

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 28, 2012

Ms. Valerie Fong
Utilities Director
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

CPF 5-2012-0005

Dear Ms. Fong:

On February 14-17, 2011, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, conducted an inspection of the City of Palo Alto's Operator Qualification (OQ) program at your office in Palo Alto, California. The OQ program procedures and supporting records demonstrating implementation of that program were reviewed.

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

1. §192.805 Qualification program

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

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

The City of Palo Alto's (City) OQ Plan does not ensure that all individuals performing covered tasks are "qualified" per the definition in 192.803. Qualified means that an individual has been evaluated and can: a) Perform assigned covered tasks; and b) Recognize and react to Abnormal Operating Conditions. Abnormal Operating Conditions (AOC's) identified in the City's Operator Qualification Plan are not specific to each covered task and are only generically described. Also, the City of Palo Alto has failed to require all individuals performing covered tasks to recognize and react to these AOC's. Task specific AOC's need to be identified and procedures implemented to ensure necessary personnel are trained to identify and properly react to these AOC's.

2. §192.805 Qualification program.

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

(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

The City has not identified a span of control in its procedures, i.e. the number of non-qualified individuals observed and directed by a qualified individual. The City has not placed any such limitation on these activities. Span of control must be addressed in the Operator Qualification Plan. This problem was previously identified in a Notice of Amendment dated December 17, 2004 (CPF No. 5-2004-1022M).

3. §192.805 Qualification program

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

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

The City's OQ Plan requires individuals performing fusion bonds as a covered task to be re-evaluated annually. The qualification for individuals performing this task expired on March 3, 2010. They were requalified on October 28, 2010. However, a total of 41 fusion bonds were completed in this period by nine (9) individuals with expired qualifications. All nine individuals passed in October 2010 and no problem with the 41 fusion bonds have been noticed to date.

4. §192.805 Qualification program

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

(d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident as defined in Part 191;

Individuals performing a covered task that may have contributed an accident must be evaluated. However, the City's OQ Program has no provisions to immediately suspend an individual performing that covered task until their performance can be evaluated. This problem was previously identified in a Notice of Amendment dated December 17, 2004 (CPF 5-2004-1022M).

Proposed Compliance Order

With respect to items 1, 2, 3 and 4 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to the City of Palo Alto. 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 Compliance 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). 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.

In your correspondence on this matter, please refer to **CPF 5-2012-0005** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

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

cc: PHP-60 Compliance Registry
PHP-500 H. Monfared (#133576)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to the City of Palo Alto a Compliance Order incorporating the following remedial requirements to ensure the compliance of the City of Palo Alto with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to task specific Abnormal Operating Conditions (AOC's), the City of Palo Alto must develop task specific AOC's and require all qualified individuals performing covered tasks to recognize and react to these task specific AOC's. These revisions need to be included in a revised Operator Qualification Plan.
2. In regard to Item Number 2 of the Notice pertaining to span of control, the span of control is not addressed in the City of Palo Alto OQ Plan. The OQ Plan must be revised to include span of control, i.e. the number of non-qualified individuals observed and directed by a qualified individual, and any limitation necessary placed on such activity.
3. In regards to Item 3, conduct a leak survey at the 41 fusion bond locations, including immediately adjacent structures.
4. In regard to Item Number 4 of the Notice pertaining to individuals who perform a covered task that may have contributed to an accident, the City of Palo Alto must include in its Operator Qualification Plan a provision to ensure that an individual who was performing a covered task that may have contributed to an accident be immediately suspended from performing that covered task until their performance of that task is evaluated.
5. The City of Palo Alto has 60 days after receipt of a Final Order to complete the above-referenced items.
6. The City of Palo Alto is requested to maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. Costs should 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.