



U.S. Department  
of Transportation

Pipeline and Hazardous  
Materials Safety  
Administration

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

FEB 5 2013

Mr. David B. Kearney  
Assistant City Attorney  
City of Richmond  
900 East Broad Street, Suite 300  
Richmond, VA 23219

**RE: In the Matter of City of Richmond – CPF No. 1-2010-0001**

Dear Mr. Kearney:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement reached between PHMSA and the City of Richmond in this enforcement action and that you signed on January 18, 2013. Service of the Consent Order and Consent Agreement by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

**VIA CERTIFIED MAIL**

Enclosure

cc: Mr. Byron Coy, Director, Eastern Region, OPS  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline  
Safety, OPS

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

_____	)	
<b>In the Matter of</b>	)	
	)	
<b>City of Richmond, Virginia,</b>	)	
<b>    a municipal corporation,</b>	)	<b>CPF No. 1-2010-0001</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**CONSENT AGREEMENT AND ORDER**

By letter dated May 6, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Proposed Violation in this proceeding, which arose out of an on-site inspection of the pipeline facilities of the City of Richmond's (City or Respondent) gas distribution facilities in Richmond, Virginia. The City operates a municipal gas distribution system consisting of approximately 1,700 miles of gas distribution lines.<sup>1</sup> The inspection was conducted on March 26-27, 2009, pursuant to chapter 601 of Title 49, United States Code, by a Virginia State Corporation Commission (VA SCC) inspector, acting as agent for OPS.

As a result of the VA SCC inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 6, 2010, a Notice of Probable Violation and Proposed Civil Penalty (Notice), a copy of which is attached hereto as Appendix One. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$49,700 for the alleged violation. The Notice also proposed finding that Respondent had committed two other probable violations of 49 C.F.R. Part 192 and warning the City to take appropriate corrective action or be subject to future enforcement action.

The City responded to the Notice by letter dated June 2, 2010, and requested a hearing to contest the alleged violation and proposed penalty and to present evidence regarding its good-faith compliance efforts. A hearing was subsequently held on August 26, 2010, in Washington, D.C., with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing, the City provided a post-hearing statement for the record, by letter dated September 15, 2010.

<sup>1</sup> <http://www.richmondgov.com/> (last accessed 6/7/2011).

Following the hearing, the parties entered into good-faith discussions to resolve the issues presented and have reached agreement that it would be in the best interests of the parties, pursuant to 49 C.F.R. Part 190, to resolve this enforcement action without further proceedings and to enter into this Consent Agreement and Order (Agreement), without adjudication of any issue of fact or law.

**NOW, THEREFORE**, upon consent and agreement of Respondent and PHMSA (collectively, Parties), the Parties agree as follows:

### **I. General Provisions**

1. Respondent acknowledges that the City and its pipeline system are 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. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's actions 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 the 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 or appeals.
3. This Agreement shall apply to and be binding upon the Parties and their respective officers, directors, and employees, and to Respondent's successors, assigns, or other entities or persons otherwise bound by law. The City agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of its officers, employees, and agents whose duties might reasonably include compliance with its terms.
4. The Parties agree that Respondent neither admits nor denies the allegation of violation in the Notice, but admits, for purposes of this Agreement, the facts as stated in the Notice. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.
5. This Agreement does not waive or modify any Federal, State, or local law or regulation applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification or any permit, under any Federal, State, or local law or regulation. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations, and permits.
6. Pursuant to 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. § 190.221, Respondent's failure to comply with this Agreement may result in the assessment of civil penalties up to \$200,000 per violation per day, or in referral of the case for judicial enforcement.

## II. Compliance Terms

7. The Parties acknowledge and agree that the City, prior to 2009, engaged in the practice of installing prospective gas distribution service lines, referred to locally as "bond issues," in areas of new development. These incomplete plastic pipeline stubs were installed so that street paving could be completed without further cutting of the pavement. Gas lines were subsequently tied in, as new buildings were erected. Pursuant to this practice, the City would install a new main, with service taps, excess flow valves, and stubbed bond issues ending in purge points. The City would simultaneously pressure test the mains and the bond issues, after opening the curb valves and closing the purge points. Next, the curb valves would be closed, residual gas in the bond issue stub released, and the purge points capped. These air-filled lines were then brought above ground. Upon construction of an actual building, the City would complete the service by excavating the bond issue, cutting it below ground, and tying it into the completed portion of the service line to the building.

8. The Parties agree that the practice described in Paragraph 7 above constitutes a threat to public safety because it allows gas lines that have been installed but not yet connected to customers to be inadvertently connected to gas service and left above ground and unprotected from deterioration and external damage.

9. The City represents that it has discontinued the practice described in Paragraph 7 above and has used its best efforts to replace or correct any plastic pipe "bond issues" where such connections were located above ground and unprotected from deterioration and external damage. The City further represents that all existing bond issues have been buried or otherwise protected against deterioration and external damage, which has been verified by the VA SCC.

10. Respondent further agrees, as of the Effective Date of this Agreement, to cease and desist permanently from the practices described in Paragraph 7 above.

11. The Parties acknowledge and agree that the warning items set forth in Items 2 and 3 of the Notice shall remain in full force and effect. The warnings were for:

49 C.F.R. § 192.303 (Item 2) — Respondent's alleged failure to construct each transmission line or main in accordance with comprehensive written specifications or standards consistent with 49 C.F.R. Part 192; and

49 C.F.R. § 192.285 (Item 3) — Respondent's alleged failure to re-qualify two individuals making plastic pipe points under an applicable procedure.

If the VA SCC or PHMSA finds a violation of either of these Items in a subsequent inspection, Respondent may be subject to future enforcement action.

## III. Penalties

12. PHMSA hereby withdraws the proposed civil penalty of \$49,700 for the alleged violation of Item 1 in the Notice.

13. If the City fails to comply with any of the terms of this Agreement, the City will be liable for stipulated penalties, according to the following provisions:

- a. The City will pay a stipulated penalty to the United States in the amount of the original proposed civil penalty of \$49,700; and
- b. Nothing in this Agreement 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 the City's violation of this Agreement or of any statutes and regulations upon which it is based, or any other applicable provision of law.

#### IV. Miscellaneous

14. This Agreement 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 Agreement shall control in the event of any inconsistency with the record in this proceeding.

15. In the event of any transfer of ownership or operating responsibility of any portion of the City's pipeline system during the term of this Agreement, the City will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the Director.

16. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. PHMSA is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out any actions required by this Agreement.

17. Respondent may request written confirmation from PHMSA when this Agreement is terminated. Except as otherwise provided herein, this Agreement may be modified only by the mutual agreement of the Parties and set forth in writing and signed by both Parties.

18. 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.

19. The Effective Date of this Agreement is the date on which this Agreement is signed by both Respondent and PHMSA.

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

For PHMSA:

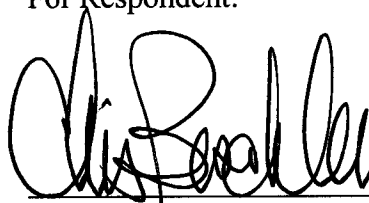


Jeffrey D. Wiese  
Associate Administrator for  
Pipeline Safety

**FEB 5 2013**

Date

For Respondent:



Christopher L. Beschler  
Deputy Chief Administrative Officer for  
Operations,  
City of Richmond, Virginia

**1-18-2013**

Date