

April 22, 2020

VIA EMAIL TO: calvin.farr@richmondgov.com

Mr. Calvin D. Farr, Jr.
Director, City of Richmond
Department of Public Utilities
900 East Broad Street, Room 115
Richmond, Virginia 23219

CPF No.: 1-2019-0004

Dear Mr. Farr:

Enclosed please find a copy of the fully-executed Consent Agreement and Order issued in the above-referenced case. It contains terms of settlement pursuant to 49 C.F.R. § 190.219 and includes a work plan for the development and implementation of a two-phase project under the City of Richmond's Distribution Integrity Management Program.

When the terms of the work plan have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. The effective date of this agreement is April 22, 2020. Service of the Consent Agreement and Order by electronic mail is deemed effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure: Consent Agreement and Order

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, PHMSA
Mr. David Kearney, Senior Assistant City Attorney, david.kearney@richmondgov.com

CONFIRMATION OF RECEIPT REQUESTED

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

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In the Matter of)		
)		
City of Richmond, Virginia,)		CPF No. 1-2019-0004
 a municipal corporation,)		
)		
Respondent.)		
)		

CONSENT AGREEMENT AND ORDER

From February 8, 2017 to October 8, 2018, pursuant to Chapter 601 of 49 United States Code, inspectors from the Virginia State Corporation Commission (VA SCC), acting as agents for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the City of Richmond’s (the City or Respondent) pipeline facilities in Richmond, Virginia. The City’s pipeline facilities consist of more than 1900 miles of distribution mains and eight gate stations to supply gas at necessary pressures.

As a result of this inspection, the Director, Eastern Region, Office of Pipeline Safety (Director), issued to Respondent, by letter dated April 22, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). A copy of the Notice is attached hereto as Appendix A. In accordance with 49 C.F.R. §190.207, the Notice proposed finding that Respondent had committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$80,500 for the alleged violation of 49 C.F.R. § 192.465(a) (Item 1). The City shall address Item 2, a violation of 49 C.F.R. § 192.491(a), through the proposed compliance actions included in the Notice (“Proposed Compliance Order”), and Item 2 is not addressed in the attached Work Plan. The Director grants the City’s request for additional time to complete the proposed compliance actions with respect to Item 2.

The City responded to the Notice by letter dated June 20, 2019 (Response). The Response proposed to resolve Item 1 of this matter via an administrative consent agreement requiring the City to expend a minimum of \$1,575,556, to develop and implement a two-phase project under the City’s Distribution Integrity Management Program (DIMP). The City proposes to add additional manpower to survey and identify all coated steel services in the City’s distribution system, determine which steel services or pot drips are missing from the City’s database, to temporarily add these newly identified missing services to the City’s ten percent program, and to monitor those services accordingly. The City will replace all services with low readings with polyethylene pipe once they are located. The City will complete the project within seven years.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Respondent and PHMSA (collectively, the Parties), the Parties hereby agree as follows:

A. General Provisions.

1. Respondent acknowledges that its pipeline system is 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. As used in this Consent Agreement and Order (Agreement), the terms “pipeline system” and “pipeline facility” shall be defined as in 49 C.F.R. Part 192. Respondent acknowledges that it received proper notice of PHMSA’s action 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 this 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, reviews, or appeals.

3. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all City officers, employees, agents, and successors-in-interest whose duties reasonably might include compliance with this Agreement.

4. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement and its appendices.

5. Nothing in this Agreement affects or relieves the City of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA’s right of access, entry, inspection, and information-gathering or its authority to bring any enforcement action against Respondent pursuant to the federal Pipeline Safety Laws, the regulations and orders issued thereunder, or any other provision of federal or state law.

6. This Agreement does not waive or modify any federal, state, or local laws or regulations that are applicable to the City or its pipeline system. This Agreement is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations and permits.

7. This Agreement does not create rights in, or grant any cause of action to, any third party not a party to this Agreement. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, agents, or successors-in-interest in carrying out the work required by this Agreement.

8. The Parties agree that the facts as alleged in the Notice are true and correct and may be considered by PHMSA to be a prior offense in any future PHMSA enforcement action taken against the City.

9. Respondent agrees to complete the corrective actions specified in Section B (Additional Work to be Performed) of this Agreement.

10. Respondent agrees that the activities described in Section B of this Agreement, and in all work plans and schedules incorporated thereunder, are not required by any federal, state, or local law or regulation and do not include actions which Respondent would likely be required to perform:

- a. as injunctive relief, including as a mitigation project, in the instant case;
- b. as injunctive relief in any other existing legal action initiated by PHMSA or any other regulatory agency against Respondent;
- c. as part of an existing settlement or order in another legal action; or
- d. under any other federal, state, or local requirement.

B. Additional Work to be Performed.

11. Respondent agrees to perform the actions set forth in the Work Plan, incorporated herein as Appendix B to this Agreement. Respondent will complete the actions described in Part 2 of the Work Plan (General Information and Proposed Action Description) and will adhere to the schedule set forth in Part 3 of the Work Plan (Project Schedule).

12. Respondent agrees to revise the Work Plan as necessary to incorporate new information obtained during the evaluations and remedial activities performed under the Work Plan. Respondent shall submit any such plan revisions to the Director for prior approval. The Director may approve Work Plan revision elements incrementally.

13. The Director may grant an extension of time for completion of any of the work to be performed under this Section B (Additional Work to be Performed) upon Respondent's timely, written request that demonstrates both good cause for an extension and provides sufficient detail to enable the Director to evaluate Respondent's request.

14. Respondent agrees to maintain documentation of the costs associated with implementation of the Work Plan and agrees to make this information available to PHMSA upon request.

C. Review and Approval Process.

15. With respect to any submission by the City under Section B (Additional Work to be Performed) of this Agreement that requires the approval of the Director, the Director may: (a) approve the submission, in whole or in part; (b) disapprove the submission on specified conditions; (c) disapprove the submission, in whole or in part; or (d) undertake any combination

of the foregoing. In the event of approval in whole, in part, or upon conditions, the City will proceed to take all actions required by the submission as modified by the Director, subject to Respondent's right to invoke the procedures in Section D (Dispute Resolution) with respect to any conditions identified by the Director. In the event that the Director does not approve all or any portion of a submission, the Director will provide the City with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for acceptance. If Respondent fails to correct the specified deficiencies, the Director may invoke the dispute resolution process provided in Section D below.

D. Dispute Resolution.

16. The Director and Respondent will attempt to informally resolve any disputes arising under this Agreement. If the City and the Director are unable to informally resolve the dispute within 15 business days, Respondent may request in writing, within 10 business days, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Respondent will provide the Associate Administrator with all information Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a written determination that shall constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Regional Director or the Associate Administrator in writing.

E. Enforcement.

17. This Agreement, including all plans and schedules incorporated by reference, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. §60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. §60122, of up to \$200,000 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017). All other work plans and associated schedules developed under Section B shall be automatically incorporated into this Agreement and are enforceable in the same manner.

F. Civil Penalties.

18. PHMSA agrees to withdraw the proposed civil penalty for Item 1 in the Notice, in exchange for completion of the Project Schedule outlined in Part 3 of the Work Plan.

19. If the Work Plan is not implemented within the timeframe contemplated in the Project Schedule, subject to any extensions approved by the Director, PHMSA reserves the right to take further enforcement action, including assessment of the civil penalty proposed in the Notice.

G. Miscellaneous.

20. Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. PHMSA and the VA SCC will have the right to inspect the records and facilities of the City, or any contractor, agent, or successor-in-interest thereof, upon reasonable notice, to confirm that the compliance terms of this Agreement are being undertaken in conformity with the terms of this Agreement.

21. Except as otherwise provided herein, this Agreement may be modified only by the mutual agreement of the Parties as set forth in writing and signed by the Parties.

22. Each undersigned representative of the Parties certifies that he or she 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.

23. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activities described in this Agreement, including all activities described in the Work Plan or any other incorporated plan or schedule. Respondent further certifies that it has inquired of City departments and of any parties acting on the behalf of the City whether they are a party to any open federal financial assistance transaction that is funding or could fund the same activities described in this Agreement, and has been informed by said parties that they are not subject to such a transaction.

H. Effective Date and Term.

24. The "Effective Date," as used herein, is the date on which this Agreement is signed by both Respondent and PHMSA. Unless otherwise specified, all deadlines for actions required by the Agreement run from the Effective Date.

I. Termination.

25. This Agreement will terminate upon the completion of all terms set forth in Section B (Additional Work to Be Performed), as determined by the Director. Respondent may request, and PHMSA will provide, written confirmation of the termination of this Agreement. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

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

For PHMSA:

For the City of Richmond, Virginia:

Alan K. Mayberry
Associate Administrator for
Pipeline Safety, PHMSA

Calvin D. Farr, Jr.
Director of Public Utilities
City of Richmond, VA

April 22, 2020

Approved as to form:

Date Issued

David B. Kearney
Senior Assistant City Attorney
City of Richmond

APPENDIX A

APPENDIX B

**Work Plan for the Development and Implementation of a
Steel Services Identification and Replacement Program
City of Richmond, Virginia
CPF 1-2019-0004**

1. Introduction.

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has allowed the City of Richmond, Virginia (the City) the opportunity to perform the following supplemental safety actions as an alternative to paying a proposed civil penalty for a violation of the pipeline safety regulations in 49 C.F.R. Part 192. The City is to perform these risk-mitigating safety actions relative to the alleged violation to enhance the continued safe operations of the City's distribution of natural gas and to provide value that offsets the proposed civil penalties. PHMSA and the City agree that the actions set forth below provide safety and/or environmental value beyond the enforcement of the proposed civil penalty, and the City has entered into a Consent Agreement and Order (Agreement) with PHMSA to perform the proposed actions within agreed-upon timeframes.

2. General Information and Proposed Action Description.

PHMSA's Notice of Probable Violation in CPF 1-2019-0004 identified two probable violations and included a proposed civil penalty for Item 1.

Item 1

In Item 1, PHMSA alleged that the City failed to survey at least ten percent of its separately-protected structures, distributed over the entire system each calendar year with a different ten percent checked each subsequent year, so that the entire system is tested in each ten-year period. Specifically, the City failed to monitor for external corrosion control at two pot drips located at 5900 Derrymore Court and 7548 Prairie Road, Richmond, VA, and at two isolated steel service lines located at 1703 and 17025 Windingridge Place, Richmond, VA.

Proposed Action for Item 1

The City plans to increase the personnel who will be responsible, under the City's DIMP Program, for surveying and identifying all coated steel services, valves, and pot drips in the distribution system, determining which steel services, valves, or pot drips are missing from the City's database, temporarily adding the missing services to the City's ten percent monitoring program, and monitoring accordingly. The City also will replace all steel services, valves or pot drips with low readings with polyethylene pipe or fittings.

The City has determined that the best remedial action aligned with the probable violation of Item 1 is for the City to have the Richmond Gas Works Corrosion contractor provide resources to patrol the City's natural gas distribution system to locate all steel services, valves and pot drips, which are not currently in the City's geographic information system (GIS), as part of the City's ten percent monitoring program. This project will require a minimum of two Corrosion Testers to locate steel pipelines not in the City's ten percent program and an as-built drawing of the

newly identified steel services, valves, or pot drip will be made and forwarded to the Department of Public Utilities GIS section. The City's GIS Technician shall enter this information in the GIS database, and the Richmond Gas Works Corrosion section shall monitor these pipelines under the City's ten percent program. The Richmond Gas Works Engineer Principal of Corrosion shall be responsible for coordinating the comprehensive project to locate all steel services, valves, and pot drips that are not currently in the City's ten percent program. The City shall replace all steel services that are determined to have low readings. The entire project will be completed within seven years.

3. Program Project Schedule.

Proposed Schedule for Item 1

The City shall require its corrosion contractor to assign at least two individuals to patrol the City's natural gas distribution system to locate all steel gas services, valves, and pot drips that are not currently being monitored in the City's ten percent program. The City will continue the project that it initiated on November 1, 2019. The contractor shall remain on the project until all services, valves, and pot drips are located and all as-built drawings are completed. The City also shall utilize its gas leak repair contractor to replace all services with low readings. The City's GIS team shall enter the location of pipelines and pot drips in the City's database.

Start date	November 1, 2019
Completion date	November 1, 2026

4. Costs.

Estimated Cost to address Item 1:	\$1,575,556
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