

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

VIA E-MAIL TO MR. KEITH METZLER

October 15, 2021

Mr. Keith Metzler
City Manager
City of Victorville
14343 Civic Drive
Victorville, CA 92392

CPF 5-2020-051-NOPV

Dear Mr. Metzler:

On April 20 through 24, 2020, a representative of the California Public Utilities Commission (CPUC), on behalf of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected the City of Victorville ("Victorville") natural gas distribution system in Victorville, California.

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

1. §192.616 - Public awareness.

(a)...

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

Victorville failed to follow the general program recommendations of API RP 1162 in its public awareness program. Specifically, Victorville failed to conduct an effectiveness evaluation of its public awareness program to assess whether the actions undertaken were achieving the intended

goals and objectives, as required by API RP 1162 Section 8.4.¹ Additionally, Victorville failed to complete an annual audit or review of whether the public awareness program was developed according to guidelines in API RP 1162.² During the inspection, Victorville was unable to produce records establishing that it had performed the requisite effectiveness evaluations and annual audits.³

2. §192.805 - Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a)...

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

Victorville failed to ensure through evaluation that individuals performing covered tasks were qualified as required by §192.805(b). During the inspection, Victorville did not provide supporting documents for the evaluation and qualification methods for each covered task.⁴

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

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

¹ API RP 1162 Section 8.4 - Measuring Program Effectiveness (Rev. 2003) states that “[o]perators should assess progress on the following measures to assess whether the actions undertaken in implementation of this RP are achieving the intended goals and objectives...”

² API RP 1162 Section 8.3 - Measuring Program Implementation (Rev. 2003) states that “[t]he operator should complete an annual audit or review of whether the program has been developed and implemented according to the guidelines in this RP.”

³ See § 192.616(i) (requiring that an “operator’s program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies”).

⁴ See 49 C.F.R. § 192.807 (requiring operators to maintain records that demonstrate compliance with operator qualification requirements).

With respect to Items 1 and 2, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to the City of Victorville. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

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

In your correspondence on this matter, please refer to **CPF 5-2020-051-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

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

cc: PHP-60 Compliance Registry
PHP-500 J. Dunphy (#20-173120)
Terrence Eng, Program Manager, Gas Safety and Reliability Branch California Public
Utilities Commission

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 1 of the Notice pertaining to Victorville's failure to conduct an effectiveness evaluation as required by API RP 1162 Section 8.4, Victorville must complete and submit to PHMSA an effectiveness evaluation of its public awareness program within **180** days of receipt of the Final Order.
- B. In regard to Item 1 of the Notice pertaining to Victorville's failure to conduct annual audits of the public awareness program as required by API RP 1162 Section 8.3, Victorville must complete and submit to PHMSA an annual audit of its public awareness program within **30** days of receipt of the Final Order.
- C. In regard to Item 2 of the Notice pertaining to Victorville's failure to ensure through evaluation that individuals performing covered tasks were qualified, Victorville must perform the requisite evaluations and submit qualification records to PHMSA within **60** days of receipt of the Final Order.

Further, Victorville must amend its Operator Qualification Program and submit the amendments to PHMSA within **30** days of receipt of the Final Order. In its amended procedures, Victorville must include sufficient detail on the means by which Victorville will evaluate an individual's ability to perform a covered task.

- D. It is requested (not mandated) that Victorville maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.