

APR 15 2009

Mr. Eugene V. N. Bissell
Chief Executive Officer and President
AmeriGas Propane, L.P.
460 North Gulph Road
King of Prussia, PA 19406

Re: CPF No. 3-2006-0004

Dear Mr. Bissell:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$105,600, and specifies actions that need to be taken by AmeriGas Propane, L.P., 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, Central Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document 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: Ivan Huntoon, Director, Central Region, PHMSA
Jean S. Konowalczyk, Esq., AmeriGas Propane

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0047 7032]

**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, L.P.,)
)

Respondent.)
_____)

CPF No. 3-2006-0004

FINAL ORDER

On August 8-12, 2005, pursuant to 49 U.S.C. § 60117, a representative 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, L.P. (Respondent), in Flint Hill, Missouri. As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 6, 2006, 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 Respondent had committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of **\$105,600**² for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. Finally, the Notice proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 192 and warning Respondent to take appropriate corrective action to address them or be subject to future enforcement action.

Respondent responded to the Notice by letter dated July 26, 2006, and requested a hearing, specifically to discuss the proposed civil penalty amount (Response). By letter dated April 3, 2007, Respondent clarified and expanded the issues it sought to discuss at the hearing (Issues Statement). A hearing via telephone conference was held on April 4, 2007. After the hearing, Respondent provided additional information by letter dated May 3, 2007 (Closing).

JURISDICTION

Before reaching the Notice Items, it is appropriate first to address Respondent's jurisdictional arguments. The Part 192 gas pipeline safety standards apply to pipeline facilities and the

¹ The Notice was originally issued with the CPF No. 3-2006-1014. By letter dated July 20, 2006, OPS notified Respondent that the CPF Number was changed to 3-2006-0004.

² The Notice incorrectly proposed a total civil penalty of \$106,400 for the violations. When the individual penalties set out on page 5 of the Notice are added, the correct total is \$105,600.

transportation of gas, including pipeline systems that transport petroleum gas or petroleum gas/air mixtures to ten (10) or more customers.³ The Notice addressed three of Respondent's propane gas distribution systems in the Flint Hill, Missouri area: Green Acres, Daniel Homesites (Daniel), and Pine Tree Mobil Manor (Pine Tree). Each of these systems is fed by propane storage tanks that are periodically refilled by tank trucks. Propane flows from the storage tanks through a combination of buried mains and service lines to individual customers. Green Acres had approximately 77 customers at the time of the 2005 inspection and is the largest of the three systems. Respondent has not raised any jurisdictional issues regarding Green Acres.

Subsequent to the 2005 OPS inspection, AmeriGas argued that the Daniel and Pine Tree systems are not subject to Part 192 because these systems each had fewer than ten customers at the time of the inspection and during the 2002-2005 time period covered by the Notice. On that basis, Respondent argues, the penalties proposed for Items 1(a), 5(b), 7(a), 7(b) and 8 should be reduced or eliminated, but has provided differing accounts as to whether and when the Daniel and Pine Tree systems became non-jurisdictional to PHMSA. For the reasons explained below, I find that these two systems were subject to PHMSA jurisdiction during the relevant time periods.

During the 2005 inspection, AmeriGas personnel indicated to the OPS inspector that the Daniel and Pine Tree systems had 13 and 11 customers, respectively. Afterwards, in a September 15, 2005 letter sent by email, AmeriGas stated that the Daniel system had 12 customers and that the Pine Tree system had been removed from service but did not say when that occurred. An attachment to the letter, entitled "Action Plan for OPS Systems in Missouri," stated that the Pine Tree system would be "abandoned" by September 1, 2005. The attachment is inconclusive on the jurisdictional status of Pine Tree, either prior to or at the time of the inspection.

Later, in its April 3, 2007 Issues Statement, AmeriGas claimed that the Pine Tree and Daniel systems had become non-jurisdictional in 2001 and early 2003, respectively, but provided no supporting evidence. During the hearing, the Presiding Official questioned AmeriGas about the jurisdictional status of the systems. Respondent expressed uncertainty about what systems were non-jurisdictional and when they may have become so. The Presiding Official provided Respondent with an opportunity to clarify its position and provide supporting evidence in its Closing.

In its Closing, Respondent provided yet another account of when the two systems became non-jurisdictional. The company contended that the Pine Tree and Daniel systems became non-jurisdictional in February 2005 and on July 7, 2004, respectively. Respondent provided documents in support of its position but they do not support Respondent's claim that the Daniel and Pine Tree systems were non-jurisdictional at the time of the inspection and during the 2002-2005 time period covered by the Notice.

Respondent provided two documents relating to the Daniel system. The first is a faded service order, dated July 7, 2004, that appears to relate to work performed pursuant to OPS requirements. The document includes a handwritten note that states "8 meter[s] on system." This document, however, is inconclusive because it merely states that there are eight meters but also suggests that AmeriGas nonetheless believed the system to be jurisdictional. Moreover,

³ 49 C.F.R. § 192.1(a)(5)(i).

Respondent's September 15, 2005 post-inspection letter to OPS clearly stated that the Daniel system had 13 customers. The second document is a list of meters, dated April 23, 2007, but this list is irrelevant because it post-dates the inspection by almost two years. Based upon a review of these two documents, the company's own statements during the inspection, and its September 15, 2005 letter to OPS, I find that the evidence shows that the Daniel system was subject to Part 192 at the time of the inspection and during the 2002-2005 time period at issue in the Notice.

Regarding the Pine Tree system, Respondent's personnel stated during the 2005 inspection that the Pine Tree system had 11 active customers. After the hearing, Respondent provided faded service orders with handwritten notes that seemed to suggest that Pine Tree system meters were removed on July 13, 2005. These documents are inconclusive and inconsistent with Respondent's statements made during the inspection. Even if, *arguendo*, the Pine Tree system ceased being jurisdictional on July 13, 2005, it is clear that the system was jurisdictional during the 2002-2005 time period at issue in the Notice. Accordingly, on the basis of Respondent's statements made during the inspection and the inconclusive nature of the evidence provided after the hearing, I find that the Pine Tree system was subject to Part 192 jurisdiction at the time of the inspection and during the 2002-2005 time period at issue in the Notice.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1a: The Notice alleged that Respondent violated 49 C.F.R. § 192.465, which states:

§ 192.465 External corrosion control: Monitoring.

(a) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463...

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to conduct cathodic protection (CP) surveys of the Daniel system for the years 2002 and 2004, and the Green Acres system in 2002. The Notice also noted that follow-up field evaluations of both systems at valve locations produced marginal CP readings. Aside from the jurisdictional issues already discussed, Respondent submitted no evidence regarding the Daniel system. Regarding the Green Acres system, at the hearing Respondent indicated it was not contesting the allegation that it failed to conduct a CP survey of the system in 2002. Therefore, I find that Respondent violated § 192.465(a) by failing to conduct annual CP surveys of the Daniel system in 2002 and 2004, and the Green Acres system in 2002.

Item 1b: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(d), as quoted above, by failing to take prompt remedial action to correct inadequate CP on the Green Acres system. Specifically, the Notice alleged that Respondent failed to correct inadequate CP at the Highway C and Green Acres Road test location after inspections in 2003 and 2005 produced low CP readings of -0.740v and -0.720v, respectively. These readings fell short of the minimum -0.850v

CP levels required under the regulations.⁴ In its Closing, AmeriGas argued that the 2003 and 2005 records showed that the readings for the “Highway C” test station were higher than those alleged in the Notice and within an acceptable range. However, it appears that Respondent was referring to a different Highway C test station other than the one at the intersection with Green Acres Road. The records provided by Respondent do not show that the readings at the specific test station cited in the Notice were acceptable and in fact confirm the low readings.⁵

Accordingly, I find that Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action to correct deficiencies indicated by the 2003 and 2005 CP surveys at the Highway C and Green Acres Road test station.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.469, which states:

§ 192.469 External corrosion control: Test stations.

Each pipeline under cathodic protection required by this subpart must have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

The Notice alleged that Respondent violated 49 C.F.R. § 192.469 by failing to provide adequate test stations or other contact points on the Green Acres system for electrical measurement to determine the adequacy of CP. Specifically, the Notice alleged that during the inspection, OPS only observed three CP test stations on the system. The Green Acres system is the largest of the three systems at issue in the Notice, serving approximately 77 meters. The Notice also alleged that OPS had not been able to obtain any CP test station readings on the Daniel system. OPS therefore alleged that there were not enough test stations to adequately monitor either of these systems. Test stations only provide an indication of the adequacy of CP in the vicinity of the station. Unless test stations are located throughout a pipeline system, an operator cannot determine whether all parts of its system are adequately protected.

In its Closing, Respondent did not contest the allegation that it had inadequate CP test stations on the Green Acres System and explained that since the date of the inspection, it had added several test stations. Regarding the Daniel system, aside from the jurisdictional arguments already discussed, Respondent submitted no evidence to show that it had sufficient test stations.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.469 by failing to provide an adequate number of test stations or other contact points for electrical measurement on the Green Acres and Daniel systems to determine the adequacy of CP.

Item 5a: The Notice alleged that Respondent violated 49 C.F.R. § 192.605, which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

⁴ Appendix D to Part 192 – Criteria for Cathodic Protection and Determination of Measurements.

⁵ Closing, Ex. 2. Respondent’s records for 2003 and 2005 confirm low CP readings for the Highway C and Green Acres Road test station.

(a) Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response...

The Notice further alleged that Respondent violated 49 C.F.R. § 192.615(c), which states:

§ 192.615 Emergency plans.

(a)...

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

(1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

(2) Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;

(3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and

(4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

The Notice alleged that Respondent violated § 192.605(a) by failing to follow its manual of written procedures for emergency plans. Respondent is required to develop emergency plan procedures in accordance with § 192.615 and to include such procedures in the Operations and Maintenance (O&M) manual required by § 192.605(a).⁶ Specifically, the Notice alleged that Respondent had failed to establish a liaison with local fire, police and public officials. The Notice alleged that Respondent could provide no documentation that it had conducted such liaison with regard to any of the three systems for the years 2002-2004.

Respondent did not contest this allegation. Accordingly, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its manual of written procedures for emergency plans.

Item 5b: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), as quoted above, by failing to follow its own procedures for conducting monthly tests to ensure that the gas in its system contained the proper concentration of odorant. The methodology in Respondent's procedure for confirming odorization is also set forth in § 192.625(f), which states:

§ 192.625 Odorization of gas.

(a)...

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by-

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic "sniff" tests at the extremities of the system to confirm that the gas contains odorant.

⁶ 49 C.F.R. § 192.605(e).

Specifically, the Notice alleged that AmeriGas violated § 192.605(a) by failing to follow its own procedures for conducting monthly “sniff” tests on each of its systems, as follows:

- Pine Tree: Failed to conduct tests for five months in 2002
- Daniel: Failed to conduct tests for nine months in 2003 and one month in 2004
- Green Acres: Failed to conduct tests for three months in 2002 and one month in 2003.

In its Closing, AmeriGas admitted that it did not follow its own O&M procedures for ensuring that its propane contained the proper concentration of odorant. Respondent’s procedures required that AmeriGas personnel verify the presence of odorant by two methods: (1) when gas is delivered to the storage tank or service is performed on the system; and (2) on a monthly basis at several test points along the pipeline. Respondent’s procedures specifically stated that the verification of odorant at delivery “does not take away the responsibility of the District to verify the presence of odorant each month.”⁷

Although Respondent conceded that it failed to follow its own odorant procedures, it contested the allegation on two grounds. First, in its Issues Statement and Closing, Respondent argued that “PHMSA has not provided any citation to the regulation that it alleges requires that the operator’s procedures be followed even if the procedure is not required under the Pipeline Safety Regulations.”⁸ This is incorrect. Item 5 of the Notice cited § 192.605(a), which provides that “each operator shall prepare *and follow* for each pipeline, a manual of written procedures for conducting operations and maintenance activities and emergency response.” [Emphasis added]. With regard to what procedures must be followed, the regulation draws no distinction among components of a procedural manual specifically required by Part 192, or other procedures an operator has included in its manual. Respondent must follow all written procedures contained in its manual for conducting operations and maintenance activities and for emergency response.

Respondent further argued that the requirements of § 192.625(f) conflict with the *National Fire Protection Association 58: Liquefied Petroleum Gas Code (NFPA 58)* and that § 192.11(c) provides that, in the event of a conflict with NFPA 58, the latter prevails.⁹ I find this argument irrelevant since Respondent included two methods of odorization verification in its O&M manual, and admittedly failed to follow them. The company cannot violate its own procedures and then claim that they conflict with NFPA 58.

Furthermore, I see no conflict between the requirements of NFPA 58 and § 192.625(f). Section 4.2.3 of NFPA 58 requires operators to test for the presence of odorant by sniff-testing when the gas is delivered to the bulk plant. Section 192.625(f)(1) is consistent with this requirement, insofar as it permits written verification from the gas delivery source (such as a documented

⁷ OPS Violation Report, attachments for Item 5b, *AmeriGas Odorization Procedures*, § 5.20. OPS collected Respondent’s procedures at the time of the inspection.

⁸ Closing at 3.

⁹ 49 C.F.R. § 192.11(c) states: “In the event of a conflict between this [Part 192] and ANSI/NFPA 58 and 59, ANSI/NFPA 58 and 59 prevail.”

sniff-test by the driver delivering the gas to the bulk plant) that odorant has been added. The fact that § 192.625(f)(2) also permits an operator to meet the testing requirement by conducting sniff tests at the extremities of the system does not place the regulation in conflict with NFPA 58; the regulation simply permits an additional means of achieving compliance. The possibility of conflict would only arise if it were impossible or impracticable to comply with both.

In its Closing, Respondent also cited a training manual for Liquefied Petroleum (LP) gas systems that is shown on the PHMSA website.¹⁰ Respondent argues, without elaboration, that the cited page of the manual “clearly demonstrates that NFPA 58, rather than Part 192 applies to propane odorization testing.” This argument is also irrelevant to the allegation of violation. Respondent chose to include two methods of odorization verification in its O&M manual and admittedly failed to follow them. The mere reference to NFPA 58 in a training manual does not prove that the requirements of Part 192 do not also apply.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.605(a), by failing to follow its own procedures for conducting monthly sniff tests for the three systems during the time periods described above, to ensure the proper concentration of odorant.

Item 7a: The Notice alleged that Respondent violated 49 C.F.R. § 192.739, which states:

§ 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 conduct the following regulator inspections:

- Daniel: Failed to conduct inspections of one of two regulators in 2002
- Green Acres: Failed to conduct inspections of many regulators in 2002. (Respondent inspected only 5 out of more than 30 regulators).

In its Closing, Respondent did not contest this allegation. Accordingly, I find that Respondent violated 49 C.F.R. § 192.739 by failing to conduct regulator inspections at the locations and in the years described above.

¹⁰ Closing Ex 4: “Training Guide for Operators of Small LP Gas Systems,” at II-3.

Item 7b: The Notice alleged that Respondent violated 49 C.F.R. § 192.739, as quoted above, by failing to test the external relief devices on the Pine Tree and Green Acres systems from 2002 to 2004. Respondent contested this allegation in its Issues Statement and Closing, arguing that it was not required to install or test relief devices because its systems were subject to § 192.197(a) and not § 192.739.

Section 192.197 is entitled “Control of the pressure of gas *delivered from* high-pressure distribution systems.” [Emphasis added]. Section 192.197 is concerned with controlling pressure on that portion of a gas pipeline system that flows through service lines and regulators to residential and commercial customers. The pressure relief devices at issue in the Notice, on the contrary, are designed to control pressure on that portion of a gas distribution system that is upstream of customer service lines and regulators. Section 192.197 does not apply to such upstream relief devices that control pressure on the distribution system itself. Therefore, I find Respondent’s argument unpersuasive.

In its Issues Statement and Closing, Respondent also cited a 2001 Final Order issued by this agency and argued that such order withdrew an allegation on “similar grounds.”¹¹ Respondent did not indicate what it believed was similar between the allegation in the Notice and the cited case. The cited case concerned different facts and circumstances. The 2001 Final Order withdrew an allegation that AmeriGas had violated § 192.743 and included a discussion of the UL 144 standard for low-pressure gas regulators. Neither § 192.743 nor UL 144 is at issue in Item 7b. Absent additional argument or explanation, I find Respondent’s reference to the 2001 Final Order inapposite.

Accordingly, upon review of all of the evidence and arguments of the parties, I find that Respondent violated 49 C.F.R. § 192.739(a) by failing to test the relief devices on the Pine Tree and Green Acres systems from 2002 to 2004.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 192.743(a), which states:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected. Except as provided in § 192.739(b), the capacity must be consistent with the pressure limits of § 192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

The Notice alleged that Respondent violated 49 C.F.R. § 192.743(a) by failing to annually check the pressure relief devices on the Green Acres and Pine Tree systems for sufficient capacity to protect the facilities to which they were connected. Specifically, the Notice alleged that the external relief devices at these locations had never been checked for capacity. In its Issues Statement, Respondent argued that no such capacity review was required because § 192.197,

¹¹ Closing at 6, citing *In the Matter of AmeriGas Partners, L.P.*, Final Order, CPF No. 38002, later re-numbered as 3-1998-0002, (December 31, 2001).

rather than § 192.743, applied to these devices. I find this argument unpersuasive for the same reasons as those set forth in Item 7b above.

AmeriGas also argued that it should not be cited for violating both § 192.739 (for failure to conduct annual testing of relief devices) and § 192.743 (for failure to conduct annual capacity reviews). Respondent argued that § 192.743 permitted it to either conduct tests or review capacity calculations, but did not require both.¹²

Respondent's argument is not supported by either regulation. Section 192.743 requires a determination of proper relief device capacity. Many kinds of system changes can affect relief capacity needs, including changes in orifice sizes, vents, piping, etc. Section 192.739 requires annual inspections and tests to determine, among other things, that the relief devices are "adequate from the standpoint of capacity and reliability of operation for the service in which [they] are employed." Whereas § 192.743 requires an assessment of what the proper relief capacity should be, § 192.739 requires an actual test of the relief device against its determined capacity. Though similar, these regulations have different purposes and requirements. PHMSA has cited other operators for violations of both regulations on the same relief device.¹³

Accordingly, I find that Respondent violated 49 C.F.R. § 192.743(a) by failing to annually check the pressure relief devices on the Green Acres and Pine Tree systems for sufficient capacity to protect the facilities to which they are connected.

ASSESSMENT OF PENALTY

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: 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 \$105,600 for the violations.

Notice Item 1a proposed a civil penalty of \$15,000 for violations of 49 C.F.R. § 192.465(a), for Respondent's failure to conduct CP surveys of the Daniel system for the years 2002 and 2004, and the Green Acres system in 2002. Adequate CP is an essential part of maintaining the integrity of pipeline systems. In this case, both of AmeriGas' systems lay in close proximity to homes. Without adequate CP, corrosion could occur and result in a leak and the migration of flammable propane into homes. By failing to conduct tests to determine whether CP was

¹² Closing, at 6.

¹³ See In the Matter of Fairbanks Natural Gas LLC, Final Order, at 2, CPF No. 5-2000-0006 (Mar. 15, 2004); and, more recently, In the Matter of CenterPoint Energy – Mississippi River Transmission Co., Final Order, at 1-2, CPF No. 3-2007-1014 (Oct. 28, 2008). Although issued after the Notice in the present case, the CenterPoint case demonstrates that PHMSA continues to take the position that §§ 192.739 and 192.743 impose separate requirements and support separate violations for the same relief device.

adequate, Respondent increased the risk of harm to the public, property and the environment. Respondent has presented no arguments or information that would warrant a reduction or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$15,000** for violating 49 C.F.R. § 192.465(a).

Notice Item 1b proposed a civil penalty of \$8,000 for violation of 49 C.F.R. § 192.465(d), for Respondent's failure to take prompt remedial action to correct inadequate CP on one particular portion of the Green Acres system. Without adequate CP, corrosion could occur and result in a leak and the migration of flammable propane into homes. By failing to correct known inadequate CP levels, Respondent increased the risk of harm to the public, property and the environment. Respondent has presented no arguments or information that would warrant a reduction or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$8,000** for violating 49 C.F.R. § 192.465(d).

Notice Item 5b proposed a civil penalty of \$15,000 for violation of 49 C.F.R. § 192.605(a), for Respondent's failure to follow its own procedures for conducting monthly "sniff tests" on each of its systems. Respondent's failure to follow its own written procedures jeopardized public safety, property, and the environment. Adherence by operators to their own written safety procedures has long been a core requirement of the Pipeline Safety Regulations and is intended to prevent mistakes that could lead to accidents. Respondent admitted that it did not follow its own O&M manual. Having rejected Respondent's other arguments, as discussed in the Findings of Violation, and in the absence of any basis for mitigation or elimination of the civil penalty for this item, I assess Respondent a civil penalty of **\$15,000** for violating 49 C.F.R. § 192.605(a).

Notice Item 7a proposed a civil penalty of \$15,000 for violation of 49 C.F.R. § 192.739, for Respondent's failure to conduct inspections of regulators on its Daniel and Green Acres systems in 2002. Respondent did not submit any evidence that indicated it had conducted the required inspections. Regulator inspection is important to pipeline safety because it can help to identify operational problems with these important overpressure protection devices. Respondent's failure to conduct regulator inspection increased the risk to the public, property and the environment. Respondent has presented no arguments or information that would warrant a reduction or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$15,000** for violating 49 C.F.R. § 192.739.

Notice Item 7b proposed a civil penalty of \$26,300 for violation of 49 C.F.R. § 192.739, for Respondent's failure to test the external relief devices on the Pine Tree and Green Acres systems from 2002 to 2004. External relief devices help to prevent overpressure of gas pipeline systems. In this case, Respondent's failure to conduct annual tests of these devices increased risks to the public, property and the environment. Respondent has presented no arguments or information that would warrant a reduction or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$26,300** for violating 49 C.F.R. § 192.739.

Notice Item 8 proposed a civil penalty of \$26,300 for violation of 49 C.F.R. § 192.743, for Respondent's failure to annually check the pressure relief devices on the Green Acres and Pine

Tree systems for sufficient capacity to protect the facilities to which they are connected. Respondent failed to conduct the annual review of relief device capacity when it failed to inspect the relief devices or perform capacity calculations. Such review is necessary to determine whether the devices have sufficient relief capacity to protect the facilities on which they are installed. Respondent argued that this penalty was duplicative of the penalty associated with Item 7b. I found that these two violations were not duplicative, for the reasons discussed more fully above; therefore, neither are the penalties. Respondent has presented no arguments or information that would warrant a reduction or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$26,300** for violating 49 C.F.R. § 192.739.

Accordingly, having reviewed the record and considered the assessment criteria for all the violations set forth above, I assess Respondent a total civil penalty of **\$105,600**. Respondent has presented no information that payment of this penalty would adversely affect its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the **\$105,600** 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.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to **Items 2 and 5a** in the Notice for violations of 49 C.F.R. §§ 192.469 and 192.605(a), 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.

Respondent must:

1. With regard to **Notice Item 2**, pertaining to the cathodic protection (CP) test stations in Green Acres, perform a comprehensive review of the Green Acres CP system that includes:
 - a. Confirming what materials are used for the main and services, and ensuring that the services, if they are copper, are insulated from the main. This work should include field excavations in various parts of the system;

- b. Addition of new test points throughout the system to ensure adequate cathodic protection monitoring; and
 - c. Taking remedial actions to correct any deficiencies found during this evaluation, including, but not limited to, replacement of corroded pipe, addition or replacement of anodes, and re-coating;
2. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Central Region, PHMSA. Costs shall 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; and
 3. Within 60 days of receipt of this Final Order, submit a proposed time schedule to accomplish the objectives specified in paragraph 1 to the Director, Central Region, PHMSA.
 4. Submit documentation of procedures, costs and evidence of actions taken to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Suite 462, Kansas City, MO 64106-2641. Please refer to CPF No. 3-2006-0004 on any correspondence or communication in these matters.

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

The Director has indicated that Respondent has taken the following actions to address **Item 5a of the Notice**, pertaining to Respondent's failure to follow its manual of written procedures for liaison with fire and police. The Proposed Compliance Order for this Item proposed that Respondent identify the emergency responders that would respond to the facilities at Green Acres in the event of an emergency and create a liaison with each individual fire and police department. In its Closing, AmeriGas indicated that since the inspection, it had developed and maintained liaisons with local fire and police officials and had updated its manual of written procedures accordingly. AmeriGas has also submitted documents showing that it has developed relationships with the Lincoln Fire Marshal, Augusta Community Fire Department, and the St. Charles County Fire Academy, and has provided training to two members of the O'Fallon Fire and Police Department (Lincoln County). Accordingly, since compliance has been achieved with respect to this violation, the compliance terms are not included in this Order.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 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 3, 4 and 6**, 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. § 192.491(c) (Notice Item 3) – Respondent’s alleged failure to document the 2004 CP survey for the Green Acres distribution system. Although Respondent’s OPS maintenance chart and service orders indicated that the survey was done on July 11, 2004, Respondent provided no records of the actual CP survey. At the hearing, Respondent did not contest the warning item. In its Closing, Respondent provided additional records for CP surveys of Green Acres, none of which detailed a July 11, 2004, CP survey;

49 C.F.R. §§ 192.603 and 192.605(b)(8) (Notice Item 4) – Respondent’s alleged failure to provide records indicating that it was evaluating its personnel to determine the adequacy of the company’s procedures. Furthermore, the warning stated that although Respondent’s personnel reviewed the company’s O&M manual annually at the safety meetings, Respondent had not provided any evidence that it was evaluating its operating personnel and incorporating any input they may have had. In its Closing, Respondent made a statement that it had done so but again provided no evidence; and

49 C.F.R. § 192.707(2) (Notice Item 6) – Respondent’s alleged failure to have the correct telephone area code listed on its line markers. The area code listed on Respondent’s line markers at the time of inspection was not operational. In its Closing, Respondent provided pictures of line markers with the updated area code.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 192.491(c) (Notice Item 3), 49 C.F.R. § 192.603 (Notice Item 4), and 49 C.F.R. § 192.707(2) (Notice Item 6) have occurred and Respondent is hereby advised to correct such conditions, if it has not done so already. In the event that PHMSA finds a violation for 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 received within 20 days of Respondent’s receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued