

**DEC 20 2010**

Mr. Ron Templeman  
General Manager  
Amerigas Eagle Propane, L.P.  
91-280 Hanua Street  
Kapolei, HI 96707-1783

**Re: CPF No. 5-2007-0022**

Dear Mr. Templeman:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes two findings of violation, and finds that Amerigas Eagle Propane, L.P., has completed the actions specified in the Notice to comply with the pipeline safety regulations. Therefore, this case is now 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. Chris Hoidal, Director, Western Region, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0794]**

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

In the Matter of	)	
	)	
Amerigas Eagle Propane, L.P.,	)	CPF No. 5-2007-0022
	)	
Respondent.	)	
	)	

**FINAL ORDER**

On November 13, 2006, 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 Eagle Propane, L.P. (Amerigas or Respondent), in Kapolei, Hawaii. Amerigas operates propane distribution systems on the island of Oahu.<sup>1</sup> OPS's inspection included a visit to three of those systems at shopping centers on Oahu.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated October 19, 2007, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Amerigas had committed three violations of 49 C.F.R. Parts 191 and 192 and proposed ordering Respondent to take certain measures to correct the alleged violations.

Amerigas responded to the Notice by letter dated November 16, 2007 (Response). The company contested 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. Parts 191 and 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 191.1, which states in relevant part:

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<sup>1</sup> Amerigas affiliates operate propane distribution systems on the islands of Maui and Hawaii.

**§ 191.1 Scope.**

(a) This part prescribes requirements for the reporting of incidents, safety-related conditions, and annual pipeline summary data by operators of gas pipeline facilities located in the United States or Puerto Rico, including pipelines within the limits of the Outer Continental Shelf as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

The Notice alleged that Amerigas had never submitted an annual report and had no operations and maintenance manual.

In its Response, Amerigas objected to the allegation of violation and stated that:

- 1) It operates a limited number of propane distribution systems in Hawaii that are subject to PHMSA's jurisdiction, but that "none of those systems services 100 customers or more from a single source."
- 2) Section 191.1 "is simply a description of scope, and it does not contain any specific requirements."
- 3) The OPS inspector did not request any documentation of compliance with the Part 191 reporting requirements.
- 4) The company had an operations and maintenance manual available at the time of the inspection.

Per § 191.11(b), "The annual report required by this section need not be submitted with respect to . . . petroleum gas systems which serve fewer than 100 customers from a single source." Amerigas stated that it is an operator of a petroleum gas system which serves fewer than 100 customers from a single source, and OPS has provided no evidence to the contrary. In the absence of such evidence, I cannot conclude that Amerigas is subject to the reporting requirements of § 191.11.

Further, as Amerigas stated, § 191.1 does not contain any specific requirements; rather, it describes, in broad terms, the scope of Part 191. Accordingly, the substance of the allegations in the Notice does not correspond to the regulation cited, and I cannot find that Respondent violated § 191.1.

Based on the foregoing, I order that Item 1 be withdrawn.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. §§ 192.603§ 192.605, which states in relevant part:

**§ 192.603 General Provisions.**

- (a) . . . .
- (b) Each operator shall keep records necessary to administer the procedures established under § 192.605.
- (c) . . . .

**§ 192.605 Procedural manual for operations, maintenance, and emergencies.**

(a) *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. . . .

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations. . . .

(1) . . . .

(d) *Safety-related condition reports.* The manual required by paragraph (a) of this section must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

(e) *Surveillance, emergency response, and accident investigation.* The procedures required by §§ 192.613(a), 192.615, and 192.617 must be included in the manual required by paragraph (a) of this section.

In particular, the Notice alleged that Respondent violated 49 C.F.R §§ 192.603(b) and 192.605(a)-(b) and (d)-(e) by failing to develop an adequate manual of operations and maintenance procedures for its propane distribution systems and to keep the records necessary to administer those procedures. Amerigas provided a copy of its operations and maintenance manual with its Response and stated that the alleged violation lacked merit.

The operations and maintenance manual submitted by Respondent bears an effective date of October 10, 2007, almost 11 months after the OPS inspection. That manual also replaced the version that had been in effect since June 1, 1998, thereby indicating that it had not been revised for more than eight years at the time of the OPS inspection. In addition, Respondent has not introduced any records necessary for the proper administration of the procedures in its manual, and an Amerigas employee told the OPS inspector “that [the] records necessary for compliance with [its] written procedures . . . ha[d] never existed.”<sup>2</sup>

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. §§ 192.603(b) and 192.695(a)-(b) and (d)-(e) by failing to develop an adequate manual of operations and maintenance procedures for its propane distribution systems and to keep the records necessary to administer those procedures.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.614, which states in relevant part:

**§ 192.614 Damage prevention program.**

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. . . .

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<sup>2</sup> OPS Violation Report at 4.

The Notice alleged that Respondent violated 49 C.F.R. § 192.614 by failing to carry out a damage prevention program, as demonstrated by the absence of any records. In its Response, Amerigas stated that the OPS inspector did not request any records related to its damage prevention program, and that it had procedures for carrying out that program in its operations and maintenance manual. Respondent submitted its O&M manual with its Response, and stated that Section 5.3, entitled Damage Prevention Program, demonstrated its compliance with § 192.614.

The O&M manual that Respondent submitted contains markings on each page indicating an effective date of October 10, 2007. These markings also indicate that this version of the O&M manual replaced a version dated June 1, 1998. The effective date of the O&M manual was nearly a year after the date of the inspection. Although this version of the manual is probative for the purposes of determining whether Respondent satisfied the terms of the compliance order, it does not provide evidence that Respondent had an adequate damage prevention program at the time of the inspection. Thus, Respondent provided no evidence that it had a damage prevention program in place at the time of the inspection.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.614(a) by failing to carry out a damage prevention program.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 191.1, 192.605, and 192.614, 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.

Because I ordered that Items 1 and 2 be withdrawn, the compliance terms proposed in the Notice as to those Items are not included in this Order.

The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of §§ 192.603(b) and 192.695(a)-(b) and (d)-(e) (**Item 2**), a December 2008 OPS inspection confirmed that Respondent has developed a sufficient manual of operations and maintenance procedures for its propane distribution systems and for keeping the records necessary to administer those procedures.
2. With respect to the violation of §192.614 (**Item 3**), Respondent has submitted a written damage prevention.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice for Item 2 and 3 are not included in this Order.

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, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept a petition received no later than 20 days after receipt of this Final Order by the Respondent, provided it contains a brief statement of the issue(s) and meets all other requirements of 49 C.F.R. § 190.215. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued