

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

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

October 20, 2011

Mr. Anthony J. Falbo  
Vice President / General Manager  
Fortistar Company / Gas Recovery Systems, LLC  
5087 Junction Road  
Lockport, New York 14094

**CPF 3-2011-1015**

Dear Mr. Falbo:

On June 7-8, 2011, a representative of the Ohio Public Utilities Commission (OH-PUC) acting as an inter-state agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your records and facilities for Gas Recovery Systems, LLC in Toledo, OH.

As a result of the inspection, it appears that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The item inspected and the probable violation is:

**1. §192.616 Public Awareness**

**(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).**

**(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.**

**(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.**

**(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:**

- (1) Use of a one-call notification system prior to excavation and other damage prevention activities;**
- (2) Possible hazards associated with unintended releases from a gas pipeline facility;**
- (3) Physical indications that such a release may have occurred;**
- (4) Steps that should be taken for public safety in the event of a gas pipeline release; and**
- (5) Procedures for reporting such an event.**

**(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.**

**(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.**

**(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.**

**(h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by June 13, 2008. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.**

**(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.**

Gas Recovery Systems LLC (GRS) did not develop and implement a written continuing public education program as required by §192.616 that followed the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162.

GRS was required to have a public awareness plan by June 20, 2006. As of the standard inspection in June 2011, there was no plan and no records showing the identification of stakeholders, the implementation of required baseline measures, the annual implementation review and the four year effectiveness evaluation of the plan. GRS did not provide the required notifications to the four stakeholder audiences within the pipeline facilities to inform them of the characteristics and hazards of landfill gas. Additionally, there was no notification and education of the public and appropriate government organizations on how to recognize and react to possible pipeline incidents.

#### Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation and has recommended that you be preliminarily assessed a civil penalty of \$27,800.

#### Proposed Compliance Order

With respect to item one pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Gas Recovery Systems, LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

#### 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). 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.

In your correspondence on this matter, please refer to **CPF 3-2011-1015** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

David Barrett  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration

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

## **PROPOSED COMPLIANCE ORDER**

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Gas Recovery Systems, LLC a Compliance Order incorporating the following remedial requirements to ensure the compliance of Gas Recovery Systems, LLC with the pipeline safety regulations:

1. In regard to Item Number One of the Notice pertaining to the Public Awareness Plan, Gas Recovery Systems, LLC must develop and implement a Public Awareness Plan in accordance to §192.616.
2. The Public Awareness Plan must be completed and submitted to the Central Region Director and the Pipeline Safety Program Manager of the Ohio Public Utilities Commission within 30 days of the receipt of the Final Order. Additionally, the Plan must be implemented immediately upon completion. Gas Recovery Systems, LLC will submit quarterly reports to the Central Region Director and the Pipeline Safety Program Manager of the Ohio Public Utilities Commission detailing the progress of the implementation for a period of 365 days after the implementation of the program.
3. It is requested (not mandated) that Gas Recovery Systems, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to David Barrett, Director, Central 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.