

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. 15-1090
ASSESSED TO PENINSULA OIL CO., INC.)
(OPENED JULY 2, 2015))

ORDER NO. 8758

AND NOW, this 8th day of September, 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, Peninsula Oil Co., Inc. ("Peninsula Oil") is an "Operator" as set forth in 26 Del. Admin. C. §8001-1.0 and 26 Del. C. §802(11) in that Peninsula Oil 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 Peninsula Oil, the Operator of the housing developments at the Reserves at Lewes

Landing located in Lewes, Delaware, and Yorkshire Estates located in Delmar, Delaware, and noted his findings in a written report dated June 4, 2015 (the "Report"). The Report noted that Peninsula Oil had failed to exercise key/critical sectionalizing valves, failed to monitor the cathodic protection system, and failed to inspect and test the pressure limiting and regulating stations for either housing development in calendar year 2014, and failed to follow Peninsula Oil's O&M Manual; and

WHEREAS, Peninsula Oil's failure to exercise the key/critical sectionalizing valves represents two potential violations of 49 C.F.R. §192.747(a);¹ and

WHEREAS, Peninsula Oil's failure to monitor the cathodic protection system also represents two potential violations of 49 C.F.R. §192.465(a);² 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...."

WHEREAS, Peninsula Oil's failure to inspect and test the pressure limiting and regulating stations also represents two potential violations of 49 C.F.R. §192.739(a);³ and

WHEREAS, Peninsula Oil'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);⁴ and

WHEREAS, based on the findings in the Report, on July 2, 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") and a copy of the Report to Mr. Stephen Palmer, Division Manager for Propane, Peninsula Oil. A copy of the NOPV and 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 \$800.00 for two potential violations of 49 C.F.R. §192.747(a), a civil penalty of \$800.00 for two potential violations

³ 49 C.F.R. §192.739(a) deals with "Pressure limiting and regulating stations: Inspection and testing" and requires the following: "Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is (1) in good mechanical condition; (2) adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and (4) properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation."

⁴ 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."

of 49 C.F.R. 192.465(a), a civil penalty of \$800.00 for two potential violations of 49 C.F.R. §192.739(a), and a civil penalty of \$400.00 for one potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$2,800.00 (the "Civil Penalties"); and

WHEREAS, Peninsula Oil 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 Peninsula Oil agree that the Proposed Consent Agreement is subject to the Commission's review and final approval; and

WHEREAS, Staff and Peninsula Oil 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 Peninsula Oil, 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 attached 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 Peninsula Oil in the amount of \$2,800.00 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 VIOLATION OF 26 *DEL. ADMIN. C.*)
§8001 AND ASSOCIATED CIVIL PENALTIES) PSC DOCKET NO. 15-1090
ASSESSED TO PENINSULA OIL CO., INC.)
(OPENED JULY 2, 2015))

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 19th day of August, 2015, between Peninsula Oil Co., Inc., a Delaware corporation (“Peninsula Oil”), and the Delaware Public Service Commission Staff (“Staff”).

WHEREAS, Peninsula Oil is a Delaware corporation with mailing address and registered agent address of 40 South Market Street, Seaford, Delaware 19973; and

WHEREAS, Peninsula Oil 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 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

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).

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).

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 June 4, 2015, of the records and facilities of Peninsula Oil, the Operator of the housing developments at the Reserves at Lewes Landing located in Lewes, Delaware, and Yorkshire Estates located in Delmar, Delaware; and

WHEREAS, Mr. Schaeffgen prepared a written report which noted that Peninsula Oil had failed to exercise key/critical sectionalizing valves, monitor the cathodic protection system, or inspect and test the pressure limiting and regulating stations for either housing development in calendar year 2014; and

WHEREAS, Peninsula Oil's failure to exercise the key/critical sectionalizing valves represents two potential violations of 49 C.F.R. §192.747(a);⁴ and

WHEREAS, Peninsula Oil's failure to monitor the cathodic protection system also represents two potential violations of 49 C.F.R. §192.465(a);⁵ and

WHEREAS, Peninsula Oil's failure to inspect and test the pressure limiting and regulating stations also represents two potential violations of 49 C.F.R. §192.739(a);⁶ and

WHEREAS, Peninsula Oil's failure to perform the above-mentioned tasks also represents one potential violation of 49 C.F.R. §192.605(a);⁷ and

WHEREAS, based on Mr. Schaeffgen's written report and findings, on July 2, 2015, Mr. Gerald D. Platt, a member of Staff and the 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. Stephen Palmer, Division Manager for Propane for Peninsula Oil. A copy of the NOPV that Staff sent to Mr. Palmer is attached as **Exhibit "A"**; and

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. §192.739(a) deals with "Pressure limiting and regulating stations: Inspection and testing" and requires the following: "Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is (1) in good mechanical condition; (2) adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and (4) properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation."

⁷ 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, 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 Peninsula Oil had recently performed all of the monitoring and testing required with no problems indicated and had provided documentation to show that these tasks had been completed [in calendar year 2015], Staff did not require Peninsula Oil to take any remedial action at that time; and

WHEREAS, Staff recommended in the NOPV that the Commission impose a civil penalty of \$800.00 for two potential violations of 49 C.F.R. §192.747(a), a civil penalty of \$800.00 for two potential violations of 49 C.F.R. 192.465(a), a civil penalty of \$800.00 for two potential violations of 49 C.F.R. §192.739(a), and a civil penalty of \$400.00 for one potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$2,800.00; and

WHEREAS, Peninsula Oil 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, Peninsula Oil 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 Peninsula Oil 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. Peninsula Oil waives its right to an evidentiary hearing for this proceeding and makes such waiver as a free and voluntary act.
3. Peninsula Oil 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. Peninsula Oil admits to all of the facts as set forth above and admits that it failed to exercise key/critical sectionalizing valves, to monitor cathodic protection systems, and to test the pressure limiting and regulating stations in calendar year 2014, all of which represents potential violations of 49 C.F.R. §192.747(a), 49 C.F.R. §192.465(a), 49 C.F.R. §192.739(a), and 49 C.F.R. §192.605(a).

5. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Peninsula Oil agrees to pay a civil penalty in the amount of \$2,800.00 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 \$800.00 for two violations of 49 C.F.R. §192.747(a), \$800.00 for two violations of 49 C.F.R. §192.465(a), \$800.00 for two violations of 49 C.F.R. §192.739(a), and \$400.00 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 Peninsula Oil fails to pay the sum of \$2,800.00 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, Peninsula Oil 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 Peninsula Oil, its successors and assigns, and may be admitted into evidence in any judicial or administrative proceeding that may be required against Peninsula Oil in order to enforce its terms.

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

9. Nothing in this Proposed Consent Agreement affects or relieves Peninsula Oil 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 Peninsula Oil 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 Peninsula Oil, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare Peninsula Oil in default and to take such action as may be permitted by this Proposed Consent Agreement or by law.

12. This agreement shall survive Peninsula Oil 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 Peninsula Oil 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. Peninsula Oil 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

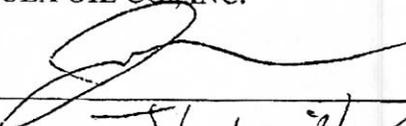
By: 

Date: 8/19/15

Printed Name: Gerald D. Plott

Title: Pipeline Safety Program Manager

PENINSULA OIL CO., INC.

By: 

Date: 8-12-15

Printed Name: John Willey

Title: President

EXHIBIT "A"

**COPY OF WRITTEN NOTICE OF POTENTIAL VIOLATIONS
OF 26 *DEL. ADMIN. C.* §8001 DATED JULY 2, 2015,
FROM GERALD D. PLATT, PROGRAM MANAGER OF
THE PIPELINE SAFETY PROGRAM FOR THE STATE OF DELAWARE,
TO STEPHEN PALMER, DIVISION MANAGER FOR PROPANE,
PENINSULA OIL CO., INC.
(INCLUDING COPY OF VIOLATION REPORT DATED JUNE 4, 2015)**



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

July 2, 2015

Peninsula Oil Co., Inc.
ATTN: Stephen Palmer
40 S. Market Street
Seaford, DE 19973

RE: Written Notice of Potential Violation of 26 Del. Admin. C. §8001 – The Reserves at Lewes Landing and Yorkshire Estates

Dear Mr. Palmer:

This letter serves as notice to Peninsula Oil Co., Inc. (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 June 4, 2015, Mr. Robert Schaeffgen, a member of the Commission Staff, performed a Standard Inspection of the records and facilities of the Operator for The Reserves at Lewes Landing in Lewes, DE and Yorkshire Estates in Delmar, DE. Mr. Schaeffgen noted the following:

Records of the maintenance/exercising of the key/critical sectionalizing valves of the distribution system of each housing development could not be produced for CY 2014. In addition, records of the cathodic protection system monitoring and records of pressure regulator testing for each housing development system could not be produced for CY 2014. Requests for these records actually began in late 2014, and after multiple follow-up e-mails asking the Operator for all testing and monitoring results for calendar year 2014, documentation was finally provided that showed these tasks were not completed until April 17, 2015. Thus, there was no maintenance/exercising of the key/critical sectionalizing valves, monitoring of the cathodic protection system, or testing of the pressure regulators for either housing development in CY 2014.

This represents the following potential violations:

- 1) Two (2) potential violations 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) Two (2) 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) Two (2) Potential violations of **49 C.F.R. §192.739(a): Pressure limiting and regulating stations: Inspection and testing**, which requires the following:

"Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is-

- (1) In good mechanical condition;*
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;*
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and*
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.*

- 4) 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 Staff recognizes that the Operator has recently performed all of the monitoring and testing required with no problems found, and this documentation has been provided. So, there is no remedial action to be taken at this time. However, the lack of attention to these sites is concerning. Therefore, the Commission Staff is recommending that the Commission impose a civil penalty of \$400.00 per potential violation of **49 C.F.R. §192.747(a)**, which totals \$800.00, impose a civil penalty of \$400.00 per potential violation of **49 C.F.R. §192.465(a)**, which totals \$800.00, impose a civil penalty of \$400.00 per potential violation of **49 C.F.R. §192.739(a)**, which totals \$800.00, and impose a civil penalty of \$400.00 for the potential violation of **49 C.F.R. §192.605(a)**. Thus, the total amount of recommended civil penalties is \$2800.00. Additional penalties may also be imposed for any additional violations found in any ensuing investigations or hearings.

Mr. Stephen Palmer, Peninsula Oil Co., Inc.
July 2, 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 written in a cursive style with a large initial "G".

Gerald D. Platt, Program Manager

Enclosure: Copy of Violation Report for 6/4/15

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. Inspector Name Robert Schaeffgen	2. Date of last Inspection 06/04/15	3. CPF #
4. Pipeline Operator/Owner Peninsula Oil Co., Inc.		
5a. Headquarters Address 40 South Market Street, Seaford, DE 19973	5b. Telephone No. (302) 629-3001	
6. Inspection Location Reserves at Lewes Landing and Yorkshire Estates	7. Inspection Unit No. <u>1 & 2</u> of <u>2</u>	
8. Portion of System Inspected (Describe location & facility) LP Distribution Systems in Lewes (Lewes Landing) and Delmar (Yorkshire Ests.)		
9. Nature and Size of Operator		
9a. Type of Operator <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (Intrastate) <input checked="" type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input type="checkbox"/> Transmission (intrastate)	9b. Type of Pipe in System Inspected <input type="checkbox"/> Cast Iron <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other -	9c. Size of Operator (No. of Miles/Customers/Storage Capacity) 2.25 miles/ /12,000
10. Nature of Probable Violations (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 pertaining to valve maintenance, cathodic protection testing, and pressure regulators.

12. Provide detailed information about violation:

Operator has procedures for performing valve maintenance, cathodic protection testing and pressure regulators within certain time intervals, and this was not accomplished. These tasks were not performed in CY 2014 at either Reserves at Lewes Landing or Yorkshire Estates. Finally tested all on April 17, 2015 . Everything tested OK.

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

By not adhering to O&M Procedures, this caused unnecessary risk to the residents of The Reserves at Lewes Landing and Yorkshire Estates.

14a. Person Interviewed: Stephen Palmer **Title:** Division Manager for Propane

14b. Comments of person interviewed: R. Schaeffgen in E-mail on 10/24/14: When will CUI be doing the Regulator Station inspection, CP Readings, Valve exercising and sniff test at the Reserves at Lewes Landing this year? I would like to observe/inspect for the field inspection of Operator Qualification, Field Protocol #9 if CUI has not yet completed it.

E-mail from Palmer to R. Schaeffgen on 10/24/14 Bob--sorry I havent responded sooner, I will get CUI and set up for this and let you know when it will happen.

11/06/14 E-mail Palmer to R. Schaeffgen: I am currently working with CUI on setting up a schedule for this, I should know soon.

11/24/14 E-mail Palmer to R. Schaeffgen: Bob--I am still waiting to here from CUI.

12/1/14 E-mail from S. Palmer to John Crawford of Peninsula (internal e-mail): John-- can we please get this scheduled to meet the Delaware State needs.

12/09/14 E-mail Palmer to R. Schaeffgen: Bob--They (CUI) should be getting back to me today.

12/17/14 iPhone e-mail Palmer to R. Schaeffgen: They finally got back to me today and I should have an answer by tomorrow it when going to get together.

12/17/14 John Crawford of Peninsula to S. Palmer to R. Schaeffgen: I spoke to Bob (Shumate of CUI) today about this he said he will get done as soon as he can.

01/09/15 E-mail S. Palmer to R. Schaeffgen: I can get that to you next week, do you want an email, or do you want me to bring you a hard copy.

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 checked (exercised) and serviced the key valves which are necessary for the safe operation of their gas distribution system in CY 2014 for The Reserves at Lewes Landing and Yorkshire Estates. It is worth noting in last year's inspection that the valve exercising documentation was not provided for CY-2013.

13. Public and/or environmental concerns in area of violation: By not performing this task, the Operator could not confirm the operability of critical valves in the event of an emergency.

14a. Person Interviewed: Stephen Palmer Title: Division Manager for Propane

14b. Comments of person interviewed: R. Schaeffgen in E-mail on 10/24/14: When will CUI be doing the Regulator Station inspection, CP Readings, Valve exercising and sniff test at the Reserves at Lewes Landing this year? I would like to observe/inspect for the field inspection of Operator Qualification, Field Protocol #9 if CUI has not yet completed it.

E-mail from Palmer to R. Schaeffgen on 10/24/14 Bob--sorry I havent responded sooned, I will get CUI and set up for this and let you know when it will happen.

11/06/14 E-mail Palmer to R. Schaeffgen: I am currently working with CUI on setting up a schedule for this, I should know soon.

11/24/14 E-mail Palmer to R. Schaeffgen: Bob--I am still waiting to here from CUI.

12/1/14 E-mail from S. Palmer to John Crawford of Peninsula (internal e-mail): John--can we please get this scheduled to meet the Delaware State needs.

12/09/14 E-mail Palmer to R. Schaeffgen: Bob--They (CUI) should be getting back to me today.

12/17/14 iPhone e-mail Palmer to R. Schaeffgen: They finally got back to me today and I should have an answer by tomorrow it when going to get together.

12/17/14 John Crawford of Peninsula to S. Palmer to R. Schaeffgen: I spoke to Bob (Shumate of CUI) today about this he said he will get done as soon as he can.

01/09/15 E-mail S. Palmer to R. Schaeffgen: I can get that to you next week, do you want an email, or do you want me to bring you a hard copy.

Continuation Sheet

Violation No. 3

11a. CFR Violated: \$192.739 Pressure limiting and regulating stations: Inspection and testing.

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

Each pressure limiting station, relief device, and pressure regulating station must be subjected at intervals not exceeding 15 months, but at least once each calendar year to tests to determine that it is: (1) In good mechanical condition; (2) adequate from standpoint of capacity and reliability of operation in which it is employed; (3) Except as provided in paragraph (b) of this section, set to relieve at correct pressure consistent with Pressure limits of 192.201(a); (4) Properly installed, etc.

12. Provide detailed information about the violation: Operator had not inspected and tested the pressure limiting and regulating station equipment, including the relief device required for the safe operation of their gas distribution system in CY 2014 for the Reserves at Lewes Landing and Yorkshire Estates. It is worth noting that in last year's inspection that the Annual Regulator and/or Overpressure Protection inspection documentation had not been provided for CY-2013.

13. Public and/or environmental concerns in area of violation: By not performing the testing of the pressure limiting and relief devices once a calendar year, operator has caused unnecessary risk to the residents of The Reserves at Lewes Landing and Yorkshire Estates.

14a. Person Interviewed: Steven Palmer Title: Division Manager for Propane

14b. Comments of person interviewed: Same comments as in Violation Nos. 1 and 2

Continuation Sheet

Violation No. 4

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 had not performed CP testing as required for the safe operation of their gas distribution system in CY 2014 for the Reserves at Lewes Landing and Yorkshire Estates. It is worth noting in last year's inspection that the CP testing documentation for CY-13 was not provided.

13. Public and/or environmental concerns in area of violation: By not performing the CP testing of underground tanks, operator has caused unnecessary risk to the residents of The Reserves at Lewes Landing and Yorkshire Estates.

14a. Person Interviewed: Steven Palmer Title: Division Manager for Propane

14b. Comments of person interviewed: Same comments as in Violation Nos. 1 and 2

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: *Robert Schaefer* Date: *July 1, 2015*

17. Compliance History

Date	Place	Describe Violation/ Noncompliance	CPF No. Date WL	Outcome

18. Gravity of Offense

19. Degree of Culpability
High

20. Ability to Continue in Business
Excellent

21. Ability to Pay
Good

22. Good Faith in Attempting to Achieve Compliance
Excellent

23a. Proposed Remedy

- Warning Letter
- Civil Penalty: Recommended Amount \$ 1200
- Compliance Order
- Hazardous Facility Order
- Notice of Amendment of O&M Plan

23b. Analysis of Proposed Remedy

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