



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
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 26, 2013

Mr. Ed Moreno
Division President
Tru-Gas, Inc.
800 South Division Street, Suite D
Waunakee, Wisconsin 53597

CPF 3-2013-0003

Dear Mr. Moreno:

On September 17, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected your propane distribution facilities in Lacrosse, Wisconsin.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation(s) are:

1. §192.11 Petroleum gas systems.

(b) Each pipeline system subject to this part that transports petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

Tru-Gas did not comply with the requirements of §192.11 by failing to follow the requirements of ANSI/NFPA 59 Section 10.1.4. Section 10.1.4 requires testing of relief devices, other than hydrostatic relief valves, to be tested for proper operation at intervals not exceeding 5 years.

Tru-Gas was unable to provide any evidence that it has ever inspected the relief devices for the Terlinqua and Pineview Trailer Parks.

2. §192.11 Petroleum gas systems.

(b) Each pipeline system subject to this part that transports petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

Tru-Gas did not comply with the requirements of §192.11 by failing to follow the requirements of with ANSI/NFPA 58 Section 4.4. Section 4.4 requires precautions (such as warning signs or devices, or barricades) to be taken against damage to liquefied petroleum gas systems where vehicular traffic is a possibility.

Tru-Gas failed to take precautions where vehicular traffic could possibly damage liquefied petroleum gas systems. Vehicles and trailers were observed parked inside the fenced enclosure next to the tanks and aboveground piping at the Pineview Trailer Park.

3. §192.11 Petroleum gas systems.

(b) Each pipeline system subject to this part that transports petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

Tru-Gas did not comply with the requirements of §192.11 by failing to comply with ANSI/NFPA 58 Section 6.7.2.4. Section 6.7.2.4 requires that rain caps or other means shall be provided to minimize the possibility of the entrance of water or other extraneous matter into the relief device or any discharge piping. Provision shall be made for drainage where the accumulation of water is anticipated.

Tru-Gas failed to minimize the possibility of the entrance of water or other matter into the relief device or discharge piping. Rain caps were missing on hydrostatic relief valves at Edgewood Trailer Park and Pineview Trailer Park.

4. §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. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission line, not in excess of 100 feet (30 meters), or separately protected service line, these pipelines may be surveyed on a sampling basis.

At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.

Tru-Gas did not perform annual cathodic protection surveys on 47 steel risers located at Pineview Trailer Park in Lacrosse, Wisconsin. Tru-Gas employees stated they did not even know if there was ever a cathodic protection system in place.

Documentation was not available at the time of the inspection showing evidence that Tru-Gas was aware of the cathodic protection system.

5. §192.481 Atmospheric corrosion control: Monitoring.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows: At least once every 3 calendar years, but with intervals not exceeding 39 months

Tru-Gas did not perform atmospheric corrosion surveys on 47 steel risers located at Pineview Trailer Park in Lacrosse, Wisconsin.

Documentation was not available at the time of the inspection showing evidence of inspection. The aboveground piping was observed to be pitted.

6. §192.491 Corrosion control records

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to 192.465(a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

Tru-Gas did not record the locations of the 47 steel risers in Pineview Trailer park and failed to record the approximate locations of the anodes on their maps.

Documentation was not available at the time of the inspection showing evidence that each of the cathodically protected piping was included on maps or records.

7. §192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (b) Ensure through evaluation that individuals performing covered tasks are qualified;**
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;**

Tru-Gas failed to ensure through evaluation that its employees were qualified to perform the covered tasks on Tru-Gas facilities.

Tru-Gas indicated that Shawn Allen, the Operator Qualification coordinator and administrator of training, performs each of the covered tasks listed in the OQ manual. Tru-Gas does not have records to indicate that Shawn Allen is qualified to perform covered tasks he performs.

8. §192.16 Customer notification

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "customer's buried piping" does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, "maintain" means monitor for corrosion according to §192.465 if the customer's buried piping is metallic, survey for leaks according to §192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

(c) Each operator shall notify each customer not later than August 14, 1996 or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meters systems may continuously post a general notice in a prominent location frequented by customers.

Tru-Gas failed to notify customers of buried customer piping. Buried customer piping was observed throughout Bluffside Trailer Park.

Documentation was not available at the time of the inspection showing evidence customers were notified of buried customer piping.

9. §192.605 Procedural manual for operations, maintenance, and emergencies.

- (a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.**
- (b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.**
- (8) Periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedure when deficiencies are found.**

Tru-Gas failed to periodically review personnel performing work to determine the effectiveness and adequacy of their procedures used in normal operations and maintenance.

Documentation was not available at the time of the inspection showing evidence the procedures have been periodically reviewed.

10. §192.707 Line markers for mains and transmission lines.

- (d) Marker warning. The following must be written legibly on a background of sharply contrasting color on each line marker:**
 - (2) The name of the operator and telephone number (including area code) where the operator can be reached at all times.**

Tru-Gas did not have the correct line markers in place. For example, the line markers located in the Bluffside, Pineview and Terlinqua Trailer Parks had an incorrect operator name and telephone number and were labeled as a natural gas pipeline.

11. §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

Tru-Gas failed to check any relief device annually to ensure they had sufficient capacity to protect the facilities to which they were connected.

Documentation was not available at the time of the inspection showing evidence the relief devices had been checked annually for capacity.

Proposed Compliance Order

With respect to item(s) 4-8, 10 and 11 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Tru-Gas, Inc. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to item(s) 1, 2, 3 and 9, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

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. All material you submit in response to this enforcement action may be 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 3-2013-0003** 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 "DARSA". The letters are stylized and connected, with a large loop at the end.

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 Tru-Gas, Inc. a Compliance Order incorporating the following remedial requirements to ensure the compliance of Tru-Gas, Inc. with the pipeline safety regulations:

1. In regard to Item Number 4 of the Notice pertaining to the failure to perform annual cathodic protection readings on the 47 steel risers, Tru-Gas shall perform a cathodic protection survey and assure readings provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of Part 192. Any deficiencies shall be immediately corrected.
2. In regard to Item Number 5 of the Notice pertaining to the failure to perform atmospheric corrosion surveys, Tru-Gas shall inspect all aboveground steel piping at Pineview Trailer Park for evidence of atmospheric corrosion and correct any deficiencies.
3. In regard to Item Number 7 of the Notice pertaining to the failure to qualify Shawn Allen for covered tasks performed on the pipeline, Tru-Gas shall ensure that any individual who performs a covered task on the pipeline qualified on that task.
4. In regard to Item Number 8 of the Notice pertaining to the failure to notify customers of buried customer piping at Bluffside Trailer Park, Tru-Gas shall provide notification to the affected customers.
5. In regard to Item Number 6 of the Notice pertaining to the failure to record corrosion control using maps and records at Pineview Trailer Park, Tru-Gas shall revise applicable maps to ensure adequate documentation.
6. In regard to Item Number 10 of the Notice pertaining to the incorrect operator name and telephone numbers listed on line markers, Tru-Gas shall perform a survey on each system owned by Tru-Gas, Inc. and correct any deficiencies found with the line markers.
7. In regard to Item Number 11 of the Notice pertaining to the failure to check relief devices annually for capacity, Tru-Gas shall check the capacity of relief devices at or near the tank (ex. Fisher 289H). {The annual test to check the capacity does not include the tank relief (5 year requirement per NPFA 59) or pressure relief devices on regulators at a meter set}.
8. All documentation demonstrating compliance with each of the items outlined in this order must be submitted to David Barrett, Director, Central Region, Pipeline and Hazardous materials Safety Administration, 901 Locust Street, Kansas City, MO 64106, for review within 60 days after the Final Order has been issued.

9. It is requested that Tru-Gas, Inc. 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. Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum civil penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. Refer to 49 C.F.R. § 190.225 for assessment considerations 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. **The Rights of Small Entities To Enforcement Fairness and Policy Against Retaliation**

The Department of Transportation has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights. Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact the PHMSA Office of Chief Counsel. You also have the right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of this agency.

The Department of Transportation strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

VII. **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.

VIII. **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 - "69140001". 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 7, 2013