

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

VIA ELECTRONIC MAIL TO: ED.SHIKADA@CITYOFPALOALTO.ORG

October 27, 2023

Mr. Ed Shikada
Assistant City Manager
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

CPF 5-2023-052-NOPV

Dear Mr. Shikada:

On August 15 through 19, 2022, representatives of the California Public Utilities Commission (CPUC), on behalf of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected the City of Palo Alto Utilities (CPA) natural gas distribution system's damage prevention procedures and records.

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

1. § 192.616 Public awareness.

(a) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance

with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

CPA failed to conduct an annual audit of the Public Awareness Program to measure program implementation as required by API RP 1162 Section 8.¹ API RP 1162, section 8, paragraph 8.3 states in part, that the “operator should complete an annual audit or review of whether the program has developed and implemented according the to the guidelines in this RP.” However, during the inspection, CPA was unable to produce documentation of its annual audit for the years 2019, 2020 and 2021.

Therefore, CPA failed to follow the requirements of API RP 1162 as required pursuant to § 192.616(c).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

Proposed Compliance Order

With respect to **Item 1** pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to City of Palo Alto. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

¹ § 192.7(b)(5) API Recommended Practice 1162, “Public Awareness Programs for Pipeline Operators,” 1st edition, December 2003, (API RP 1162), IBR approved for § 192.616(a), (b), and (c).

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement 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).

Following your receipt of this Notice, you have **30** days to respond as described in the enclosed *Response Options*. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within **30** days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 5-2023-052-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

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

cc. PHP-60 Compliance Registry
PHP-500 J. Dunphy (#22-246104)
Terrence Eng, Program Manager, Gas Safety and Reliability Branch California Public
Utilities Commission

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 1 of the Notice pertaining to the CPA's failure to conduct the required annual Public Awareness Program audits, CPA must amend its procedures to provide detailed instructions for conducting and documenting an annual audit of the Public Awareness Plan required by Section 8.3 of API RP 1162. Additionally, CPA must conduct an audit (using the amended procedures) and submit the amended procedures and audit results to PHMSA within **60** days of receipt of the Final Order.
- B. It is requested (not mandated) that CPA maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs 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.