

JUNE 30, 2014

Mr. Jerry E. Sheridan
President and Chief Executive Officer
AmeriGas Partners, LP
460 North Gulph Road
Valley Forge, PA 19482

Re: CPF No. 2-2013-0021

Dear Mr. Sheridan:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$24,950, and specifies actions that need to be taken by AmeriGas Propane, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order have been completed, as determined by the Director, Southern Region, this enforcement action will be 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. Wayne T. Lemoi, Director, Southern Region, OPS
Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, OPS
Mr. Paul Grady, VP and COO, AmeriGas Propane, LP
Mr. Edward Boden, Safety and Technology Engineer, AmeriGas Propane, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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In the Matter of)	
)	
AmeriGas Propane, LP,)	CPF No. 2-2013-0021
)	
Respondent.)	
)	

FINAL ORDER

On April 8-12, 2013, 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 facilities and records of AmeriGas Propane, LP (AmeriGas or Respondent), in Broward County, Florida, and Fort Lauderdale, Florida. AmeriGas is a subsidiary of AmeriGas Partners, LP, a publicly traded master limited partnership that distributes propane throughout the United States.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated June 20, 2013, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that AmeriGas had committed various violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$33,700 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face future potential enforcement action.

AmeriGas responded to the Notice by letter dated July 19, 2013 (Response). The company contested one of 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. Part 192, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.723, which states in relevant part:

¹ <http://investors.amerigas.com/investor-relations/ir-home/default.aspx> (last accessed January 17, 2014).

§ 192.723 Distribution systems: Leakage surveys.

(a) Each operator of a distribution system shall conduct periodic leakage surveys in accordance with this section.

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:

(1)

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, a leakage survey must be conducted at least once every 3 calendar years at intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 192.723 by failing to conduct a leakage survey with leak detector equipment as frequently as necessary, but at least once every five calendar years at intervals not exceeding 63 months. Specifically, the Notice alleged that, during the inspection, AmeriGas failed to provide documentation that it conducted a leakage survey of the Pleasant Ridge distribution system in Deerfield Beach, FL from 2007-2012.

Respondent did not contest this allegation of violation.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.723 by failing to conduct a leakage survey with leak detector equipment as frequently as necessary, but at least once every five calendar years at intervals not exceeding 63 months.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.739, which states in relevant part:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—

(1) In good mechanical condition;

(2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and

(4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.739 by failing to inspect and test

each pressure regulating station and its equipment at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that AmeriGas failed to provide documentation to show it had inspected four LPG distribution systems in calendar year 2012.²

In its Response, AmeriGas argued that, while § 192.739 requires testing, NFPA 58/59 simply requires that the regulators cited in the Notice be approved according to *ANSI/UL 144, Standard for LP Gas Regulators*. Because § 192.11(c) states that “in the event of a conflict between this part and ANSI/NFPA 58 and 59 [the latter prevails],” AmeriGas argued that it was not required to inspect these regulators.

The Merriam-Webster dictionary defines the word “conflict”³ as “a competitive or opposing action of incompatibles.” In deciding whether the § 192.739 testing requirement is “incompatible” with NFPA 58/59, I have considered whether the regulation and the standard are incapable of reconciliation. Since nothing in either text would impede AmeriGas from complying with both the standard and the regulation at the same time, I find that there is no conflict between § 192.739 and NFPA 58/59 regarding the inspection and testing of pressure regulating stations.

In its defense, AmeriGas cited a PHMSA Final Order that withdrew a similar allegation of violation and regarded a “conflict” between Part 192 and NFPA 58/59 as a circumstance where the former required testing and the latter did not. However, in a more recent case involving AmeriGas, PHMSA held that an operator was required to comply with both NFPA 58/59 and Part 192 when the operator was capable of complying with both requirements.⁴ Insofar as the Respondent has failed to claim either “impossibility” or “impracticability,” I find that AmeriGas was required to conduct these inspections pursuant to § 192.739.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.739 by failing to inspect and test each pressure regulating station and its equipment at intervals not exceeding 15 months, but at least once each calendar year.

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

² AmeriGas failed to provide documentation that the following distribution systems were subjected to inspection and testing: (1) Brentwood #1 – 8, 11-19; Pleasant Ridge, Deerfield Beach; Madison Apartments, Fort Lauderdale; and Sunshine Plaza, Tamarac. Pipeline Safety Violation Report (Violation Report), June 20, 2013 (on file with PHMSA), at 11.

³ <http://www.merriam-webster.com/dictionary/conflict>.

⁴ An operator may only claim a conflict between the requirements of NFPA 58 and Part 192 where “the possibility of conflict would arise if it were impossible or impracticable to comply with both.” *In the Matter of AmeriGas Propane, L.P.*, Final Order C.P.F. No. 3-2006-0004 (April 15, 2009) (available at www.phmsa.dot.gov/pipeline/enforcement).

ASSESSMENT OF PENALTY

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.⁵ 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; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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. The Notice proposed a total civil penalty of \$33,700 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$16,200 for Respondent's violation of 49 C.F.R. § 192.723, for failing to conduct a leakage survey with leak detector equipment as frequently as necessary, but at least once every five calendar years at intervals not exceeding 63 months. AmeriGas neither contested the allegation nor presented any evidence or argument justifying a modification of the proposed penalty. Leakage surveys provide invaluable information to operators about their systems, and if conducted regularly, can reduce product releases and other negative consequences. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,200 for violation of 49 C.F.R. § 192.723.

Item 3: The Notice proposed a civil penalty of \$17,500 for Respondent's violation of 49 C.F.R. § 192.739, for failing to inspect and test each pressure regulating station and its equipment at certain intervals. Above, I rejected AmeriGas' argument that it was not required to conduct these inspections. In considering the proposed penalty, the noncompliance affected a number of LPG distribution systems. In addition, Respondent was assessed a penalty for failure to inspect regulators on April 16, 2009.⁶ The Respondent did not contest the violation at the time and therefore I find it dubious that Respondent relied on the 1998 Final Order in making its decision that it was not required to comply with § 192.739. Nevertheless, since the case cited by the Respondent is relevant to the situation here, I find that the Respondent had some reasoned basis for failing to comply with the regulation and warrants a penalty reduction. Notwithstanding this penalty reduction, the holding of the 1998 Final Order was erroneous when made, and therefore should not be used as a future basis for avoiding compliance with Part 192.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$8,750 for violation of 49 C.F.R. § 192.739.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$24,950**.

⁵ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

⁶ *In the Matter of AmeriGas Propane* (AmeriGas), Final Order, C.P.F. No. 3-2006-0004 (Aug. 9, 2009) (available at www.phmsa.dot.gov/pipeline/enforcement).

Payment of the civil penalty must be made within 20 days of service. 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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$24,950 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2 and 3 in the Notice for violations of 49 C.F.R. §§ 192.723 and 192.739, 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.723 (**Item 2**), Respondent must conduct a leakage survey with leak detector equipment of its Pleasant Ridge LPG distribution system in Deerfield Beach, FL, and prepare records to document the leakage survey within 90 days after receipt of this Final Order.
2. With respect to the violation of § 192.739 (**Item 3**), Respondent must inspect and test each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment in accordance with § 192.739, and prepare records to document the tests and inspections within 90 days after receipt of this Final Order.
3. PHMSA requests that AmeriGas maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Southern Region. The costs should be reported in two categories: (1) total costs associated with preparation and revision of plans, procedures, studies, and analyses; and (2) total cost associated with replacements, additions, and other changes to the pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1 and 4, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 192.457 (**Item 1**) — Respondent's alleged failure to provide records to demonstrate that approximately two miles of 0.75-1 inch diameter coated steel pipeline was cathodically protected or that these lines had no areas of active corrosion; and

49 C.F.R. § 192.747 (**Item 4**) — Respondent's alleged failure to document that it checked and serviced each valve which might be necessary for the safe operation of its distribution system, at intervals not exceeding 15 months but at least once each calendar year.

AmeriGas presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued