

December 11, 2015

Mr. Jerry E. Sheridan
President and Chief Executive Officer
AmeriGas Propane, LP
460 North Gulph Road
King of Prussia, PA 19406

Re: CPF No. 2-2015-0003

Dear Mr. Sheridan:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$43,200, 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 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: Director, Southern Region, OPS
Mr. Chris Wagner, Director, Safety, Training, and Compliance, AmeriGas Propane, LP
Ms. Colleen Lynch, Associate Counsel, 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**

In the Matter of)	
)	
AmeriGas Propane, LP, a subsidiary of)	
)	
AmeriGas Propane, Inc.)	CPF No. 2-2015-0003
)	
Respondent.)	
)	

FINAL ORDER

On May 19-23, 2014, October 9-10, 2014, and March 19, 2015, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the records of AmeriGas Propane, LP (AmeriGas or Respondent) in its office in Orlando, Florida, as well as its liquefied petroleum gas (LPG) pipeline systems in Orange and Seminole Counties, Florida. Respondent, a subsidiary of AmeriGas Propane, Inc.,¹ owns and operates 6.5 miles of pipelines across 13 regulated LPG systems in Orange County, Florida and Seminole County, Florida.²

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated April 30, 2015, a Notice of Probable Violation, Proposed Civil Penalty, 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 violated 49 C.F.R. §§ 192.614 and 192.723, and proposed assessing a civil penalty of \$43,200 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also stated the warning items required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

Respondent failed to respond in writing within 30 days of receipt of service of the Notice. Under 49 C.F.R. § 190.209(c), such failure to respond constitutes a waiver of AmeriGas' right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this

¹ *AmeriGas – Overview*, <http://investors.amerigas.com/investor-relations/ir-home/default.aspx> (last visited November 2, 2015).

² *Id.*; see also Pipeline Safety Violation Report (Violation Report) (April 30, 2015) (on file with PHMSA), at 1.

case, the Notice was mailed to Respondent by certified mail (USPS Article No. 7012-2210-0001-9165-3989) on April 30, 2015 and was received by Respondent on May 4, 2015, as shown by the return receipt on file with PHMSA.³ To date, Respondent has not responded in writing to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.⁴

FINDINGS OF VIOLATION

Respondent did not contest the allegations in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.614(b), which states:

§ 192.614 Damage prevention program.

(a)...

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in one public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of this section, a one-call system is considered a "qualified one-call system" if it meets the requirements of section (b)(1) or (b)(2) of this section.

The Notice alleged Respondent violated 49 C.F.R. § 192.614(b) by not complying with § 192.614(c)(3) and participating in a qualified one-call system. Specifically, § 192.614(b) states an operator must adhere to § 192.614(c)(3) by participating in a qualified one-call system where one is in place. AmeriGas breached § 192.614(b) by not participating in the State of Florida's qualified one-call system – Florida Sunshine 811. Respondent violated this regulation by not registering its Orange and Seminole County, Florida LPG distribution systems with Florida Sunshine 811.

³ United States Postal Service Return Receipt (Return Receipt) (May 4, 2015) (on file with PHMSA), at 1.

⁴ In the Matter of Tampa Pipeline Corporation, Final Order (CPF No. 2-2008-6002] (April 26, 2010), 2010 WL 6531627, (D.O.T.), August 27, 2010; See also, In the Matter of Tampa Bay Pipeline Corporation, Final Order (CPF No. 2-2005-6012 (Dec. 1, 2006), 2008 WL 902910 (D.O.T.), March 31, 2008. PHMSA final orders are generally accessible on the agency's website, available at <http://primis.phmsa.dot.gov/comm/reports/enforce/Actions>.

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. § 192.614(b) by failing to register its Orange and Seminole County, Florida LPG distribution systems with Florida Sunshine 811.

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

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; the Respondent's ability to pay the penalty 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 \$43,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$43,200 for Respondent's violation of 49 C.F.R. § 192.614(b), for failing to register its Orange and Seminole County, Florida LPG distribution systems with Florida Sunshine 811. AmeriGas neither contested the allegation nor presented any evidence or argument justifying a reduction or elimination of the proposed penalty. Further, the failure to register its Orange and Seminole County, Florida LPG distribution systems is a serious violation that could affect the ongoing physical and operational integrity of these systems, as well as possibly lead to adverse consequences to the people and environment surrounding these systems. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$ 43,200 for violation of 49 C.F.R. § § 192.614(b).

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 **\$43,200**.

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.

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.

Failure to pay the \$43,200 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 1 in the Notice for a violation of 49 C.F.R. § 192.614(b). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of 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 ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

With respect to the violation of § 192.614(b) (**Item 1**), Respondent must:

- 1) Ensure that all of its PHMSA regulated systems in the State of Florida are covered by a qualified one-call system;
- 2) Complete the above item and prepare records to document the results within 90 days after the receipt of this Final Order;
- 3) Within 100 days following receipt of this Final Order, AmeriGas must provide to the Director, Office of Pipeline Safety, PHMSA Southern Region, written documentation confirming the Compliance Order Items have been completed. The documentation, at a minimum, must include: a list of systems by district responsible for its operation, the date AmeriGas began operating the system, the date the system was first covered by a qualified one-call system, and verification that each system is actively covered by a qualified one-call system.
- 4) It is requested (not mandated) that AmeriGas maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Southern Region, Pipeline and Hazardous Materials Safety Administration. 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.

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 2 and 3, the Notice alleged probable violations of 49 C.F.R. Part 192.723 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warning(s) were for:

49 C.F.R. § 192.723(b)(1) (**Item 2**) — Respondent's alleged failure to conduct leakage surveys at its Metro West, Avalon, and Oviedo systems at intervals not exceeding 15 months, but at least once each calendar year; and

49 C.F.R. § 192.723(b)(2) (**Item 3**) — Respondent's alleged failure to conduct a leakage survey at its Lake Roper system at least once every five calendar years, but at intervals not exceeding 63 months.

If OPS finds a violation of these regulations in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, 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. § 190.243. 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