

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE NOTICE OF)
POTENTIAL VIOLATIONS OF 26 *DEL. ADMIN.*)
C. §8001 AND ASSOCIATED CIVIL PENALTIES) PSC DOCKET NO. 15-1069
ASSESSED TO BRANDYWINE HILLS)
APARTMENTS, LLC)
(OPENED JUNE 24, 2015))

ORDER NO. 8777

AND NOW, this 18th day of August, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has qualified for federal certification to operate a state pipeline safety compliance program pursuant to 49 U.S.C. §60105(a) and has the authority pursuant to 26 *Del. C.* §821 to make and enforce rules required by the federal National Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601); and

WHEREAS, the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, to order remedial actions and impose civil penalties where appropriate; and

WHEREAS, Brandywine Hills Apartments, LLC ("Brandywine Hills") is an "Operator" as set forth in 26 *Del. Admin. C.* §8001-1.0 and 26 *Del. C.* §802(11) in that Brandywine Hills acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware and therefore falls within the Commission's jurisdiction; and

WHEREAS, a member of the Commission's staff ("Staff") performed a standard inspection of the records and facilities of the Operator of Brandywine Hills Apartments located in Wilmington, Delaware, and noted

his findings in a written report dated May 7, 2015 (the "Report"), which findings included failure to exercise key/critical sectionalizing valves for the apartment complex in calendar year 2014, failure to monitor the cathodic protection system for the apartment complex in calendar year 2014, and failure to follow Brandywine Hills's O&M Manual; and

WHEREAS, Brandywine Hills's failure to exercise the key/critical sectionalizing valves represents one potential violation of 49 C.F.R. §192.747(a);¹ and

WHEREAS, Brandywine Hills's failure to monitor the cathodic protection system also represents one potential violation of 49 C.F.R. §192.465(a);² and

WHEREAS, Brandywine Hills's failure to perform duties in a timely fashion pursuant its O&M Manual also represents one potential violation of 49 C.F.R. §192.605(a);³ and

¹ 49 C.F.R. §192.747(a) deals with "Valve maintenance: Distribution systems," and requires the following: "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."

² 49 C.F.R. §192.465(a) deals with "External corrosion control: Monitoring" and requires the following: "Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of 192.463...."

³ 49 C.F.R. §192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

WHEREAS, based on the findings in the Report, on June 24, 2015, the Program Manager of the Pipeline Safety Program for the State of Delaware (who is also a member of the Commission Staff) sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. Kevin Wolfgang, owner of Brandywine Hills. A copy of the NOPV and the Report are attached to the Proposed Consent Agreement (defined below); and

WHEREAS, Staff recommended in the NOPV that the Commission impose a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.747(a), a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.465(a), and a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$600.00 (the "Civil Penalties"); and

WHEREAS, Brandywine Hills and Staff entered into settlement negotiations and agreed to resolve the potential violations and the Civil Penalties by entering into a consent agreement (the "Proposed Consent Agreement") which is attached as Attachment "A". Both Staff and Brandywine Hills agree that the Proposed Consent Agreement is subject to the Commission's review and final approval; and

WHEREAS, Staff and Brandywine Hills submit that resolving this matter through a negotiated compromise and without the need for a formal evidentiary hearing serves the public interest and yields a reasonable result. In addition, both parties assert that the Civil Penalties are within the bounds of allowable civil penalty amounts

based on circumstances unique to Brandywine Hills, and this settlement will avoid further administrative and hearing costs;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* §512(c), the Commission finds that the Proposed Consent Agreement is in the public interest for the reasons set forth above and, therefore, approves such agreement in full.

2. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, 49 U.S.C. §60122(a), and subpart B of Part 190 of the Federal Regulations, the Commission assesses a civil penalty against Brandywine Hills in the amount of \$600.00 payable within 20 days of the date of this Order.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

ATTACHMENT "A"

Proposed Consent Agreement

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE NOTICE OF)
POTENTIAL VIOLATIONS OF 26 *DEL. ADMIN. C.*)
§8001 AND ASSOCIATED CIVIL PENALTIES) PSC DOCKET NO. 15-1069
ASSESSED TO BRANDYWINE HILLS)
APARTMENTS, LLC (OPENED JUNE 24, 2015))

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 5th day of August, 2015, between Brandywine Hills Apartments, LLC, a Delaware limited liability company (“Brandywine Hills”), and the Delaware Public Service Commission Staff (“Staff”).

WHEREAS, Brandywine Hills is a Delaware limited liability company with mailing address of 1627 New Jersey Avenue, New Castle, Delaware, 19720 and with a Delaware registered agent listed as Lauren Wolfgang, Esquire, 1627 New Jersey Avenue, New Castle, Delaware 19702; and

WHEREAS, Brandywine Hills is an “Operator” as set forth in 26 *Del. C.* §802(11)¹ and 26 *Del. Admin. C.* §8001-1.0² in that such company acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

WHEREAS, the Delaware Public Service Commission (the “Commission”) has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. §60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

WHEREAS, 26 *Del. C.* §821 provides, in pertinent part, that the Commission “shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety

¹ 26 *Del. C.* §802(11) defines an “underground pipeline facility operator” as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the “Natural Gas Pipeline Safety Act of 1968” and the “Hazardous Liquid Pipeline Safety Act of 1979.” See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§60101 through 60128.

² Under 26 *Del. Admin. C.* §8001-1.0, an “Operator” means an “underground pipeline facility operator” as defined in 26 *Del. C.* §802(11).

Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)...;³ and

WHEREAS, as part of its duties as a certified state pipeline safety compliance program, Mr. Robert Schaeffgen, a member of Staff and pipeline safety inspector, performed a standard inspection on May 7, 2015, of the records and facilities of the Operator of Brandywine Hills Apartments located in Wilmington, Delaware; and

WHEREAS, Mr. Schaeffgen prepared a written report which noted that Brandywine Hills had failed to exercise key/critical sectionalizing valves for the apartment complex in calendar year 2014. Mr. Schaeffgen also noted that Brandywine Hills had failed to monitor the cathodic protection system for the apartment complex in calendar year 2014; and

WHEREAS, Brandywine Hills's failure to exercise the key/critical sectionalizing valves represents one potential violation of 49 C.F.R. §192.747(a);⁴ and

WHEREAS, Brandywine Hills's failure to monitor the cathodic protection system also represents one potential violation of 49 C.F.R. §192.465(a);⁵ and

WHEREAS, Brandywine Hills's failure to exercise the key/critical sectionalizing valves also represents one potential violation of 49 C.F.R. §192.605(a);⁶ and

WHEREAS, based on Mr. Schaeffgen's written report and findings, on June 24, 2015, Mr. Gerald D. Platt, a member of Staff and Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. Kevin Wolfgang, owner of Brandywine Hills. A copy of the NOPV that Staff sent to Mr. Wolfgang is attached as **Exhibit "A"**; and

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to order remedial actions and to impose civil penalties. The NOPV further indicated because valve

³ 26 *Del. C.* §821 further provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* §802(11).

⁴ 49 C.F.R. §192.747(a) deals with "Valve maintenance: Distribution systems," and requires the following: "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."

⁵ 49 C.F.R. §192.465(a) deals with "External corrosion control: Monitoring" and requires the following: "Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of 192.463...."

⁶ 49 C.F.R. §192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

maintenance/exercising and cathodic protection monitoring had recently been completed in calendar year 2015 with no problems found, Staff did not require Brandywine Hills to take any remedial action at that time; and

WHEREAS, Staff did recommend, however, that within 30 days of the date of the NOPV, Brandywine Hills should correct its Operator ID information with the U.S. DOT Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, Staff recommended that within 30 days of the date of the NOPV, Brandywine Hills should become a member of Miss Utility of Delaware, Inc.; and

WHEREAS, Staff also recommended in the NOPV that the Commission impose a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.747(a), a civil penalty of \$200.00 for the potential violation of 49 C.F.R. 192.465(a), and a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$600.00; and

WHEREAS, Brandywine Hills and Staff thereafter entered into settlement negotiations and hereby propose to resolve all of the issues in this proceeding without recourse to a formal administrative hearing by entering into this Proposed Consent Agreement under the terms and conditions set forth herein; and

WHEREAS, Brandywine Hills has been informed that it is entitled to an evidentiary hearing and to be represented by counsel but has decided to waive its right to an evidentiary hearing;

NOW, THEREFORE, upon the mutual consent and agreement of Brandywine Hills and Staff (individually, a "Party," and collectively, the "Parties"), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

1. The Parties have conferred and have agreed to enter into this Proposed Consent Agreement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Proposed Consent Agreement will be presented to the Commission for the Commission's final approval.

2. Brandywine Hills waives its right to an evidentiary hearing for this proceeding and makes such waiver as a free and voluntary act.

3. Brandywine Hills states it fully understands all of the violations alleged by Staff, the facts relating to above-referenced potential violations, and all of the consequences of its consent to this Proposed Consent Agreement.

4. Brandywine Hills admits to all of the facts as set forth above and admits that it failed to exercise key/critical sectionalizing valves and to monitor cathodic protection systems in calendar year 2014, which represents a potential violation of 49 C.F.R. §192.747(a), 49 C.F.R. §192.465(a), and 49 C.F.R. §192.605(a).

5. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Brandywine Hills agrees to pay a civil penalty in the amount of \$600.00 within 20 days of the date of a final Commission order that approves this Proposed Consent Agreement. This sum is the total of a civil penalty in the amount of \$200.00 for one violation of 49 C.F.R. §192.747(a), \$200.00 for one violation of 49 C.F.R. §192.465(a), and \$200.00 for one violation of 49 C.F.R. §192.605(a). Pursuant to 26 *Del. C.* §116(b)(2), these civil penalties will be payable to and deposited into the General Fund of the State of Delaware.

6. If Brandywine Hills fails to pay the sum of \$600.00 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, Brandywine Hills agrees that it shall pay interest at the current annual rate in accordance with 31 U.S.C. §3717, 31 C.F.R. §901.9, and 49 C.F.R. §89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

7. The terms of this Proposed Consent Agreement are binding upon Brandywine Hills, its successors and assigns, and may be admitted into evidence in any judicial or administrative proceeding that may be required against Brandywine Hills in order to enforce its terms.

8. This finding of violations will be considered a prior offense in any subsequent enforcement action against Brandywine Hills.

9. Nothing in this Proposed Consent Agreement affects or relieves Brandywine Hills 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 administrative orders issued thereunder. Nothing in this Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against Brandywine Hills pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

10. No change, amendment, or modification to this Proposed Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

11. If Staff or the Commission fails to act on any one or more defaults by Brandywine Hills, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare Brandywine Hills in default and to take such action as may be permitted by this Proposed Consent Agreement or by law.

12. This agreement shall survive Brandywine Hills and be enforceable against its successors or assigns.

13. The provisions of this Proposed Consent Agreement are not severable.

14. The Parties agree that this Proposed Consent Agreement may be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

15. This Proposed Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval of this Proposed Consent Agreement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

16. The Parties may enforce this Proposed Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

17. If a Court grants a legal challenge to the Commission's approval of this Proposed Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Consent Agreement, or if some other legal bar has the same effect, then this Proposed Consent Agreement is voidable upon written notice by either Party to the other Party.

18. This Proposed Consent Agreement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Proposed Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Proposed Consent Agreement. This Proposed Consent Agreement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

19. This Proposed Consent Agreement contains all of the terms and conditions agreed to by the Parties and constitutes the final agreement between Brandywine Hills and Staff.

20. This Proposed Consent Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will

make their best efforts to support this Proposed Consent Agreement and to secure its approval by the Commission.

21. It is expressly understood and agreed that this Proposed Consent Agreement constitutes a negotiated resolution of the issues in this proceeding.

22. Each of the undersigned representatives of the Parties certifies that he or she is fully and legally authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

23. This Proposed Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Proposed Consent Agreement by facsimile transmission or by e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. Brandywine Hills agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

[SIGNATURE PAGE TO FOLLOW]

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: Gerald D. Platt

Date: 8/5/15

Printed Name: Gerald D. Platt

Title: Pipeline Safety Program Manager

BRANDYWINE HILLS APARTMENTS, LLC

By: K.M. Wolfgang

Date: August 3, 2015

Printed Name: Kevin M. Wolfgang

Title: Managing Member

EXHIBIT "A"

COPIES OF WRITTEN NOTICE OF POTENTIAL VIOLATIONS
OF 26 DEL. ADMIN. C. §8001 DATED JUNE 24, 2015,
FROM GERALD D. PLATT, PROGRAM MANAGER OF THE
PIPELINE SAFETY PROGRAM FOR THE STATE OF DELAWARE,
TO KEVIN WOLFGANG, OWNER OF BRANDYWINE HILLS APARTMENTS, LLC



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

June 24, 2015

Brandywine Hills Apartments, LLC
ATTN: Kevin Wolfgang
1627 New Jersey Avenue
New Castle, DE 19720

RE: Written Notice of Potential Violation of 26 Del. Admin. C. §8001 – Brandywine Hills Apartments,
4310 Miller Road, Wilmington, DE 19802

Dear Mr. Wolfgang:

This letter serves as notice to Brandywine Hills Apartments, LLC (the "Operator") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, 26 Del. Admin. C. §8001 (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, Title 49, U.S. Code of Federal Regulations, Parts 190-193 and 198-199.

On May 7, 2015, Mr. Robert Schaefergen, a member of the Commission Staff, performed a Standard Inspection of the records and facilities of the Operator for Brandywine Hills Apartments in Wilmington, DE. Mr. Schaefergen noted the following:

The records of the maintenance/exercising of the key/critical sectionalizing valves of the distribution system of the apartment complex indicated that this occurred on December 5, 2013, and then on February 3, 2015. In addition, records indicated that the cathodic protection system monitoring for the apartment complex had been completed on December 5, 2013, and then on February 3, 2015. Thus, there was no maintenance/exercising of the key/critical sectionalizing valves or monitoring of the cathodic protection system for the apartment complex in CY 2014.

This represents the following potential violations:

- 1) One (1) potential violation of 49 C.F.R. §192.747(a): Valve maintenance: Distribution systems, which requires the following:

"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."

- 2) One (1) potential violations of **49 C.F.R. §192.465(a): External corrosion control: Monitoring**, which requires the following:

"Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463..."

- 3) This also represents a potential violation of **49 C.F.R. §192.605(a): Procedural manual for operations, maintenance, and emergencies**. These sections state the following:

"General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

The Commission is authorized by the Regulations to order remedial actions and to impose civil penalties. Since valve maintenance/exercising and cathodic protection monitoring have recently been completed (in CY 2015) with no problems found, there is no further action to be taken on these matters at this time. However, further investigation indicates the Operator's ID information is incorrect, and the Operator is not a member of Miss Utility of Delmarva. In this case, the Commission Staff is recommending the following actions and civil penalties:

- 1) Within 30 days of this letter, the Operator should correct its Operator ID information with the *US DOT Pipeline and Hazardous Materials Safety Administration (PHMSA)*. This can be done by going to <http://www.phmsa.dot.gov/resources/e-forms> and following the link for the "Operator Registry Notification" form. Currently, the Operator ID for your facility is 38611, and the Owner/Operator is listed as "Evergreen Realty, Inc.". The ID number can stay the same, but the Owner/Operator name needs to be changed to "Brandywine Hills Apartments, LLC". If you have any problems, contact the PHMSA helpline at 202-366-8075.
- 2) Within 30 days of this letter, become a member of *Miss Utility of Delmarva*. Use the contact information at <http://www.missutilitydelmarva.com/> in order to accomplish this task.
- 3) Civil penalties should be assessed in the amount of \$200.00 for the potential violation of 49 C.F.R. §192.747(a), \$200.00 for the potential violation of 49 C.F.R. §192.465(a), and \$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties is \$600.00. Additional penalties may also be imposed for any additional violations found in any ensuing investigations or hearings.

Mr. Kevin Wolfgang, Brandywine Hills Apartments, LLC
June 24, 2015
Page 3

The Commission Staff is referring this matter to the Commission for a formal hearing so that the Commission can rule on this matter. A docket will be opened for this matter, and a notice of a hearing date will be sent to the Operator as soon as possible.

If you have questions regarding this matter, please don't hesitate to contact me at 302-736-7526.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald D. Platt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gerald D. Platt, Program Manager

Enclosure: Copy of Violation Report for 5/7/15

cc: Julie Donoghue, Deputy Attorney General
Robert Schaeffgen, DE PSC Pipeline Safety Inspector

UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
GAS PIPELINE SAFETY VIOLATION REPORT

1. <u>Inspector Name</u> Robert Schaefer	2. <u>Date of Inspection</u> 05/07/15	3. <u>CPF #</u>
4. <u>Pipeline Operator/Owner</u> Brandywine Hills Apartments, LLC		
5a. <u>Headquarters Address</u> 1627 New Jersey Ave, New Castle, DE 19720	5b. <u>Telephone No.</u> (302) 764-3242	
6. <u>Inspection Location</u> Brandywine Hills Apartments	7. <u>Inspection Unit</u> No. 1 of 1	
8. <u>Portion of System Inspected</u> (Describe location & facility)		
9. <u>Nature and Size of Operator</u>		
9a. <u>Type of Operator</u> <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (Intrastate) <input type="checkbox"/> LPG <input checked="" type="checkbox"/> Master Meter <input type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input type="checkbox"/> Transmission (intrastate)	9b. <u>Type of Pipe in System</u> <u>Inspected</u> <input type="checkbox"/> Cast Iron <input checked="" type="checkbox"/> Steel <input type="checkbox"/> Plastic <input type="checkbox"/> Other -	9c. <u>Size of Operator</u> (No. of Miles/Customers/Storage Capacity) 0.50 miles/ /0
10. <u>Nature of Probable Violations</u> (Check as many as applicable)		
<input type="checkbox"/> 1. Problem in Design/Materials <input type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input type="checkbox"/> 7. Pressure Control <input checked="" type="checkbox"/> 8. Other Maintenance/Monitoring <input type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input type="checkbox"/> 15. Other _____ <input type="checkbox"/> 16. Inadequate/No Procedures		
<input type="checkbox"/> A. Construction <input type="checkbox"/> D. Training <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> E. Maintenance <input type="checkbox"/> C. Operations		

Violation No. 1

Violated: 192.605 (a) Procedural Manual for Operations, Maintenance, and Emergencies

11b. Summarize what the regulation requires that operator did not do:
Operator did not follow their manual of written procedures for conducting Operations and Maintenance Activities. Specifically the Cathodic Protection testing and Valve Maintenance interval had not been performed annually, not exceeding 15 months.

12. Provide detailed information about violation:
Operator did not have their Cathodic protection testing and key valve (Valve Maintenance) exercising performed at an interval not exceeding 15 months, but at least once each calendar year. Operator performed the Cathodic Protection testing on February 3, 2015 and the previous testing of the Cathodic Protection was on December 5, 2013. Key/critical valves were exercised on February 3, 2015 and previously on December 5, 2013.

13. Public and/or environmental concerns in area of violation:
By not operating the key/critical/sectionalizing valves annually, not to exceed 15 months, operator is placing the residents at risk.

14a. Person Interviewed: Michael Bullock Title: Maintenance Supervisor
14b. Comments of person interviewed: He was not aware that the Cathodic Protection monitoring had not been completed last year.

Continuation Sheet

Violation No. 2

11a. CFR Violated: 192.747 (a) Valve maintenance: Distribution systems

11b. Summarize what the regulation requires that operator did not do:

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.

12. Provide detailed information about the violation:

Operator had not exercised the key/critical/sectionalizing valves last year not to exceed 15 months. Key/critical valves were exercised on February 3, 2015 and previously on December 5, 2013.

13. Public and/or environmental concerns in area of violation:

By not operating the key/critical/sectionalizing valves annually, not to exceed 15 months, operator is placing the residents at risk.

14a. Person Interviewed: Michael Bullock Title: Maintenance Supervisor

14b. Comments of person interviewed: He did not realize that the key/critical/sectionalizing valves had to be operated/exercised at least once each calendar year not to exceed 15 months.

Continuation Sheet
Violation No. 3

11a. CFR Violated: 192.465 (a) External Corrosion Control: Monitoring

11b. Summarize what the regulation requires that operator did not do:

Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463.

12. Provide detailed information about the violation: Operator did not perform the testing of the Cathodic Protection system at intervals not exceeding 15 months, but at least once every calendar year. Operator performed the Cathodic Protection testing on February 3, 2015 and the previous testing of the Cathodic Protection was on December 5, 2013.

13. Public and/or environmental concerns in area of violation: By not testing the Cathodic Protection system at least once each calendar year, operator could be placing the residents of Brandywine Hills at risk.

14a. Person Interviewed: Michael Bullock Title: Maintenance Supervisor

14b. Comments of person interviewed: He had not realized that the testing of the Cathodic Protection system was required annually not to exceed 15 months.

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Pipeline Safety Regulations Part 192	OPS/PHMSA	

16. Inspector's Signature:

Date:

17. <u>Compliance History</u>				
Date	Place	Describe Violation/ Noncompliance	CPF No. Date WL	Outcome
18. <u>Gravity of Offense</u>				
19. <u>Degree of Culpability</u> Fair				
20. <u>Ability to Continue in Business</u> Excellent				
21. <u>Ability to Pay</u> Good				
22. <u>Good Faith in Attempting to Achieve Compliance</u> Excellent				
23a. <u>Proposed Remedy</u> <input checked="" type="checkbox"/> Warning Letter <input type="checkbox"/> Civil Penalty: Recommended Amount \$ _____ <input type="checkbox"/> Compliance Order <input type="checkbox"/> Hazardous Facility Order <input type="checkbox"/> Notice of Amendment of C&M Plan				
23b. <u>Analysis of Proposed Remedy</u>				
24. Regional Director's Signature: _____			Date: _____	

U.S. Department of Transportation
Office of Pipeline Safety
Eastern Region

EXHIBIT TAB
Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness

Investigator
Name

Title