

SEPTEMBER 15, 2014

Mr. Jerry E. Sheridan
AmeriGas Partners, LP
President and Chief Executive Officer
460 North Gulph Road
Valley Forge, PA 19482

Re: CPF No. 2-2013-0022

Dear Mr. Sheridan:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$70,100, and specifies actions that need to be taken by your subsidiary, AmeriGas Propane, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southern Region, OPS, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Wayne T. Lemoi, Director, Southern Region, OPS
Mr. Paul Grady, VP and COO, AmeriGas Propane, LP
Mr. Mike McLean, Corporate OPS Compliance, AmeriGas Propane, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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In the Matter of)	
)	
AmeriGas Propane, LP,)	CPF No. 2-2013-0022
)	
Respondent.)	
)	

FINAL ORDER

On June 10-13 and July 11, 2013, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of AmeriGas Propane, LP (AmeriGas or Respondent), in Palm Beach County, Florida. AmeriGas is a subsidiary of AmeriGas Partners, LP, a publicly traded master limited partnership that distributes propane throughout the United States.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated November 7, 2013, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that AmeriGas had committed various violations of 49 C.F.R. Part 192 and assessing a civil penalty of \$70,100 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

AmeriGas responded to the Notice by letter dated December 2, 2013 (Response). The company contested one of the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.11(b), which states:

§ 192.11 Petroleum gas systems.

(a)

(b) Each pipeline system subject to this part that transports only

¹ <http://investors.amerigas.com/investor-relations/ir-home/default.aspx> (last accessed January 17, 2014).

petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

The Notice alleged that Respondent violated 49 C.F.R. § 192.11(b) by failing to meet the petroleum gas system requirements in National Fire Protection Association (NFPA) Standard 58, Section 6.7.4.5, for “Regulator Installation.” Specifically, the Notice alleged that AmeriGas had pressure relief devices with points of discharge that were less than five feet from sources of ignition at two customer locations.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.11(b) by failing to meet the petroleum gas system requirements in NFPA 58.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a), which states:

§ 192.465 External corrosion control: Monitoring.

(a) 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. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet (30 meters), or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection met the requirements of § 192.463. Specifically, the Notice alleged that AmeriGas could not demonstrate it had performed the required testing on four of its systems during 2010, 2011, and/or 2012.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection met the requirements of § 192.463.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(b), which states:

§ 192.465 External corrosion control: Monitoring.

(a)

(b) Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2½ months, to insure that it is operating.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(b) by failing to inspect each cathodic protection rectifier at least six times each calendar year, but with intervals not exceeding 2½ months. Specifically, the Notice alleged that AmeriGas inspected one of its rectifiers only one time in 2012.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(b) by failing to inspect each cathodic protection rectifier at least six times each calendar year, but with intervals not exceeding 2½ months.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.481(a), which states:

§ 192.481 Atmospheric corrosion control: Monitoring.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

The Notice alleged that Respondent violated 49 C.F.R. § 192.481(a) by failing to inspect each onshore pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion once every three calendar years, but with intervals not exceeding 39 months. Specifically, the Notice alleged that AmeriGas failed to inspect its pipelines at Tavares Cove and Loxahatchee Pointe for atmospheric corrosion at the required intervals.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.481(a) by failing to inspect each onshore pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion once every three calendar years, but with intervals not exceeding 39 months.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 192.625(f), which states:

§ 192.625 Odorization of gas.

(a)

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by—

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic “sniff” tests at the extremities of the system to confirm that the gas contains odorant.

The Notice alleged that Respondent violated 49 C.F.R. § 192.625(f) by failing to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Specifically, the Notice alleged that while AmeriGas had records of periodic “sniff” tests and written verification from its supplier showing the propane had been odorized prior to delivery, this was insufficient to meet the requirements of the regulation because AmeriGas was not operating a master meter system.

In its Response, AmeriGas argued that sniff tests were sufficient to comply with the odorant testing requirement in NFPA 58 (2004), “Liquefied Petroleum Gas Code,” Section 4.2.3, and that therefore § 192.625(f) conflicts with NFPA 58. Section 192.11(c) of Part 192 states: “In the event of a conflict between this part and ANSI/NFPA 58 and 59, ANSI/NFPA 58 and 59 prevail.” AmeriGas stated that because there is a conflict between § 192.625(f) and NFPA 58 and the latter prevails over the former, sniff testing was sufficient to comply with Part 192 odorant testing requirements for small propane gas systems.

I disagree. I have reviewed the regulation and NFPA 58 and can find no conflict between the two in this case. In fact, this is not the first time the very same defense has been raised by AmeriGas and rejected by PHMSA.² In addition, this issue was addressed directly in the preamble to a final rule adopted by PHMSA in 2010 that updated certain technical standards incorporated by reference into the pipeline safety regulations, and which clarified that “[w]hen a requirement exists in Part 192 that does not exist in NFPA 58 or 59, operators are required to comply with it. A conflict only exists when an operator cannot comply with a requirement in NFPA 58 and 59 because it conflicts with a requirement in part 192.”³

AmeriGas also argued that PHMSA’s *Training Guide for Operators of Small LP Gas Systems* recognizes the supposed conflict between NFPA 58 and § 192.625(f) in the section on “Odorization.” The training guide explains the requirements of NFPA 58. However, it does not discuss a conflict between NFPA 58 and the regulation and does not relieve operators of the requirement to comply with § 192.625(f).

Because the Respondent has failed to establish a conflict between NFPA 58 and the regulation in this case, I find that AmeriGas was required to conduct periodic testing for odorant concentration, as provided in § 192.625(f). Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 192.625(f) by failing to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.

² In a 2009 final order issued to AmeriGas, the company was cited under 49 C.F.R. § 192.605(a) for failing to follow its own procedures for conducting monthly tests to ensure that gas in its system contained the proper concentration of odorant. Although AmeriGas acknowledged in that case that it had failed to follow its own procedures for conducting “sniff tests” at the extremities of its system, it argued nevertheless that it did not need to conduct such tests because NFPA allowed other means of verification. The company argued this constituted a “conflict” between the standard and the regulation and that NFPA 58 controlled. This argument was specifically rejected by PHMSA in the final order, which stated: “[T]he regulation simply permits an additional means of achieving compliance. The possibility of conflict would only arise if it were impossible or impracticable to comply with both.” *In the Matter of AmeriGas Propane, L.P.*, Final Order C.P.F. No. 3-2006-0004 (April 15, 2009) (available at www.phmsa.dot.gov/pipeline/enforcement).

³ Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits, Final Rule, 75 Fed. Reg. 48593, 48595 (Aug. 11, 2010).

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 192.707(a), which states:

§ 192.707 Line markers for mains and transmission lines.

(a) *Buried pipelines.* Except as provided in paragraph (b) of this section, a line marker must be placed and maintained as close as practical over each buried main and transmission line:

- (1) At each crossing of a public road and railroad; and
- (2) Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

The Notice alleged that Respondent violated 49 C.F.R. § 192.707(a) by failing to place and maintain line markers as close as practical over each buried main at each crossing of a public road. Specifically, the Notice alleged that AmeriGas did not have line markers at the crossings of public roads at four locations.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.707(a) by failing to place and maintain line markers as close as practical over each buried main at each crossing of a public road.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 192.741(a), which states:

§ 192.741 Pressure limiting and regulating stations: Telemetering or recording gauges.

(a) Each distribution system supplied by more than one district pressure regulating station must be equipped with telemetering or recording pressure gauges to indicate the gas pressure in the district.

The Notice alleged that Respondent violated 49 C.F.R. § 192.741(a) by failing to place telemetering or recording pressure gauges in each distribution system supplied by more than one pressure regulating station. Specifically, the Notice alleged that AmeriGas fed its Loxahatchee Point distribution system from two separate regulator stations, but did not supply telemetering or recording pressure gauges to indicate the gas pressure in the district.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.741(a) by failing to place telemetering or recording pressure gauges in each distribution system supplied by more than one pressure regulating station.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 192.743(a), which states:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected. Except as provided in § 192.739(b), the capacity must be consistent with the pressure limits of § 192.201(a). This capacity

must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

The Notice alleged that Respondent violated 49 C.F.R. § 192.743(a) by failing to determine the capacity of pressure relief devices at pressure regulating stations to ensure that they were adequate to protect the facilities to which they were connected, at intervals not exceeding 15 months but at least once each calendar year. Specifically, the Notice alleged that AmeriGas did not have records to demonstrate that it had determined, at the required intervals, the capacity of the relief device downstream of its regulator station at Mystic Cove.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.743(a) by failing to determine the capacity of pressure relief devices at pressure regulating stations to ensure they were adequate to protect the facilities to which they were connected, at intervals not exceeding 15 months but at least once each calendar year.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁴ In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$70,100 for the violations cited above.

Item 3: The Notice proposed a civil penalty of \$35,200 for Respondent's violation of 49 C.F.R. § 192.465(a), for failing to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection met the requirements of § 192.463. AmeriGas neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Testing of cathodic protection is necessary to protect against corrosion on the pipe, which could result in a leak or more severe consequences if leaking gas were ignited. AmeriGas was aware of the regulatory requirement and failed to comply. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,200 for violation of 49 C.F.R. § 192.465(a).

⁴ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

Item 4: The Notice proposed a civil penalty of \$34,900 for Respondent's violation of 49 C.F.R. § 192.465(b), for failing to inspect each cathodic protection rectifier at least six times each calendar year, but with intervals not exceeding 2½ months. AmeriGas neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Regular inspections are necessary to ensure that rectifiers are providing adequate cathodic protection to a pipeline. As described above, cathodic protection is required to protect against the possibility of corrosion and leaks. AmeriGas was aware of the regulatory requirement and failed to comply. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$34,900 for violation of 49 C.F.R. § 192.465(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$70,100**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$70,100 civil penalty will result in accrual of 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 charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 5, 7, 8, 9, and 10 in the Notice, for violations of 49 C.F.R. §§ 192.11(b), 192.481(a), 192.625(f), 192.707(a), 192.741(a), and 192.743(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.11(b) (**Item 1**), Respondent must survey all of its PHMSA-regulated systems in the state of Florida, identify all locations that do not meet the NFPA 58 (2004) regulator point of discharge distance requirements, and take corrective actions to bring the identified locations into compliance with the standard.
2. With respect to the violation of § 192.481(a) (**Item 5**), Respondent must inspect all of its PHMSA-regulated systems in the state of Florida on which it has not

conducted atmospheric corrosion monitoring during the previous 39 months and document the inspections. If atmospheric corrosion is found, Respondent must comply with § 192.479.

3. With respect to the violation of § 192.625(f) (**Item 7**), Respondent must ensure the proper concentration of odorant by conducting sampling, using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. AmeriGas must conduct the instrumented sampling at multiple locations within each system, including at the extremities of the systems and within dead-legs, for all of its PHMSA-regulated systems in the state of Florida.

4. With respect to the violation of § 192.707(a) (**Item 8**), Respondent must survey all of its PHMSA-regulated systems in the state of Florida, identify locations where buried mains cross public roads, and ensure that pipeline markers meeting the requirements of §192.707(d) are placed and maintained as close as practical over each buried main at each crossing of a public road.

5. With respect to the violation of § 192.741(a) (**Item 9**), Respondent must survey all of its PHMSA-regulated systems in the state of Florida, identify locations where its LPG distribution systems are supplied by more than one pressure regulating station, and install telemetering or recording pressure gauges.

6. With respect to the violation of § 192.743(a) (**Item 10**), Respondent must survey all of its PHMSA-regulated systems in the state of Florida and determine the capacity of all relief devices to ensure they have sufficient capacity to protect the facilities to which they are connected, either by testing the devices in place or by review and calculations.

7. Within 100 days following receipt of the Final Order, AmeriGas must provide written documentation that Items 1-6 have been completed to the Director, Office of Pipeline Safety, PHMSA Southern Region, and must make the records and documentation demonstrating completion available for inspection by PHMSA representatives.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 2 and 6, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 192.463(a) (**Item 2**) — Respondent’s alleged failure to ensure that its cathodic protection systems provided a level of protection at least equal to that provided by compliance with one of more of the criteria in Appendix D of Part 192; and

49 C.F.R. § 192.615(c) (**Item 6**) — Respondent’s alleged failure to establish and maintain liaison with appropriate fire, police, and other public officials prior to 2013.

AmeriGas presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued