

April 19, 2021

VIA ELECTRONIC MAIL TO: konderdonk@suburbanpropane.com

Mr. Keith P. Onderdonk
Vice President, Operational Support
Suburban Propane, LP
240 Route 10 West
Whippany, New Jersey 07981

Re: CPF No. 3-2019-0003

Dear Mr. Onderdonk:

Enclosed is the Decision on the Petition for Reconsideration issued in the above-referenced case. For the reasons explained therein, the Decision reduces the civil penalty to \$22,900. When the civil penalty has been paid, this enforcement action will be closed. This Decision constitutes the final administrative action in this proceeding. Service of this decision by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA

CONFIRMATION OF RECEIPT REQUESTED

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

_____)
In the Matter of)

Suburban Propane, LP,)

Respondent.)
_____)

CPF No. 3-2019-0003

DECISION ON PETITION FOR RECONSIDERATION

From September 11, 2018, through September 13, 2018, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the Suburban Propane, LP (Suburban or Respondent) facilities and records in West Salem, and propane gas systems in La Crosse and Juneau counties, Wisconsin. As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent by letter dated November 22, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice).¹ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Suburban had committed four violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$46,700 for the alleged violations.

Suburban responded to the Notice by letter dated February 12, 2020 (Response) contesting the allegations, requesting a hearing, and requesting a copy of the case file, including the civil penalty worksheet.² Respondent also requested an informal conference and specifically stated that it “[did] intend to seek available economic relief where possible.” On May 5, 2020, the Central Region provided the case file and civil penalty worksheet,³ and on May 20, 2020, held an informal conference with Respondent. On June 4, 2020, Respondent withdrew its request for a hearing and noted that it no longer contested the alleged violations, proposed compliance order, or proposed civil penalty for Item 2.⁴

¹ Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), CPF No. 3-2019-0003 (November 22, 2019). The original Notice went undelivered by the U.S. Postal Service. On January 14, 2020, Central Region resent the Notice to a new address provided by Suburban. Suburban had 30 days from the date of receipt of the Notice to respond, as permitted under § 190.208.

² Suburban Propane, LP’s Response to Notice (February 12, 2020).

³ Due to certain COVID-19 related mail issues, Central Region did not review Suburban’s response until May 4, 2020.

⁴ Suburban email to PHMSA (June 3, 2020) (on file with PHMSA).

On December 18, 2020, pursuant to 49 U.S.C. §§ 60118 and 60122 and 49 C.F.R. § 190.213, the Associate Administrator for Pipeline Safety (Associate Administrator) issued a Final Order finding that Respondent had committed violations of 49 C.F.R. §§ 193.603(b) (Item 1), 192.743(a) (Item 2), 192.619(a) (Item 3), and 192.201(a)(2)(iii) (Item 4).⁵ The Final Order found that Respondent had already satisfied the terms of the proposed compliance order. In addition, pursuant to the authority of 49 U.S.C. § 60122 and 49 C.F.R. § 190.223, the Final Order assessed a civil penalty of \$22,900 for Item 2 and a reduced civil penalty of \$6,566 for Item 4. The total civil penalty for both violations was \$29,466.

On January 6, 2021, Respondent filed a Petition for Reconsideration pursuant to 49 C.F.R. § 190.243 (Petition).⁶ In its Petition, Respondent sought reconsideration of the civil penalty assessed for Item 4 and presented grounds for reconsideration. Respondent asserted that the civil penalty assessment considerations in the Final Order did not properly reflect certain factual information. In addition, Respondent asserted that it had withdrawn its initial hearing request based on its understanding from the informal conference on May 20, 2020, that Respondent had already provided sufficient grounds to support withdrawal of the civil penalty for Item 4 and the Director had recommended withdrawal.

Standard of Review

Under 49 C.F.R. § 190.243, a respondent may petition the Associate Administrator for reconsideration of a final order that has been issued pursuant to § 190.213. Reconsideration is not an appeal or a completely new review of the record.⁷ A respondent may ask for correction of an error or, in limited circumstances, may present previously unavailable information. If a respondent requests consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the final order. Repetitious information or arguments will not be considered.⁸ The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

Analysis

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.⁹ 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; any effect that

⁵ *Suburban Propane, LP*, Final Order, CPF No. 3-2019-0003, 2020 WL 8369928 (December 18, 2020).

⁶ *Suburban Propane LP's Petition for Reconsideration* (January 6, 2021).

⁷ 49 C.F.R. § 190.243(a)-(d).

⁸ *Plains All American Pipeline, LP*, CPF No. 5-2009-00118, 2013 WL 5883403, at *3 (August 30, 2013).

⁹ These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure and correction of violations, or actions to correct a violation, prior to discovery by PHMSA. 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.

Item 4 of the Notice proposed a civil penalty of \$23,800 for the violation of § 192.201(a)(2)(iii), for failing to correctly set pressure relief devices to operate at pressures consistent with the pressure limits of § 192.201(a)(2)(iii). Specifically, the Notice alleged that Respondent violated 49 C.F.R. § 192.201(a)(2)(iii) by failing to set its pressure relief devices to operate at pressures that do not exceed the maximum allowable operating pressure (MAOP) plus 50 percent when MAOP is less than 12 psig.¹⁰ While Respondent had withdrawn its contest of the violation in response to the Notice, Respondent had offered information to mitigate the civil penalty, including that it utilized the regulator manufacturer's documentation to establish an MAOP of 15 psig.¹¹ Respondent also contended that the setting of the station regulator relief valves would have been allowed under a separate provision, § 192.201(a)(2)(ii), and that the violation was quickly corrected. The Final Order did not find the settings were compliant with any other code sections, but determined that Respondent had provided a reasonable justification for its noncompliance, which was predicated on a misinterpretation of the correct MAOP for the six segments, and that the misinterpretation warranted a reduction of the proposed civil penalty under the good faith credit. The proposed civil penalty was reduced to \$6,566.

Respondent argued in its Petition that the civil penalty assessment considerations in the Final Order did not appropriately reflect certain factual information. With regard to nature and circumstances, Respondent asserted that its established inlet pressure was not an error or misinterpretation, but a difference in choice, and that the safety of the system was not compromised. According to the Petition, "the manufacturer documentation previously provided to PHMSA clearly shows that the service regulators in question are more than capable of handling a 15 psi inlet pressure while still offering adequate relief protection downstream."¹² Further, with regard to gravity, Respondent argued that due to the performance limitations of the regulator itself, pipeline safety was not affected at all. Regarding culpability, Respondent asserted that culpability did not exist for Item 4, because the relief settings were compliant under a separate regulation, § 192.201(a)(2)(ii).

PHMSA finds Respondent's assertions are based on an erroneous interpretation of the regulation. As more fully explained in the Final Order, Respondent's pressure relief devices were not set to operate at pressures that do not exceed the MAOP plus 50 percent. The Notice alleged that 19 and 19.5 psig exceeded the pressure setting permitted under § 192.201(a)(2)(iii) because the actual MAOP of the five stations is 10 psig, as limited by house service regulators. Therefore, the maximum pressure setting of the relief valves would be 15 psig. The regulators in question are stamped with the maximum pressure relief setting, but Respondent used the manufacturer's

¹⁰ Notice, at 3.

¹¹ Response, at 4.

¹² Petition, at 1.

specifications for emergency pressure rating to calculate its MAOP when MAOP must be calculated under normal operating conditions, not based on the emergency pressure rating. Section 192.201(a)(2)(ii) is not applicable because the MAOP is not 12 psig or more. As to whether pipeline safety was affected, a finding that pipeline safety was minimally affected is the lowest possible level under the gravity assessment factor and was the appropriate rating for violation Item 4.

Respondent also contended that the Final Order did not consider its history of prior offenses when assessing a penalty, according to § 192.225(a)(3), or its good faith in attempting to achieve compliance as required by § 192.225(a)(4). However, Respondent's history of prior offenses was in fact included in the Violation Report, and was considered in the Penalty Assessment as a factor that did not increase the total point calculation used to determine the base civil penalty. Good faith was also considered in assessing Respondent's civil penalty, and the Final Order specifically reduced the penalty under this consideration to account for Respondent's reasonable justification for its non-compliance.

Finally, Respondent asserted that prior to issuance of the Final Order, it had withdrawn its hearing request based on its understanding from the informal conference on May 20, 2020, that Respondent had provided sufficient grounds to support withdrawal of the civil penalty for Item 4 and the Director had recommended withdrawal.

Respondent is correct that the Director's recommendation dated September 10, 2020, submitted pursuant to § 190.209(b)(7), recommended withdrawal of the civil penalty for Item 4. As a general matter, I am not bound by a Director's recommendation, and will consider all of the evidence in the case file and the applicable civil penalty assessment factors when issuing a final order.

Given Respondent's lack of violation history, it appears Respondent may have been unaware that the Director's recommendation is not binding, unlike a Consent Agreement reached pursuant to § 190.219. Having considered these circumstances in light of the Director's recommendation, Respondent's limited enforcement history, Respondent's justification for the noncompliance and the minimal, if any, impact to pipeline safety, I have determined that it would be appropriate to reconsider the previously reduced civil penalty for Item 4 pursuant to § 190.225(b)(2), which permits me to consider "other matters as justice may require" in determining the amount of a civil penalty. Under this assessment factor, I find that the record demonstrates that Respondent misunderstood the requirements of § 192.201(a)(2)(iii) and the MAOP stamped on the regulator itself, and this fact should be credited when considering justification for a civil penalty in this case. Further, Respondent's failure to comply with § 192.201(a)(2)(iii) in this case minimally affected pipeline safety, the noncompliance was not egregious or willful, and did not significantly increase the likelihood of a pipeline failure. Respondent is advised to ensure that it complies with the regulations going forward as the regulations assist in the continued safe operation of the pipeline, and a failure to comply with regulations may result in future enforcement, including issuance of a civil penalty.

Based upon the foregoing, I withdraw the civil penalty for violation of 49 C.F.R. § 192.201(a)(2)(iii) (Item 4). No other amendments to the Final Order are made by this Decision, and the remaining civil penalty of \$22,900 for violation of § 192.743(a) (Item 2) is now due.

Payment of the civil penalty must be made within 20 days of service of this Decision. 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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$22,900 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 United States District Court.

This Decision on Reconsideration is the final administrative action in this proceeding.

April 19, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued