

## FORTISTAR Methane Group

Gas Recovery Systems, LLC

10611 West Five Mile Road ♦ Northville, Michigan 48167

November 17, 2011

David Barrett  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462  
Kansas City, MO 64106-2641

Reference: CPF 3-2011-1015  
Vienna Junction Plant, 6505 Hagman Road, Erie, Michigan 48133

Dear Mr. Barrett:

We are in receipt of your letter dated October 20, 2011 in regard to the above referenced facility. The Pipeline and Hazardous Materials Safety Administration (PHMSA) found the Vienna Junction facility in probable violation of certain sections of CFR Title 49. Specifically, the letter noted that Gas Recovery Systems LLC (GRS) did not develop and implement a written continuing public education program that was supposed to be in place by June 20, 2006. The letter further stated that no plan or records were found regarding this Public Awareness Program (PAP) during the June 2011 inspection. The letter contained a proposed Civil Penalty of \$27,800 and a proposed Compliance Order.

GRS requests your consideration of the following:

- The facility has undergone changes in management and currently has new Operations (Director and Regional Manager) and Health and Safety (Vice President, H&S Analyst) staff.
- Current management was under the impression that the entire safety program required and applicable to the GRS landfill gas pipeline is handled by our 3<sup>rd</sup> party vendor, UTI.
- UTI did prepare the O&M Manual and the Emergency Procedures manual and continues to update both on an annual basis following required testing of the pipeline.
- The Emergency Procedures Manual does include a section detailing the PAP. Thus, GRS does have a written plan for implementing the PAP but previous management did not implement the written plan. Current management continued to believe that UTI was addressing the required mailings, notifications, etc.
- We contacted UTI and discussed this situation in detail. We understand that UTI's involvement at the facility changed from year to year and their current responsibility did not include PAP implementation.
- To correct this situation (implementation of the PAP) and to comply with the new requirements of CFR Title 49, we have contracted with UTI for the following:
  - o Immediate implementation of PAP
  - o Preparation and Implementation of the Distribution Integrity Management Plan (DIMP)

- Annual required testing of the pipeline
- Annual updating of the O&M and Emergency Procedures Manual
- In 2010/2011, current management staff worked successfully with the USDOT to implement a Random Drug and Alcohol testing program for employees of the facility. This shows GRS' willingness and desire to work on regulatory compliance issues as soon as they are identified to ensure that our facility operates in compliance.
- We have dedicated a full time Health and Safety Analyst to document the requirements of the Pipeline Safety program as applicable to the GRS pipeline in an internal white paper. The analyst is actively supported by the Vice President in charge of Environmental and Health & Safety issues.
- Financial records from the GRS facility indicate that the facility has a negative EBIDTA of \$102,000 over the past three years.

As directed by your letter, we are responding to the proposed civil penalty and proposed compliance order as noted below:

**Proposed Civil Penalty:**

We are choosing option a.3 of the Procedures for Responding to a Notice of Violation included in your October 20<sup>th</sup> letter. GRS does have a written PAP but did not implement the program as written. GRS is currently expending the following additional amount on the pipeline safety program:

- \$9,975 to complete PAP initial mailing
- \$245 to obtain Affiliate membership with Ohio Gas Association (to inform excavation companies about the existence of the pipeline)
- \$3,555 to complete 2012 annual PAP mailing
- \$4,990 to prepare and implement DIMP
- Operations staff oversight
- H&S staff oversight.

Given the poor financial performance of the site and the current market that does not show any relief in the financial scenario in the near future, we are requesting that PHMSA waive the civil penalty and allow us to spend available financial resources for safety and environmental programs outlined above.

**Proposed Compliance Order:**

We are responding to the three items as they appear in the letter:

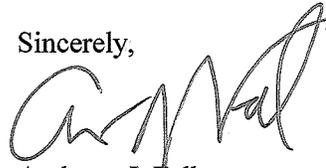
1. The GRS Emergency Procedures Manual for this facility has a completed plan documenting the requirements of the PAP. We have contracted with UTI to complete implementation of the PAP. UTI has informed us that they will complete the program no later than December 22, 2011.
2. The PAP is in place and a copy is included as an attachment to this letter. We expect to have completely implemented the plan by December 22, 2011. GRS will submit quarterly progress reports to the Central Region Director and the Pipeline Safety Program Manager of the Ohio Public Utilities Commission for a period of 1 year following implementation of the PAP. We expect these reports to be submitted on or prior to April 15, 2012, July 15, 2012, October 15, 2012 and January 15, 2013.

Mr. David Barrett  
PHMSA  
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3. GRS has provided the PHMSA with the costs requested in the Proposed Civil Penalty section of this letter. The immediate total 3<sup>rd</sup> party costs for implementation of the Pipeline Safety Program are \$18,765. Staff costs for administration and oversight of the Pipeline Safety program is expected to add an additional 30% bringing the total to approximately \$24,400.

If you have any questions, please contact me at (716) 439-1004 or Suparna Chakladar at your convenience at (951) 833-4153.

Sincerely,



Anthony J. Falbo  
Senior Vice President - Operations  
FORTISTAR Methane Group  
Gas Recovery Systems, LLC

Enclosures

cc: Suparna Chakladar  
Linwood Bubar

## **4. PUBLIC AWARENESS PROGRAM**

### **4.1 Master Meter Operators and Petroleum Gas Distributors where Pipeline Operation is an Incidental Part of their Operation**

Providing that a master meter or petroleum operator does not transport gas as a primary activity, the following procedure must be implemented.

Gas Recovery Systems will provide customers/residents public awareness messages twice annually. If the master meter or petroleum system is located on property the operator does not control, the operator must provide similar messages twice annually to persons controlling the property.

The public awareness message must include:

1. A description of the purpose and reliability of the pipeline;
2. An overview of the hazards of the pipeline and prevention measures used;
3. Information about damage prevention;
4. How to recognize and respond to a leak; and
5. How to get additional information.

Suggestions for distributing this message are as follows:

1. Specific mailings;
2. Insert with other mailings (utility bills, news letters, etc.); and
3. Hand delivery.

The next page contains a sample of a letter that may be used to communicate this message.

(COMPANY LETTER HEAD)

(DATE)

**IMPORTANT INFORMATION REGARDING (COMPANY NAME) NATURAL GAS PIPELINE FACILITIES**

Dear Resident,

We want to provide you with information regarding (COMPANY NAME) natural gas pipeline facilities. These pipeline facilities are located underground and above ground within the development you live and are used to provide natural gas to the community. To ensure the natural gas pipeline facilities are safe and reliable (COMPANY NAME) follows a regular operation and maintenance program.

A hazard that you could potentially encounter with the pipeline facilities is leakage that is caused by deterioration of the facilities over time or outside forces. (COMPANY NAME) regular operation and maintenance program should address any deterioration of the facilities before they become a leak or problem. Pipeline leakage caused by outside forces (i.e., Digging into the underground pipeline and damaging it, causing a leak.) can be prevented by calling (COMPANY NAME) maintenance office before you do any digging (i.e., planting flowers, installing swing set posts, etc.) within the community. The maintenance office can be reached at (TELEPHONE NUMBER). We will mark the location of the underground pipeline facilities with paint or flags and/or show you the location of the underground pipeline facilities in the area you will be digging.

If a leak does occur (COMPANY NAME) feels it is important for you to be able to recognize it. Gas cannot be seen, nor can it be smelled unless treated with an odorant. (COMPANY NAME) is treated with an odorant and you should be able to smell it. Be alert for the following "telltale" signs of a leak:

1. A distinctive (gas) odor – rotten egg smell.
2. A shrill blowing or hissing sound.
3. Dirt being blown or thrown into the air.
4. Bubbles coming from or water being blown into the air at a puddle, pond, creek or river.
5. Fire apparently coming from the ground or burning above the ground.
6. Patches of brown vegetation in grassy areas.
7. Dry dirt spots in grassy areas.

If you suspect a gas leak inside or outside of your home please do the following:

1. Notify (COMPANY NAME) at (24 HOUR EMERGENCY TELEPHONE NUMBER) so the leak can be verified and corrective measures taken.
2. Avoid open flames or other ignition sources, including operating light switches, operating garage door openers and operating motor vehicles.
3. Evacuate the area.

(COMPANY NAME) would like to point out that (24 HOUR EMERGENCY TELEPHONE NUMBER) should be called any time you suspect a leak or feel that there is an emergency with the natural gas pipeline facilities. This number is answered 24 hours a day 7 days a week. If you have any questions or would like additional information regarding (COMPANY NAME) natural gas pipeline facilities please call (NON-EMERGENCY TELEPHONE NUMBER).

Thank You.

## **4.2 All Other Gas Operators and Petroleum Gas Distributors Where Distribution or Transportation of Gas is a Primary Activity**

Gas Recovery Systems will provide literature to educate the customers (employees) about the smell of natural gas. This will be done on an annual basis or more frequently. Brochures and mailings will also be developed and distributed from time to time that inform the public about the properties of natural gas.

The information and guidelines contained in this section and the API RP1162 compliant Public Awareness Program provided by the Ohio Gas Association will provide operators with a complete package of information and guidelines for conducting a pipeline safety compliant program. These plans must be used and implemented in conjunction with each other to ensure compliance.

Types of information to be included:

- Facts about the gas distributed
- Importance of recognizing and reporting a gas emergency
- How to report an emergency to an operator
- What actions to take in an emergency or when gas leaks are detected
- Importance of reporting a gas odor regardless of how slight
- How to identify a pipeline marker

Attached are examples of information to be used.

## **Educational Program Requirements**

Gas Recovery Systems program requirements for continuing education of the stakeholders to our pipeline operations are as follows.

Program requirements for carrying out public education programs are contained in 49 CFR 195 and 49 CFR 192 (as applicable) and are included at the end of this section. This program is to fulfill the obligations of those requirements as well as provide a thorough communications program about our operations and how to safely interact with our facilities. In order to accomplish this goal, some items that need to be part of our public education program are included here.

- a) Continuing educational program of:
  - Public
  - Appropriate government organizations
  - Persons engaged in excavation-related activities
  
- b) Items to be carried out as part of this continuing education program to the public are:
  - Use of a one-call notification system prior to excavation
  - Damage prevention activities other than use of the one-call notification system.
  - Possible hazards associated with unintended releases from the pipeline facility.
  - Physical indications that such a release may have occurred.
  - Steps that should be taken for public safety in the event of a pipeline release.
  - How to report an event, such as a pipeline release?

Gas Recovery Systems is aware of the statutory requirement in the PSIA 2002 that by December 17, 2003 (not later than 12 months after the date of its enactment), each owner or operator of a gas or hazardous liquid pipeline facility must review its existing public education program for effectiveness and modify the program as necessary. This requirement has been completed.

Relative to the requirements of the PSIA 2002, Gas Recovery Systems conducted an initial review for effectiveness of its current pipeline public education program in response to the PSIA 2002. This was done by meeting with industry trade associates and discussing various methods employed by others for meeting this obligation. It was also evaluated by communicating with a sampling of the public in their service area.

The following is an example of this communication:

Was person(s) contacted aware of who provided gas service in Gas Recovery Systems's operating area?

Was person(s) contacted familiar with the properties of natural gas?

Was person(s) contacted familiar with how to communicate with Gas Recovery Systems in case of an emergency?

Was person(s) contacted aware of state one call system?

Based on the response received it is concluded that Gas Recovery Systems has been effective in communicating through our continuing education program. Documentation of this communication should be kept on file. Included is a sample of survey form that may be used.

#### **Program Goals/Objectives and Admission**

a) Gas Recovery Systems management objectives for public awareness programs. We strive to support the following objectives:

- 1) Raise the awareness of stakeholders to the presence of pipelines in their community.
- 2) Raise the awareness of stakeholders in understanding of the role of pipelines in transporting energy.
- 3) Help the public understand that while pipeline accidents are possible, pipelines are a relatively safe mode of energy transportation?
- 4) Help the public understand that pipeline operators undertake a variety of measures to prevent pipeline accidents.
- 5) Help the public understand that pipeline operators anticipate and plan for management of accidents if they occur.
- 6) Help the public understand the steps that it can take to prevent pipeline emergencies.
- 7) Help the public understand the steps that it can take to respond to pipeline emergencies.

It is important that all associates of Gas Recovery Systems understand the need to support the objectives of the public awareness program. The management strongly supports this program. This procedure documents this program. The person responsible for natural gas operations is responsible for the programs administration. It is their, or their documented designates, responsibility for program implementation.

## Audience Scope & Identification

This public awareness program is for the following audiences:

- 1) Affected Public
- 2) Local Public Officials
- 3) Emergency Officials
- 4) Excavators
- 5) The communication coverage areas (e.g., corridor width and distance) relative to pipeline assets are areas within 220 yards of our pipeline facilities. Affected stakeholders in this area are as follows:
  - a) Customers.
  - b) Residents located along distribution systems
  - c) Residents located adjacent to transmission pipeline ROW
  - d) Residents located on gathering systems ROW
  - e) Gathering places such as schools and hospitals
- 6) Methods to be used to identify the appropriate members of the stakeholder audiences.
  - a) Local, county, state and federal agencies can be used to help identify who these stakeholders might be. County auditor offices can be particularly effective in helping to develop your communications program. State and regional trade associations can be utilized to help identify excavators in the area and also to communicate with these companies. State one call centers may be able to provide help in identifying excavators.

## Communication-Messages, Frequency and Methods

- 1) The following are content messages that need to be considered for inclusion in the communications:
  - a) Pipeline purpose and reliability.
  - b) Hazard awareness and prevention measures.
  - c) Leak recognition and response:
    - Potential hazards of products transported
    - How to recognize a pipeline leak
    - Response to a pipeline leak
    - Liaison with emergency officials
  - d) Emergency preparedness communications:
    - Priority to protect life
    - Emergency contacts

- Emergency preparedness response plans
  - Emergency preparedness - drills and exercises
  - e) **Damage Prevention**
  - f) **Pipeline location information:**
    - Pipeline markers
    - Maps
  - g) **High Consequence Areas (HCA) and Integrity Management Plans for Transmission Operators:**
    - Message content for affected public within HCA's
    - Message content for emergency officials within HCA's
    - Message content for public officials within HCA's
  - h) **Content on Operator websites.**
    - Company information
    - General information on pipeline operations
    - Maps
    - Affected public information
    - Emergency and security information
    - Damage Prevention Awareness
  - i) **Right-of-way encroachment prevention.**
  - j) **Pipeline maintenance activities undertaken.**
  - k) **Security**
  - l) **Facility purpose**
- 2) **Baseline delivery frequency and method for communicating to each audience.**  
(See following tables.)

## Hazardous Liquid and Natural Gas Transmission Operators

Type of Stakeholder	Message Type (Baseline)	<u>Suggested Program Delivery Freq. in years</u>	<u>Suggested Delivery Method</u>
Land owners, residents located along transmission pipeline right-of-way, places of congregation, residents near storage or other major operational facilities	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Damage Prevention Awareness One-Call requirements Leak recognition and response Pipeline location Info How to get additional info Availability of list of pipeline operators through NPMS	2	Targeted mailings or brochures or flyers or letters  and  pipeline markers
Emergency Officials	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Emergency Preparedness Communications Potential hazards One-Call requirements Pipeline location Info How to get additional info Availability of list of pipeline operators through NPMS Operators Maintenance Programs	1	Personal contact (preferred) or Targeted mailings, brochures flyers, letters or Group meetings or Telephone calls with mailing
Public Officials	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Emergency Preparedness Communications One-Call requirements Pipeline location Info How to get additional info Availability of list of pipeline operators through NPMS	3	Targeted mailings or brochures or flyers or letters
Excavators contractors	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Damage Prevention Awareness Leak Recognition and response One-Call requirements	1	Targeted mailings or brochures or flyers or letters and One-call center outreach and pipeline markers
Land developers	As needed	As appropriate	Personal contact Targeted mailings, brochures flyers, letters Group meetings Telephone calls
One call centers	As needed	As appropriate	Personal contact Targeted mailings, brochures flyers, letters Group meetings Telephone calls Maps (as required)

## Local Natural Gas Distribution Companies (LDC)

Type of Stakeholder	Message Type (Baseline)	<u>Suggested Program Delivery Freq. in years</u>	<u>Suggested Delivery Method</u>
Residents along the distribution system.	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Damage Prevention Awareness One-Call requirements Leak recognition and response How to get additional info	1	Public Service Announcements or Paid Advertising or Bill Stuffers (for combination gas and electric companies)
LDC customers	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Damage Prevention Awareness One-Call requirements Leak recognition and response	twice annually	Bill stuffers
Emergency Officials	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Emergency Preparedness Communications How to get additional info	1	Letters or Group meetings
Public Officials	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Emergency Preparedness Communications How to get additional info	3	Targeted mass mailings or letters
Excavators contractors	Pipeline purpose and reliability, Awareness of hazards and prevention measures undertaken, Leak Recognition and response	1	One-call center outreach or group meetings
One call centers	As needed	As appropriate	Membership

## Gathering Pipeline Operators

Type of Stakeholder	Message Type (Baseline)	Suggested Program Delivery Frequency in years	Suggested Delivery Method
Land owners, residents and places of congregation, within areas of potential impact	Gathering pipeline purpose, Awareness of hazards and prevention measures undertaken, Damage Prevention Awareness One-Call requirements Leak recognition and response How to get additional info	2	Targeted mailings or brochures or flyers or letters or personal contact
Emergency Officials	Gathering pipeline purpose, Awareness of hazards and prevention measures undertaken, Emergency Preparedness Communications Company contact and response information Specific description of products being transported and any special hazard How to get additional info	1	Personal contact (preferred) or Targeted mailings, brochures flyers, letters or Group meetings or Telephone calls with mailing
Public Officials	General location of gathering pipeline, purpose, awareness of hazards and prevention measures undertaken, Copies of materials provided to affected public and emergency officials Company contacts How to get additional info	3	Targeted mailings or brochures or flyers or letters
Excavators contractors	General location of gathering pipeline, purpose, awareness of hazards and prevention measures undertaken, Damage prevention awareness One-Call requirements Leak Recognition and Response	1	Targeted mailings or brochures or flyers or letters and One-call center outreach and pipeline markers
Land developers	As needed	As appropriate	Personal contact Targeted mailings, brochures flyers, letters. Group meetings Telephone calls
One call centers	As needed	As appropriate	Personal contact Targeted mailings, brochures flyers, letters. Group meetings Telephone calls Maps (as required)

## **Program Planning, Implementation and Documentation**

The costs for this program shall be identified and planned for. This program shall have periodic redevelopment and updates. These procedures shall be used to redevelop and update these plans.

Resources that are available to help in preparation and implementation of this program are as follows (listed at the end of this section, Section 1.8 and Section 6):

- 1) Trade associations.
- 2) One-Call Centers
- 3) Federal and State Agencies.
- 4) Consultants such as Utility Technologies International Corporation
- 5) Other pipeline operators
- 6) Operator employee participation

Records shall be maintained to document this programs implementation. These shall include:

What information went to what targeted segments.

Addresses to which communications were actually sent.

Lists of excavators identified. This may be done through state trade associations.

For each stakeholder audience:

- 1) Actual message type and content (including copies of printed materials distributed).
- 2) Actual delivery frequencies.
- 3) Actual delivery methods.

## **Program Evaluation and Improvement**

### **Program Effectiveness**

Measures, means and frequency for tracking performance.

The program should assess on a periodic basis the effectiveness of the programs implementation. The selected set of measures should reflect:

*Whether the program is being implemented as planned - the process.*

*Whether the program is effective - program effectiveness.*

Based on the results of the evaluation addressing these two questions, Gas Recovery Systems may need to make changes in program implementation process, stakeholder identification effort, messages, and methods of delivery and/or frequency.

These guidelines for these assessments are as follows:

- 1) Internal self-assessments
- 2) Third party audits
- 3) Regulatory inspections
- 4) Trade association activities

The following items should be measured to assess whether the program is effective:

- 1) Is the information reaching the intended stakeholder audiences?
- 2) Are the recipient audiences understanding the messages delivered?
- 3) Are the recipients motivated to respond appropriately in alignment with the information provided?
- 4) Is implementation of the program impacting bottom line results (for example, a reduction in third-party damages)?

Information that may be tracked is as follows:

- 1) Number of percentage of individuals actually reached in a specific audience.
- 2) Number of telephone inquiries to Gas Recovery Systems.
- 3) Number of bounce-back card replies received.
- 4) Number of officials in attendance at emergency drills, etc.

The results and findings of these assessments should be incorporated into making modifications to this plan as necessary.

Methods that may be used to solicit data to determine if the program is being implemented appropriately and if the operator's public awareness efforts are effective are as follows:

- 1) Solicitation of input from pipeline personnel.
- 2) Targeted audience surveys (e.g., affected public, local public officials, emergency Officials, excavators.)
- 3) Focus groups.
- 4) Bounce-back reply cards.
- 5) Meetings with stakeholders.
- 6) Trade association surveys on operators behalf (if the methodology, scope, and target audiences used by those evaluations apply to the operator's program).

Program assessment results may suggest the need for changes or enhancements in audience identification or outreach, message type or content, delivery methods and/or frequency. This procedure requires that program changes be documented to describe their nature and the basis for why the modifications were needed.

Included are examples of survey forms that may be used to track the effectiveness of the public education program.

**PUBLIC EDUCATION PROGRAM EFFECTIVENESS SURVEY**

Fill out the following for each person contacted. Use this information to evaluate the effectiveness for your public education and to make changes where appropriate.

<b>PERSON CONTACTED</b>		<b>DATE:</b>	
Telephone Number	Type of Stakeholder: Circle		
Address	1. Public (landowner, resident, places of ...congregation) 2. Customer 3. Emergency 4. Public Official 5. Excavator/Contractor 6. Other _____		
Check appropriate response			
<b>Questions:</b>	<b>Yes</b>	<b>No</b>	<b>Comments</b>
1. Was person(s) contacted aware that Gas Recovery Systems provided natural gas service in the area of their home or business?			
2. Was person(s) contacted familiar with the properties of natural gas such as odor and flammability?			
3. Was person(s) contacted aware of their obligation to call before digging?			
4. Was person(s) aware of how gas line locations are communicated such as line markers, paint markings, flags and signs			
5. Was person(s) contacted familiar with how to communicate with Gas Recovery Systems in case of emergency?			
Survey Conducted by:			

If response is negative, surveyor should provide proper information and follow up with a mailing if appropriate.

## RESOURCE CONTACT INFORMATION

### Trade Associations:

American Petroleum Institute

[www.api.org](http://www.api.org)

1220 L Street, NW, Washington, DC 20005

Association of Oil Pipelines

[www.aopi.org](http://www.aopi.org)

1101 Vermont Avenue, NW Suite 604, Washington, DC 20005

American Gas Association

[www.aga.org](http://www.aga.org)

400 N. Capitol Street, NW Suite 604, Washington, DC 20005

American Public Gas Association

[www.apga.org](http://www.apga.org)

11094-D Lee Highway, Suite 102, Fairfax, Va. 22030-5014

Interstate Natural Gas Association of America

[www.ingaa.org](http://www.ingaa.org)

10 G Street NE, Suite 700, Washington, DC 20002

Ohio Gas Association

[www.ohiogasassoc.org](http://www.ohiogasassoc.org)

200 Civic Center Drive, Columbus, Ohio 43215

### Government Agencies:

Office of Pipeline Safety

[www.ops.dot.gov](http://www.ops.dot.gov)

Pipeline and Hazardous Materials Safety Administration, U.S. Dept. of Transportation

PHP-10, 1200 New Jersey Ave, SE, Washington, DC 20950

[www.phmsa.dot.gov](http://www.phmsa.dot.gov)

Transportation Safety Institute

6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169

[www.tsi.dot.gov](http://www.tsi.dot.gov)

The National Pipeline Mapping System (OPS/DOT)

[www.npms.phmsa.dot.gov](http://www.npms.phmsa.dot.gov)

### Private Organizations:

Ohio Utility Protection Service

(800) 362-2764

[www.oups.org](http://www.oups.org)

Common Ground Alliance

[www.commongroundalliance.com](http://www.commongroundalliance.com)

Dig Safely (for one call centers)

[www.digsafely.com](http://www.digsafely.com)



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

901 Locust Street, Suite 462  
Kansas City, MO 64106-2641

**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.

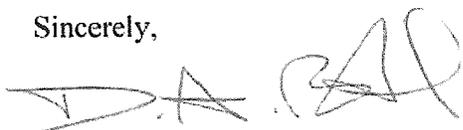
#### Response to this Notice

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,

A handwritten signature in black ink, appearing to read 'D.A. Barrett', is written over a faint, larger version of the same signature.

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.

## **-Response Options for Pipeline Operators in Compliance Proceedings**

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an 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).

### **I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:**

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

#### **a. When the Notice contains a proposed CIVIL PENALTY\* --**

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER\* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

\* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT\*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

\* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

### III. Procedure for Requesting a Hearing

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

### IV. Extensions of Time

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

### V. Freedom of Information Act

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. Small Business Regulatory Enforcement Fairness Act Information

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to [http://www.sba.gov/ombudsman/dsp\\_faq.html](http://www.sba.gov/ombudsman/dsp_faq.html).

VII. Payment Instructions

*Civil Penalty Payments of Less Than \$10,000*

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration  
Mike Monroney Aeronautical Center  
Financial Operations Division (AMZ-341) P.O. Box 269039  
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

*Civil Penalty Payments of \$10,000 or more*

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

## INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1** - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

**Block #7** - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10** - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**NOTE:** A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009