U.S. Department
of Transportation
**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 26, 2013

Mr. Ed Moreno
Division President
Tru-Gas, Inc.
800 South Division Street, Suite D
Waunakee, Wisconsin 53597

CPF 3-2013-0004M

Dear Mr. Moreno:

On September 17, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected Tru-Gas, Inc. procedures for the propane distribution facilities in Lacrosse, Wisconsin.

On the basis of the inspection, PHMSA has identified an apparent inadequacy found within Tru-Gas, Inc. plans or procedures, as described below:

1. §192.11 Petroleum gas systems

(b) Each pipeline system subject to this part that transports petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

Tru-Gas has failed to incorporate the standards of NFPA 59 into the design, operations and maintenance of utility gas plants greater than the 4000 gallons aggregate water capacity as required by the scope of NFPA 58 and 59.

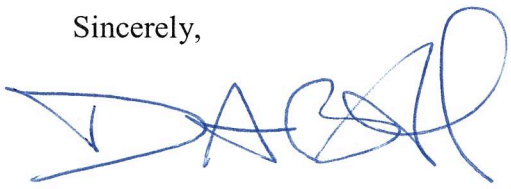
Response to this Notice

This Notice is provided pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237. Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

If, after opportunity for a hearing, your plans or procedures are found inadequate as alleged in this Notice, you may be ordered to amend your plans or procedures to correct the inadequacies (49 C.F.R. § 190.237). If you are not contesting this Notice, we propose that you submit your amended procedures to my office within 90 days of receipt of this Notice. This period may be extended by written request for good cause. Once the inadequacies identified herein have been addressed in your amended procedures, this enforcement action will be closed.

It is requested that Tru-Gas, Inc. maintain documentation of the safety improvement costs associated with fulfilling this Notice of Amendment (preparation/revision of plans, procedures) and submit the total to David Barrett, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. In correspondence concerning this matter, please refer to **CPF 3-2013-0004M** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed **CIVIL PENALTY*** --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;

2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed $200,000 per violation per day the violation persists up to a maximum of $2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum civil penalty may not exceed $100,000 per violation per day, with a maximum penalty not to exceed $1,000,000 for a related series of violations. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based;

3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or

4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed **COMPLIANCE ORDER*** --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;

2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;

3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or

4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a **WARNING ITEM** --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. **Procedures for Responding to a NOTICE OF AMENDMENT*--**

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;

b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or

d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than $10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **The Rights of Small Entities To Enforcement Fairness and Policy Against Retaliation**

The Department of Transportation has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights. Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact the PHMSA Office of Chief Counsel. You also have the right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of this agency.

The Department of Transportation strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

VII. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VIII. **Payment Instructions**

Civil Penalty Payments of Less Than $10,000

Payment of a civil penalty of less than $10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number

for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than $10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of $10,000 or more

Payment of a civil penalty of $10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) RECEIVER ABA NO. 021030004	(2) TYPE/SUB-TYPE (Provided by sending bank)
(3) SENDING BANK ABA NO. (Provided by sending bank)	(4) SENDING BANK REF NO. (Provided by sending bank)
(5) AMOUNT	(6) SENDING BANK NAME (Provided by sending bank)
(7) RECEIVER NAME TREAS NYC	(8) PRODUCT CODE (Normally CTR, or as provided by sending bank)
(9) BENEFICIAL (BNF) = AGENCY LOCATION CODE BNF = /ALC-69-14-0001	(10) REASONS FOR PAYMENT Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: $10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**69140001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - **"AC-payment for PHMSA Case #** / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 7, 2013