

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

VIA FED EX – TRACKING NO. 7703 2269 4373

September 22, 2017

Mr. Robert Dowell
Director
City of Long Beach Gas & Oil
2400 East Spring Street
Long Beach, CA 90806-2285

CPF 5-2017-0019

Dear Mr. Dowell:

On September 14-18, 2015 and March 13-22, 2017, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected your City of Long Beach Gas & Oil (LBGO) records and gas distribution system in Long Beach, California.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§192.1005 What must a gas distribution operator (other than a master meter or small LPG operator) do to implement this subpart?
No later than August 2, 2011 a gas distribution operator must develop and implement an integrity management program that includes a written integrity management plan as specified in §192.1007.**

LBGO did not implement its written integrity management program that includes a written integrity management plan as specified in §192.1007. Specifically, LBGO failed to implement Section 8 of its Distribution Integrity Management Plan (DIMP) that covered the required elements of §192.1007(e) and (f).

LBGO's Section 8 requires LBGO to measure performance, monitor results, and evaluate effectiveness of its Integrity Management (IM) program pursuant to §192.1007(e).¹ At the inspection, LBGO failed to show records that LBGO uses the DIMP attribute data to measure performance, monitor results, and evaluate effectiveness of its IM program.²

Furthermore, LBGO's Section 8 requires periodic evaluation and improvement pursuant to §192.1007(f).³ LBGO exceeded the regulatory deadline for re-evaluation of five years, which should have occurred on or about November 16, 2016. However, during the inspection visit of March 13-22, 2017, LBGO did not provide documentation evidencing completion of its re-evaluation in accordance with its DIMP.⁴

2. §192.616 Public awareness.

(a) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

LBGO did not follow the general program recommendations of API RP 1162 regarding the required Public Awareness program pursuant to 49 C.F.R. § 192.616(c), nor did it provide a justification as to why compliance with the recommended practice was not practicable and not necessary for safety. Specifically, Section 8.4 of API RP 1162 recommends that operators measure program effectiveness and discusses four evaluation methods.⁵

¹ 49 C.F.R. § 192.1007(e)(1) states that operators must “[d]evelop and monitor performance measures from an established baseline to evaluate the effectiveness of its IM program. An operator must consider the results of its performance monitoring in periodically re-evaluating the threats and risks....”

² See 49 C.F.R. § 192.1011 (requiring that operators “maintain records demonstrating compliance with the requirements of this subpart for at least 10 years...”).

³ 49 C.F.R. § 192.1007(f) states that operators “must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five years. The operator must consider the results of the performance monitoring in these evaluations.”

⁴ In fact, during the PHMSA inspection, LBGO stated that it still have to conduct this 5-year review. Violation Report at 6.

⁵ See API RP 1162 (1st ed.) (2003) Sections 8.4.1-8.4.4 (explaining how an operator should evaluate for effectiveness by measuring outreach, understandability of the content of the message, desired behaviors by the intended stakeholder audience, and the achievement of bottom-line results).

LBGO records did not show the effectiveness evaluation of their Public Awareness program required by API RP 1162 Section 8.4 for all intended stakeholder groups.⁶ Specifically, LBGO failed to develop and implement a more comprehensive and widespread effectiveness survey for excavating companies, local government, and local responder agencies.⁷

3. §192.479 Atmospheric corrosion control: General.

(a) Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

LBGO did not clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere pursuant to 49 C.F.R. §192.479(a).⁸ Specifically, LBGO failed to maintain adequate coating material or protection against corrosion on portions of pipeline exposed to atmosphere in three of the pipeline bridge crossings (#2, #3 and #6). During the field inspection, the PHMSA inspector observed that the pipeline coating portions and wrappings were already cracking, flaking and spalling and will need maintenance and re-wrap/recoat.⁹ Furthermore, the bolts on flanges in City Gate Plant 4 were starting to corrode.¹⁰ Since these were exposed to the atmosphere, LBGO should have cleaned and coated them pursuant to §192.479(a).¹¹

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists up to a maximum of \$2,090,022 for a related series of violations.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to item 1, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to the City of Long Beach Gas & Oil. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

⁶ Violation Report at Exhibit B.

⁷ At the inspection, LBGO's Gas Pipeline Compliance Officer stated that LBGO will do a more comprehensive effectiveness survey for these other intended stakeholders in the next study. Violation Report at 14.

⁸ No excepted portions set forth in 49 C.F.R. § 192.479(c) apply to LBGO's system.

⁹ Violation Report at Exhibit C.

¹⁰ *Id.*

¹¹ At the inspection, LBGO's Gas Pipeline Compliance Officer stated that LBGO is currently in the process of getting a contractor to perform maintenance on these pipeline segments. *Id.* at 22.

Warning Items

With respect to items 2 and 3, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Response to this Notice

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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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 you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2017-0019** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Huy Nguyen
Acting Director, Western Region
Pipeline and Hazardous Materials Safety Administration

cc: PHP-60 Compliance Registry
PHP-500 N. Cruz (#150209, #150208)

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to the City of Long Beach Gas & Oil (LBGO) a Compliance Order incorporating the following remedial requirements to ensure the compliance of LBGO with the pipeline safety regulations:

1. In regard to Item 1 of the Notice pertaining to the failure of LBGO to implement its Distribution Integrity Management Plan (DIMP) as specified in the required elements of an IM plan, LBGO must implement the requirements of §§192.1007 (e) and (f) in accordance with its DIMP Section 8, including conducting its 5-year comprehensive review of the plan required in Section 8: Periodic Evaluation and Improvement. LBGO must submit documentation evidencing compliance with this Item, including the results of the 5-year review, to the Director, Western Region, within 180 days of receipt of this Final Order.
2. It is requested (not mandated) that LBGO maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Huy Nguyen, Acting Director, Western Region. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.