



**CITY OF RICHMOND**

DEPARTMENT OF PUBLIC UTILITIES

GAS AND WATER DISTRIBUTION

OPERATIONS CENTER

Mr. Byron E. Coy  
 Director, Eastern Region  
 Pipeline and Hazardous Materials Safety Administration  
 820 Bear Tavern Road, Suite 306  
 Trenton, NJ 08628

June 2, 2010

**RE: Notice of Probable Violation and Civil Penalty  
 CPF 1-2010-0001**

Dear Mr. Coy,

We received your Notice of Probable Violation and Proposed Civil Penalty (Reference CPF 1-2010-0001) dated May 6, 2010 and respectfully request a hearing to contest the allegations in item 1, request acknowledgement of our good faith efforts, and contest the proposed civil penalty.

**Background**

The City of Richmond had a practice of installing “Bond Issues” which were incomplete plastic pipeline stubs in new developments which eventually became completed gas services. The bond issues allowed the completion of the development’s paving and later tie in of natural gas services as buildings were constructed.

The process (prior to 2008) entailed installation of a new main with service taps, excess flow valves, curb valves, and stubbed bond issues ending in purge points. The curb valves were opened. The purge points were closed. Then the main and bond issues were pressure tested at the same time. Once the pressure test was complete, the main was tied in to a natural gas source and the main and bond issues were purged through the purge points. Then the curb valves were to be closed, residual gas in the bond issue stub would be released and the purge point capped. This air filled line was brought above ground to ease its later location. Once the building was constructed, the service would be completed. On installation the bond issue would be excavated, cut below ground level and tied into the completed portion of the service to the building with a coupling.

With the help of our regulators, the Virginia State Corporation Commission (SCC), we discovered in 2008 and 2009, that (in at least three cases) a portion of the process was

skipped. The curb valves were not closed and gas pressure remained up to the closed purge point, above ground.

## **Federal Regulatory Requirements and Allegations**

There are three regulatory questions to discuss:

### **1. Is a bond issue a service line?**

**49 CFR 192.3** Definitions include a definition of a service line:

*“Service line means a distribution line that transports gas from a common source of supply to an individual customer ...served through a meter header or manifold...”*

The bond issue does not transport gas to a customer. It does not include a meter header or manifold. At some point in the future, the below ground portion of this line will become a service. But at the time of this finding, it was not a service line.

### **2. Were the Bond Issues at lots 20 & 21 Ginter Street outside a building?**

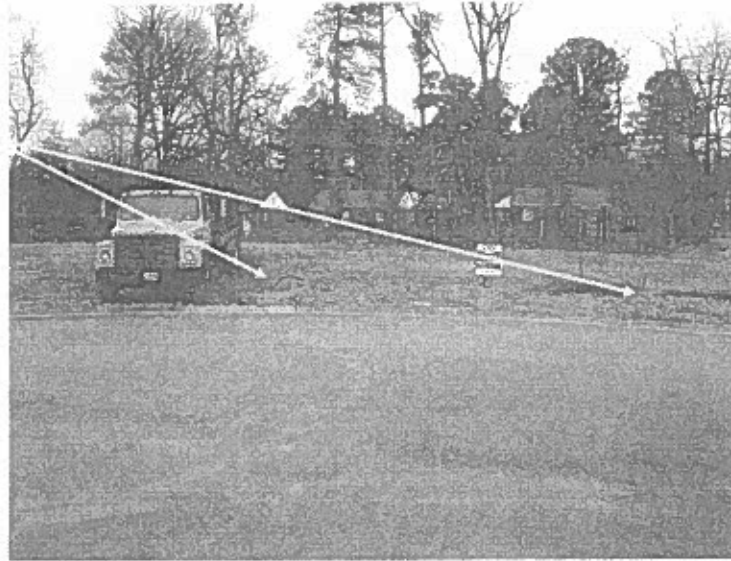
The Notice of Violation quotes a portion of **49 CFR 192.375 Service Lines: Plastic** as follows:

*(a) Each plastic service line outside a building must be installed below ground level, except that-*

*(2) It may terminate above ground level and outside the building, if-*  
*(i) The above ground level part of the plastic service line is protected against deterioration and external damage.*

As can be readily seen in the photos submitted by the SCC (below), these bond issues are in undeveloped lots with no adjacent buildings. Therefore the requirements for “each plastic service line outside a building....” do not apply.

Lots 20 & 21  
Ginter Street in  
Henrico  
County, VA.  
Plastic above  
ground service  
charged with  
natural gas.



49 CFR 192 is silent on requirements for a plastic line in an empty lot except for the general requirements for installing plastic pipe. The Notice of Violation did not address this requirement; however it is pertinent and is discussed below.

### 3. What are the general requirements for installing temporary plastic pipe?

49 CFR 192.321 (g) addresses Installation of Plastic Pipe and states:

*(g) Uncased plastic pipe may be temporarily installed above ground level under the following conditions:*

*(2) The pipe either is located where damage by external forces is unlikely or is otherwise protected against such damage.*

We agree that the bond issues were not “otherwise protected from damage”. The issue comes down to an interpretation of the alternative part of section (2): whether the temporary plastic pipes were located where damage by external forces “is unlikely”. The regulations do not require the pipe to be installed where damage is impossible only “unlikely.”

In just the 10 years between 1998 and 2008, approximately 5000 additional new plastic services were installed (according to our annual reports). We know of damage to two of those bond issues. This is a damage rate of 0.04%. We consider that within the statistical realm of “unlikely”.

## **City of Richmond, Department of Public Utilities (DPU) Good Faith Efforts**

The following is a chronology of the City of Richmond DPU's response and good faith efforts to eliminate above ground bond issues. Notwithstanding the regulatory discussion above, we have taken this issue seriously.

**February 5-7, 2008**, Virginia SCC conducted a comprehensive review of DPU records. They included a finding concerning a leak record of a damaged above ground bond issue.

**March 31, 2008**, a change was made in DPU Gas Management to ensure that a regulatory focus was applied throughout the DPU gas organization. We started a complete re-write of the City of Richmond, DPU O&M manual to ensure regulatory compliance and procedural compliance.

**April 29, 2008**, Virginia SCC issued the report of the February inspection (NOI-159).

**May 16, 2008**, City of Richmond DPU responded to the item with three action items:

- (1) Personnel were directed to cease the practice of installing Bond Issues above ground.
- (2) A commitment to revise the Operating Procedure by July 1, 2008 was made.
- (3) Leak survey personnel were instructed to also search for any remaining above ground bond issues during their walking surveys. City of Richmond DPU conducts residential surveys every 3 years. This would ensure that the entire system was inspected over a three year period, not to exceed 39 months (i.e. by August, 2011).

**May 20, 2008** Virginia SCC responds: "It is good to hear that this process of 'stubbing up' gas services is going to be revised to prohibit plastic piping above ground. Once this procedure is revised, please provide Staff a copy". Since they did not mention it, we presumed that the three year commitment to survey our entire system was acceptable to the SCC. They ended their letter with the statement: "Since the State Corporation Commission has started conducting inspections for compliance, the City has been very attentive whenever we have had any issues or concerns".

**June 30, 2008** Procedure II.3.III entitled "Construction of Services" was revised to include the statement: "No portion of the Bond Issue shall extend above ground."

**December 2008** Completed the re-write of the City of Richmond O&M manual.

**March 26, 2009** Virginia SCC identify the two above ground bond issues at Lots 20 & 21 Ginter St that form the basis for this Notice of Probable Violation (NOI-193). Note that this was less than one year into the three year survey process that we were using to find any remaining above ground bond issues.

**April 17, 2009** City of Richmond DPU responded to the item and made a further commitment: “Instead of identifying these bond issues through the three year survey process as proposed in our response to NOI 159, the City of Richmond will identify and inspect all existing Bond Issues for above ground pipe and correct as necessary by April 1, 2010”.

**April 2009 – April 2010** DPU committed considerable resources to performing a review through the means of satellite imagery of each development in our service territory to identify any remaining open lots. These lots were then physically visited and inspected to ensure that no live, above ground bond issues remained. This review and inspection was conducted independent of the survey process and was completed a full year before our original commitment of mid 2011. We believe that we have eliminated the problem. While it is possible that one or two have been missed, we have instructed all our crews, contractors, and inspectors to remain vigilant for any remaining above ground bond issues.

We have also changed our construction process to install buried plastic sleeves across streets to be paved where possible. This allows later insertion of the service without the need to excavate the paved area.

## **Proposed Civil Penalty**

In light of the actions that we completed (detailed above), we were very surprised at the amount of the proposed penalty \$49,700. We would like to discuss the assessment considerations (per 49 CFR 190.225) that may or may not have been included in your analysis. This includes the gravity of the violation, the respondents history of prior offenses, the respondent’s ability to pay (we are a municipal, non-profit organization), and our good faith efforts.

## **Summary**

The City of Richmond respectfully requests a hearing with our legal counsel to discuss whether the two plastic bond issues allegedly “stubbed up” at lots 20 and 21 Ginter Street constitutes a violation of §192.375 in light of the fact that they were not services, were not located outside a building and the plastic pipe was statistically unlikely to be damaged by external forces. Ultimately our goal would be for PHMSA to reclassify this item as a Warning with no Civil Penalty.

In the alternative, we would request the PHMSA to consider the City’s good faith efforts and expenditures already made to date to eliminate this problem and reduce the amount of the Civil Penalty accordingly.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Bellman". The signature is written in a cursive style and is followed by a long horizontal line that extends to the right.

Michael R. Bellman  
Deputy Director – Gas & Light  
City of Richmond – DPU  
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Richmond, VA 23224  
(804) 646-8301

cc. Gregory O'Halloran, Esq.  
Christopher Beschler  
Carl James