Work Plan revision elements incrementally.

13. The Director may grant an extension of time for completion of any of the work to be performed under this Section B (Additional Work to be Performed) upon Respondent's timely, written request that demonstrates both good cause for an extension and provides sufficient detail to enable the Director to evaluate Respondent's request.

14. Respondent agrees to maintain documentation of the costs associated with implementation of the Work Plan and agrees to make this information available to PHMSA upon request.

C. Review and Approval Process.

15. With respect to any submission by the City under Section B (Additional Work to be Performed) of this Agreement that requires the approval of the Director, the Director may: (a) approve the submission, in whole or in part; (b) disapprove the submission on specified conditions; (c) disapprove the submission, in whole or in part; or (d) undertake any combination of the foregoing. In the event of approval in whole, in part, or upon conditions, the City will proceed to take all actions required by the submission as modified by the Director, subject to Respondent's right to invoke the procedures in Section D (Dispute Resolution) with respect to any conditions identified by the Director. In the event that the Director does not approve all or any portion of a submission, the Director will provide the City with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and

resubmit it for acceptance. If Respondent fails to correct the specified deficiencies, the Director may invoke the dispute resolution process provided in Section D below.

D. Dispute Resolution.

16. The Director and Respondent will attempt to informally resolve any disputes arising under this Agreement. If the City and the Director are unable to informally resolve the dispute within 15 business days, Respondent may request in writing, within 10 business days, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Respondent will provide the Associate Administrator with all information Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a written determination that shall constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Regional Director or the Associate Administrator in writing.

E. Enforcement.

17. This Agreement, including all plans and schedules incorporated by reference, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. §60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. §60122, of up to \$200,000 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017). All other work plans and associated schedules developed under Section B shall be automatically incorporated into this Agreement and are enforceable in the same manner.

F. Civil Penalties.

18. PHMSA agrees to withdraw the proposed civil penalty for Item 1 in the Notice, in exchange for completion of the Project Schedule outlined in Part 3 of the Work Plan.

19. If the Work Plan is not implemented within the timeframe contemplated in the Project Schedule, subject to any extensions approved by the Director, PHMSA reserves the right to take further enforcement action, including assessment of the civil penalty proposed in the Notice.

G. Miscellaneous.

20. Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. PHMSA and the VA SCC will have the right to inspect the records and facilities of the City, or any contractor, agent, or successor-in-interest thereof, upon reasonable

notice, to confirm that the compliance terms of this Agreement are being undertaken in conformity with the terms of this Agreement.

21. Except as otherwise provided herein, this Agreement may be modified only by the mutual agreement of the Parties as set forth in writing and signed by the Parties.

22. Each undersigned representative of the Parties certifies that he or she 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. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activities described in this Agreement, including all activities described in the Work Plan or any other incorporated plan or schedule. Respondent further certifies that it has inquired of City departments and of any parties acting on the behalf of the City whether they are a party to any open federal financial assistance transaction that is funding or could fund the same activities described in this Agreement, and has been informed by said parties that they are not subject to such a transaction.

H. Effective Date and Term.

24. The “Effective Date,” as used herein, is the date on which this Agreement is signed by both Respondent and PHMSA. Unless otherwise specified, all deadlines for actions required by the Agreement run from the Effective Date.

I. Termination.

25. This Agreement will terminate upon the completion of all terms set forth in Section B (Additional Work to Be Performed), as determined by the Director. Respondent may request, and PHMSA will provide, written confirmation of the termination of this Agreement. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

The Parties hereby agree to all conditions and terms of this Agreement:

For PHMSA:

For City of Richmond, Virginia:

Alan K. Mayberry
Associate Administrator for
Pipeline Safety, PHMSA

Robert Steidel
Deputy Chief Administrative Officer for
Operations, City of Richmond, VA

APPENDIX A

APPENDIX B

**Work Plan for the Development and Implementation of a Natural Gas Training Program
City of Richmond, Virginia
CPF 1-2016-0005**

1. Introduction.

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has allowed the City of Richmond, Virginia (the City) the opportunity to perform the following supplemental safety actions as an alternative to paying a proposed civil penalty for a violation of the pipeline safety regulations in 49 C.F.R. Part 192. The City is to perform these risk-mitigating safety actions relative to the violation to enhance the continued safe operations of the City's distribution of natural gas and to provide value that offsets the proposed civil penalties. PHMSA and the City agree that the actions set forth below provide safety and/or environmental value beyond the enforcement of the proposed civil penalty, and the City has entered into a Consent Agreement and Order (Agreement) with PHMSA to perform the proposed actions within agreed-upon timeframes.

2. General Information and Proposed Action Description.

PHMSA's Notice of Probable Violation in CPF 1-2016-0005 identified one probable violation and included a proposed civil penalty. PHMSA alleged that the City failed to follow a manual of written procedures for conducting maintenance activities. Specifically, the City allegedly failed to follow its Natural Gas Procedures Manual ("O&M Manual") Volume II, Chapter 7, Section V, paragraph E, Services.

Paragraph E.2 of the O&M Manual states that, "When a service line (2-inch diameter or less) is to be abandoned in place, but the main is to continue in use, the service shall be physically disconnected from the main, *at the main*" [emphasis added].

During the inspection conducted on February 3, 2016, the Virginia State Corporation Commission (VA SCC) reviewed the City's leak inspection records for 2015. The records indicated that a one (1) inch diameter steel gas line to 5001 Patterson Avenue had a grade 1 leak reported on September 28, 2015. According to the VA SCC, a new plastic service line had been installed on November 3, 2011 to replace the steel gas line. The steel line was not abandoned at the main in accordance with City of Richmond procedures when the new plastic line was installed. The City properly abandoned the steel line at the main during the September 28, 2015 leak call.

During the City's April 2016 cast iron renewal meeting, the City reviewed the O&M Manual with respect to services with all of the construction inspectors and contractors responsible for performing this task, to ensure that all services are being abandoned at the main.

The City has reviewed potential remedial actions that the City can perform and use in the development of the Agreement with PHMSA. Following consideration, the City has determined that the best remedial action aligned with the probable violation is for the City to develop and implement a comprehensive Natural Gas Training Program ("Training Program") for all City gas utility construction and maintenance personnel. The Training Program will focus on the City gas

utility’s O&M procedures and on qualification of the City’s operators, to ensure compliance with 49 CFR Part 192. The Training Program will include retraining for City personnel on safe abandonment of service lines connected to still-functioning mains. A City of Richmond gas utility Senior Training Specialist shall be responsible for coordination, development and implementation of the Training Program. The City shall perform all training on-site in a classroom setting. The City shall document records of attendance and training content.

3. Training Program Project Schedule.

Estimated Schedule

Training Program Development:	March 31, 2018
Training Facility Construction Completion:	November 7, 2017 ¹
Full Training Program Implementation:	March 31, 2018 ²

4. Costs.

a. Construction costs:	\$457,517.22
b. Additional costs (see table below):	\$267,765.15
Total Expenditures	\$725,282.37 ³

Selected Vendor	Description	Amount	Total for Vendor
Barco Products	bench, outside table, etc.	\$3,959.67	\$3,959.67
Consolidated Pipe & Supply	electrofusion machine	4,200.00	4,200.00
Fastenal	air tower w/ reserve tank and dryer	4,858.05	
	constant flow compressor	4,755.05	9,613.10
Fence Scapes	chain link fence	1,400.00	
	fence w/ double gate	4,900.00	6,300.00
Grainger	carport kit	7392.20	
	shelving, etc.	2,882.42	
	flammables storage cabinet	1,388.50	

¹ Including installation of 460 feet of 2-inch polyethylene and 260 feet of 2-inch steel intermediate pressure gas main. The Training Facility is located at 2900 Caldwell Road in Richmond.

² The City anticipates the bid solicitation package will be forwarded to the City’s Department of Procurement by November 30, 2017, with contract implementation by March 31, 2018.

³ The Total Expenditures do not reflect the City’s personnel costs or O&M costs. The estimated cost for the Training Program software will not be determined until the City has selected a bid from a company for the Operators Qualification program.

Selected Vendor	Description	Amount	Total for Vendor
	tamper seals for fire extinguishers	215.23	
	mini lightbar, drum funnel, cable ties, etc.	2,292.84	
	10 ft. stepladder	416.00	
	fire extinguishers	3,712.88	
	cable ties	39.38	
	flame resistant coveralls	235.12	
	fire extinguishers	1,274.00	
	flame resistant overalls (type a)	445.81	
	flame resistant overalls (type b)	58.78	
	fire hood	374.75	
	gasket fill caps, quad ring fill caps, cap wrenches	4,765.58	
	fire extinguisher on wheels	4,885.78	
	shoe covers, ball valve lockout, air circulator, etc.	1,657.74	
	confined space blower	1,450.00	
	keyed padlocks	106.50	
	hitch pins	237.50	33,831.01
Heath Consultants	odorator	4,995.00	4,995.00
Lowe's	storage shed	4,573.36	
	storage shed	4,506.36	
	miscellaneous items	105.26	
	natural gas generator	3,306.15	
	cleaning supplies	442.55	
	grill	973.88	
	hand tools	1,022.33	
	freezer	284.05	15,231.94
Major Safety Service, Inc.	DBI Sala Advanced System Portable Base – large for confined space system	3,707.25	
	fall protection harness and trauma straps	3,517.00	
	hearing protection and face shields for fire school	1,305.03	
	fall protection anchor and retractable life line	997.75	9,527.03
Mayer Electric	electrical supplies, conduit, adapters, etc.	7,216.99	7,216.99
MobiLease	classroom trailer	101,378.21	101,378.21
Montondo Trailer	restroom trailer	30,145.00	30,145.00
Overhead Door Company	furnish and install 8'1" x 8'1" 610 Series Door	2,338.00	2,338.00
Strickland Machine Company	confined space training platform	24,300.00	24,300.00

Selected Vendor	Description	Amount	Total for Vendor
United Rentals	aluminum panel shoring – 6’ shoring box, 5’ shoring box, lifting lugs, trench ladder and other items related to shoring boxes	14,729.20	14,729.20
		TOTAL	\$267,765.15