



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

409 3rd Street, SW, Suite 300
Washington, DC 20024

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 20, 2008

Mr. Jon Peterson, President
PAPCO
213 West Third Avenue, Room 305
Warren, PA 16365

CPF: 1-2008-0001

Dear Mr. Peterson:

On June 11-13, 2007, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your Pipeline Distribution System in Warren, PA.

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. **§192.603 General provisions.**
 - (b) **Each operator shall keep records necessary to administer the procedures established under §192.605.**

The operator failed to provide records to demonstrate that the Distribution Valves at the Glade Bridge Valve Station were inspected in accordance with §192.747 of the Code. This section of the Code requires that each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year. No records were provided for the 2004 inspection period.

No records were available for 2004-Glade Bridge (red, white, blue line valves).

2. § 192.463 External corrosion control: Cathodic protection.

(a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

The operator failed to meet the minimum level of cathodic protection as outlined under §192.463 of the code, at the locations indicated below. Based upon the operators operations and maintenance (O&M) procedures, the operator has selected to use the at least as negative -0.85V criteria in Appendix D of Part 192 as a basis for measuring the levels of cathodic protection throughout their system. The potential readings outlined in the table below do not meet the minimum -0.85V criteria.

Location	Findings	Dates (Readings) *	Duration
Williams Southwell Meter	No readings.	2004, 2005, 2006	2 years plus
Public Way Valves	Low Potentials (less negative than -0.85V)	9/11/04 (-0.6V) 9/1/05 (-0.6V) 9/1/06 (-0.6V)	2 years plus
West End RR Bridge (south side)	Low Potentials (less negative than -0.85V)	8/25/03(-0.6V) 8/10/04(-0.6V); 9/1/04(-0.6V) 9/1/05(-0.6V) 9/1/06(-0.6V)	3 years plus
300 yds East of Mohawk Valves	Low Potentials (less negative than -0.85V)	8/6/04(-0.7V) 9/1/05(-0.7V) 9/1/06(-0.7V)	2 years plus

*Note: PHMSA field audit conducted 6/13/07 confirmed low potential readings at the locations indicated above: Public Way Valves (-0.4V); West End RR Bridge (-0.4V); 300 yds East of Mohawk Valves (-0.7V)

3. §199.115(a) Contractor employees.

With respect to those employees who are contractors or employed by a contractor, and operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this part are complied with; and

(b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

The operator failed to include a private contractor (Pipeline Technician) in their Drug and Alcohol (D&A) program.

Records reviewed during the audit indicate that the private contractor has been working for the operator since 2002. Since the contractor was not covered under his own plan, it was the responsibility of PAPCO to ensure that he was included in the PAPCO D&A testing program for the drug related requirements. The operator failed to ensure that their contractor complied with this section of the code and applicable sections of Part 40.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$58,000.00 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$38,000
3	\$20,000

Warning Items

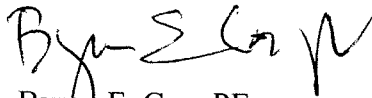
With respect to item number 1, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Be advised that failure to do so may result in PAPCO being subject to additional enforcement action.

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 1-2008-0001** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Byron E. Coy, PE
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

cc: Michael Yazemboski, Engineer, PHMSA ER, Pittsburgh, PA

Ref. # 119210

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an 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).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. Pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to make findings and to close the case with prejudice to the respondent. Payment terms are outlined below;
2. Submit written explanations, information, or other materials in response to the allegations and/or seek elimination or mitigation of the proposed civil penalty. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based; or
3. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. Notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. Submit written explanations, information, or other materials in answer to the allegations in the Notice and object to or seek clarification of the proposed compliance order items in whole or in part; or
3. Request a hearing as described below to contest the allegations and/or proposed compliance order items;

c. When the Notice contains a **WARNING ITEM** --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. **Procedures for Responding to a NOTICE OF AMENDMENT*--**

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. Notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. Submit written explanations, information, or other materials in answer to the allegations in the Notice and/or object to or seek clarification of the proposed amendment items in whole or in part; or
- c. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material prepared by PHMSA, including the violation report, the Notice, and any order issued in this case, and any material provided to PHMSA by the respondent, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If the information you provide is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. PAYMENT INSTRUCTIONS

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
 Mike Monroney Aeronautical Center
 Financial Operations Division (AMZ-341) P.O. Box 25082
 Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**BNF=/ALC-69-14-0001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "**AC-payment for PHMSA Case #** / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

May 2007