

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Paul Grady
Senior Vice President of Operations
AmeriGas Propane
P.O. Box 965
Valley Forge, PA 19482

RE: CPF No. 54002

Dear Mr. Grady:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws two of the allegations of violation, makes findings of violations, assesses a civil penalty of \$500, and requires certain corrective action. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. §190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosures

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

| | | |
|------------------|---|---------------|
| In the Matter of |) | |
| |) | |
| AmeriGas Propane |) | CPF No. 54002 |
| |) | |
| Respondent. |) | |
| |) | |

FINAL ORDER

During the week of June 21, 1993, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Chester, California. As a result of the inspection, the Director, Western Region, OPS issued to Respondent, by letter dated February 9, 1994, 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 Respondent had committed violations of 49 C.F.R. Parts 191, 192, and 199 and proposed assessing a civil penalty of \$500 for the alleged violation of 49 C.F.R. § 191.9. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the notice by letter dated April 11, 1994 (Response). Respondent did not contest alleged violations 1, and 5 through 11 in the Notice. Respondent contested 4 of the alleged violations, offered information to explain the allegations and requested mitigation of the proposed civil penalty.

In telephone conversations with RSPA's Office of Chief Counsel on November 19 & 27, 1996, Mr. Bill McEnroe, Safety Director, AmeriGas Propane, Chester, California waived Respondent's right to a hearing.

FINDINGS OF VIOLATION

Respondent did not contest items 1, and 5 through 11 in the Notice. Accordingly, I find that Respondent committed the following violations of 49 C.F.R. Parts 191 and 192 as more fully described in the Notice:

49 C.F.R. §191.5 -- failing to provide telephonic notice to the National Response Center "at the earliest practicable moment following discovery" of an incident which occurred at Respondent's facility in Chester, California on January 18, 1993, at 8:00 a.m.;

49 C.F.R. § 192.453 -- failing to have written procedures to implement the requirements of 49 C.F.R. Part 192, Subpart I, and failing to have a person qualified by experience and training in pipeline corrosion control methods on staff at the Chester, California district office to carry out these procedures;

49 C.F.R. § 192.479(a) -- failing to adequately prevent atmospheric corrosion on AmeriGas distribution tanks located at Lassen West, Pehar System, and Watson System;

49 C.F.R. §192.491 -- failing to maintain maps showing the location of its cathodically protected piping and cathodic protection facilities, or records of each corrosion control test, survey, or inspection;

49 C.F.R. § 192.603(b) -- failing to maintain an operating and maintenance plan meeting the requirements of 49 C.F.R. Part 192, and records necessary to administer the plan;¹

49 C.F.R. §192.605 --failing to maintain a written operating and maintenance plan meeting the requirements of 49 C.F.R. Part 192;

49 C.F.R. §192.614 -- failing to have a written damage prevention program;

49 C.F.R. § 192.615 -- failing to have a written emergency plan.

The Notice also alleged that Respondent failed to submit U.S. Department of Transportation Form RSPA F 7100.1 within 30 days of the incident which occurred at Respondent's facility in Chester, California on January 18, 1993, in violation of 49 C.F.R. § 191.9. In its response, Respondent claims that it did not believe it was required to submit the form based on a conversation between Respondent and OPS. After learning that OPS had no plans to inspect the pipeline system following the Chester, California incident, Respondent contends that it "reasonably concluded that no such report was necessary." Response at page 2. OPS' decision not to inspect Respondent's facility does not negate Respondent's duty to comply with the regulations. Accordingly, I find Respondent in violation of 49 C.F.R. § 191.9.

¹ As of the date of the inspection and the Notice in this case, written operating and maintenance plans were required by 49 C.F.R. §192.603(b), and the essential elements of the plans were listed in 49 C.F.R. §192.605. Subsequent regulatory revisions have combined these requirements into a revised 49 C.F.R. §192.605. References in this Final Order are to the former regulations unless otherwise noted.

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

WITHDRAWAL OF ALLEGATIONS

Item #3 in the Notice alleged that Respondent had violated 49 C.F.R. § 191.11 by failing to submit annual system reports on DOT Form RSPA F 7100.1-1. In its response, Respondent claimed that the propane gas system in question served fewer than 100 customers from a single source, and therefore, was exempt from the reporting requirement by 49 C.F.R. § 191.11(b)(1). OPS did not dispute Respondent's claim. Therefore, this allegation of violation is withdrawn.

Item #4 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.283(b) by failing to properly qualify its plastic pipe joining procedures. In its response, Respondent submitted information demonstrating that its procedure was properly qualified. Therefore, this allegation of violation is withdrawn.

Item #12 in the notice alleged Respondent violated 49 C.F.R. §199.7(a). That section requires each operator to maintain and follow a written anti-drug plan that conforms to the requirements of 49 C.F.R. Part 199 and DOT procedures set forth in 49 C.F.R. Part 40. 49 C.F.R. §199.7(a) also requires written anti-drug plans to contain the following elements:

- (1) Methods and procedures for the compliance with all the requirements of this part, including the employee assistance program;
- (2) The name and address of each laboratory that analyzes the specimens collected for drug testing;
- (3) The name and address of the operator's medical review officer; and
- (4) Procedures for notifying employees of the coverage and provisions of the plan.

While liquefied petroleum gas (LPG) operators were subject to the requirements of 49 C.F.R. Part 199 at the time of the Notice's issuance, they are no longer subject to the regulations. (58 FR 68258, 68260; December 23, 1993). Therefore, RSPA is withdrawing this allegation of violation.

ASSESSMENT OF PENALTY

Under 49 U.S.C. §60122, Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed assessing a civil penalty of \$500 for violation of 49 C.F.R. § 191.9.

49 U.S.C. §60122 and 49 C.F.R. §190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Respondent failed to file a written report of an outside force incident that resulted in a fatality. The written reports, filed on form RSPA F 7100.1, provide RSPA with a data base on which broad enforcement, rulemaking, and other regulatory decisions are based. Misunderstanding the requirement neither excuses the violation nor, in this case, mitigates the penalty, which is already modest.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$500 for violation of 49 C.F.R. § 191.9.

Payment of the civil penalty **must be made within 20 days of service**. Payment can be made by sending a certified check or money order (containing the CPF number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. §89.21(b)(3)) also permit this **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**. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. §3717, 4 C.F.R. §102.13, and 49 C.F.R. §89.23. Pursuant to those same authorities, a late penalty charge of 6 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.

COMPLIANCE ORDER

Under 49 U.S.C. §60118(a), each person who engages in the transportation of gas or hazardous liquids, 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 hereby ordered to take the following actions, to the extent it has not already done so, to ensure compliance with the pipeline safety regulations applicable to its operations:

1. Establish a written corrosion control program that includes the design, installation, operation and maintenance of cathodic protective systems, as required by 49 C.F.R. § 192.453.
2. Establish written procedures, as required by 49 C.F.R. § 192.605, for examination of buried pipelines when exposed, in accordance with 49 C.F.R. § 192.459.
3. Establish written procedures, as required by 49 C.F.R. § 192.605, for inspection of the internal surface when any pipe is removed. The exposed portion must be examined for evidence of internal corrosion, in accordance with 49 C.F.R. § 192.475(b).
4. Establish written procedures, as required by 49 C.F.R. § 192.605, for continuing surveillance of your facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions, in accordance with 49 C.F.R. § 192.613(a).
5. Establish written procedures, as required by 49 C.F.R. § 192.605, for maximum allowable operating pressure for steel and/or plastic pipelines, in accordance with 49 C.F.R. § 192.619.
6. Establish written procedures, as required by 49 C.F.R. § 192.603(b), for purging of pipelines, in accordance with 49 C.F.R. § 192.629.
7. Establish written procedures, as required by 49 C.F.R. § 192.603(b), for line markers for mains, in accordance with 49 C.F.R. § 192.707. Also, place line markers over the main at each crossing of a public road and/or wherever necessary to identify the location of the main to reduce the possibility of damage or interference.

8. Establish written procedures, as required by 49 C.F.R. § 192.605, for patrolling, in accordance with 49 C.F.R. § 192.721.
9. Establish written procedures, as required by 49 C.F.R. § 192.605, for leak surveys, in accordance with 49 C.F.R. § 192.723.
10. Establish written procedures, as required by 49 C.F.R. § 192.605, for test requirements for reinstating service lines, in accordance with 49 C.F.R. § 192.725.
11. Establish written procedures, as required by 49 C.F.R. § 192.605, for abandonment or activation of facilities, in accordance with 49 C.F.R. § 192.727.
12. Establish written procedures, as required by 49 C.F.R. § 192.605, for inspection and testing of pressure limiting and regulating stations, in accordance with 49 C.F.R. §192.739.
13. Establish written procedures, as required by 49 C.F.R. § 192.605, for valve maintenance, in accordance with 49 C.F.R. §192.747.
14. Establish written procedures, as required by 49 C.F.R. § 192.605, for steps to be taken to minimize the danger of accidental ignition of gas, in accordance with 49 C.F.R. §192.751.
15. Prepare a manual of written procedures for conducting operations and maintenance activities as required by 49 C.F.R. § 192.605.
16. Establish written procedures to prevent damage to an operator's pipeline by the operator's excavation activities, as required by 49 C.F.R. § 192.614.
17. Establish written procedures to minimize the hazard resulting from a gas pipeline emergency, as required by 49 C.F.R. § 192.615.
18. Establish a written anti-drug plan which meets the requirements of 49 C.F.R. Parts 40 & 199, as required by 49 C.F.R. § 199.7(a). Attached for your convenience are copies of OPS' model Anti-Drug, and Alcohol Misuse Prevention plans.
19. Respondent shall complete the above items within 90 days following receipt of this Final Order. The Regional Director may grant an extension of time, upon receipt of a written request stating reasons therefore, for completion of any of the actions required herein.

When appropriate procedures have been prepared, submit to the Director, Western Region, Office of Pipeline Safety, Research and Special Programs Administration, 12600 W. Colfax Avenue, Suite A250, Lakewood, CO 80215-3736

The Notice proposed a compliance order item requiring Respondent to submit U.S. Department of Transportation Form RSPA F 7100.1 for the incident that occurred on the distribution system in Chester, California, January 18, 1993. Respondent has demonstrated corrective action addressing this item by submitting the form on April 14, 1994 as an attachment to Respondent's response. No further submission is required.

The Notice did not propose any penalty with respect to Respondent's failure to notify the DOT of the incident which occurred at Respondent's facility in Chester, California "at the earliest practicable moment following discovery" as required by 49 C.F.R. §191.5. The Notice did propose a compliance order item requiring Respondent to establish written procedures "as required by 49 C.F.R. §192.603(b)" for telephonic notification of incidents in accordance with 49 C.F.R. §191.5. A review of the applicable regulations, both past and present, reveals that written procedures pertaining to 49 C.F.R. §191.5 are not, in fact, required elements of an Operations and Maintenance Manual, and therefore, the proposed compliance order item has been deleted.

Under 49 U.S.C. §190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The terms and conditions of this Final Order are effective upon receipt.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$25,000 per violation per day, or in referral of the case for judicial enforcement.

Richard B. Felder
Associate Administrator
For Pipeline Safety

Date Issued: 07/31/1997