

VIA EMAIL TO: jamesferrell@ferrellgas.com, jordanburns@ferrellgas.com, and rufusyoungblood@ferrellgas.com

Mr. James E. Ferrell
Chairman, Interim Chief Executive Officer and President
Ferrellgas Partners, LP
One Liberty Plaza
Liberty, Missouri 64068

Re: CPF No. 3-2019-0001

Dear Mr. Ferrell:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$19,600, and specifies actions that need to be taken by your subsidiary, Ferrellgas, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Allan Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Jordan Burns, Vice President and General Counsel, Ferrellgas
Mr. Rufus Youngblood, Director Safety, Ferrellgas

VIA EMAIL – CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)

Ferrellgas, LP,)
a subsidiary of Ferrellgas Partners, LP,)

Respondent.)
_____)

CPF No. 3-2019-0001

FINAL ORDER

From August 7, 2019, through August 9, 2019, 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 Ferrellgas, LP's (Ferrellgas or Respondent) liquid propane distribution facilities in northern Wisconsin. Ferrellgas, a subsidiary of Ferrellgas Partners, LP,¹ operates six small liquid propane distribution systems in Wisconsin.² The systems are comprised of plastic mains, plastic services, and some copper lines supplied by underground and above-ground 1,000-gallon tanks.³

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 29, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Ferrellgas had violated 49 C.F.R. §§ 192.513, 192.619, and 192.743, and proposed assessing a civil penalty of \$19,600 for the alleged violation of § 192.513. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

Ferrellgas responded to the Notice by letter dated July 10, 2019 (Response). The company did not contest the allegations of violation of §§ 192.513 and 192.743 (Items 2 and 7, respectively), offered additional information in response to the allegation of violation of § 192.619 (Item 5),

¹ Ferrellgas Partners, LP Form 10-K, available at <https://ferrellgas.gcs-web.com/static-files/e9dc3d5d-7b17-4295-9729-cc99c18488c4> (last accessed March 10, 2020).

² Pipeline Safety Violation Report (Violation Report), (April 29, 2019) (on file with PHMSA), at 1 (on file with PHMSA).

³ *Id.*

and requested that the proposed civil penalty be reduced or eliminated for § 192.513 (Item 2). Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.513, which states, in relevant part:

§ 192.513 Test requirements for plastic pipelines.

(a) Each segment of a plastic pipeline must be tested in accordance with this section.

(b)

(c) The test pressure must be at least 150 percent of the maximum operating pressure or 50 p.s.i. (345 kPa) gage, whichever is greater. However, the maximum test pressure may not be more than 3 times the pressure determined under § 192.121 at a temperature not less than the pipe temperature during the test.

The Notice alleged that Respondent violated 49 C.F.R. § 192.513 by failing to test its plastic pipelines to a pressure of at least 50 psi. Specifically, the Notice alleged that Ferrellgas installed three plastic service lines in 2017 and 2018 that were not pressure tested to at least 50 psi.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.513 by failing to test its plastic pipelines to a pressure of at least 50 psi.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a), which states, in relevant part:

§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

(a) No person may operate a segment of steel or plastic pipeline at a pressure that exceeds a maximum allowable operating pressure determined under paragraph (c) or (d) of this section, or the lowest of the following:

(1) The design pressure of the weakest element in the segment, determined in accordance with subparts C and D of this part. However, for steel pipe in pipelines being converted under § 192.14 or uprated under subpart K of this part, if any variable necessary to determine the design pressure under the design formula (§ 192.105) is unknown, one of the following pressures is to be used as design pressure:

The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(1) by failing to determine its maximum allowable operating pressure (MAOP) in conformance with the design pressure of

the weakest element in the pipeline segment. Specifically, the Notice alleged that Ferrellgas' procedures stated that its MAOP for each system was 30 psi, even though its house-service regulators have a maximum inlet pressure limit of 10 psi. Therefore, the Notice alleged that Ferrellgas' MAOP should not have exceeded 10 psi.

In its Response, Ferrellgas stated that the MAOP in its Operations and Maintenance Manual (O&M Manual) is set at 30 psi because 30 psi is the limit for propane vapor in polyethylene (poly) pipe. Ferrellgas also stated that no further MAOP calculations were needed "because poly pipe used in the propane industry has a design pressure far above 30 psi." Ferrellgas acknowledged nevertheless that the second-stage regulators used in its systems have a maximum inlet pressure of 10 psi.⁴

Section 192.619(a)(1) provides that no person may operate a segment of plastic pipeline at a pressure that exceeds the MAOP of the design pressure of the weakest element in the segment. Respondent's second-stage regulators constitute a part of the pipeline segment and have a maximum inlet pressure of 10 psi. The design pressure of the poly pipe is therefore immaterial because the second-stage regulator is the weaker element on the pipeline segment. Consequently, the MAOP should not have exceeded 10 psi.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.619(a) by failing to determine its MAOP in conformance with the design pressure of the weakest element in the pipeline segment.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 192.743, which states, in relevant part:

§ 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.

(b) If review and calculations are used to determine if a device has sufficient capacity, the calculated capacity must be compared with the rated or experimentally determined relieving capacity of the device for the conditions under which it operates. After the initial calculations, subsequent calculations need not be made if the annual review documents that parameters have not changed to cause the rated or experimentally determined relieving capacity to be insufficient. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.743 by failing to determine the capacity of its regulator-station relief devices at intervals not exceeding 15 months, but at least

⁴ Response, at 4.

once each calendar year, by testing them in place or by review and calculations. Specifically, the Notice alleged that none of Ferrellgas' nine regulator stations had been tested in place or by calculation to determine if the relieving capacities were sufficient. The Notice also alleged that Ferrellgas did not have any capacity-design sheets for its regulator stations available for the PHMSA inspector to review.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.743 by failing to determine the capacity of its regulator-station relief devices at intervals not exceeding 15 months, but at least once each calendar year, by testing in place or by review and calculations.

These findings of violation will be considered prior offenses]in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁵ In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; 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 \$19,600 for the violation of Item 2.

Item 2: The Notice proposed a civil penalty of \$19,600 for Respondent's violation of 49 C.F.R. § 192.513, for failing to test its plastic pipelines to a pressure of 50 psi. In its Response, Ferrellgas explained that its employees had mistakenly tested the lines using the parameters found in NFPA 54 and 58, which have a lower minimum test pressure than those established in Part 192. Ferrellgas noted that it had re-tested all of the lines in accordance with its O&M Manual and that the new tests showed that the lines were safe and their integrity had not been compromised. In light of these mitigating factors, Ferrellgas requested that the proposed penalty be rescinded or reduced.

While I acknowledge, and appreciate, Ferrellgas' willingness to re-test its pipelines following the issuance of the Notice, I do not find that such corrective actions warrant the withdrawal or reduction of the civil penalty. Regarding the nature and circumstances of the violation, PHMSA noted in the Violation Report that the alleged violation related to a failure to perform a required activity and that the violation had been discovered by PHMSA or a State Partner. It is uncontested that Ferrellgas failed to test its plastic pipelines to a pressure of at least 50 psi and that PHMSA, rather than the company, had discovered the violation.

⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

Regarding gravity, PHMSA noted in the Violation Report that pipeline safety was minimally affected; therefore, the proposed civil penalty has already accounted for the fact that pipeline integrity was never compromised. Regarding culpability, Ferrellgas did not contest the violation and has thus acknowledged that it failed to comply with an applicable requirement of Part 192. Regarding good faith, Ferrellgas seeks a penalty reduction because its employees mistakenly used the wrong standard when testing the lines. Ferrellgas stated that in most other circumstances where these lines had been installed to serve a single customer from a stationary ASME tank, the test pressure used would have been acceptable under the codes that it uses for the safe installation and operation of propane systems.

I am unconvinced that it would be appropriate to reduce a proposed penalty because an employee made a mistake or used the wrong standard while performing a safety task. On the contrary, pipeline operators are and should be expected to ensure that their personnel perform all safety-related tasks using the correct standards and procedures. As such, a reduction of the proposed civil penalty under the “good faith” standard is not warranted.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$19,600** for violation of 49 C.F.R. § 192.513.

Failure to pay the \$19,600 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 5 and 7 in the Notice for violations of 49 C.F.R. §§ 192.619 and 192.743, 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:

1. With respect to the violation of § 192.619 (**Item 5**), Respondent must evaluate its pipelines and determine the MAOP according to § 192.619 and document its findings for each of its systems.
2. With respect to the violation of § 192.743 (**Item 7**), Respondent must determine if the relieving capacity of its regulator-station relief devices is sufficient by testing the devices in place or by capacity calculations of each station.
3. All documentation demonstrating compliance with items 1 and 2 of the

compliance order must be submitted to the Director, Central Region, Pipeline and Hazardous Safety Materials Administration, for review within 90 days of receipt of the Final Order.

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

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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 1, 3, 4, 6 and 8, 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 the following:

49 C.F.R. § 192.285 (**Item 1**) — Respondent's alleged failure to re-qualify a person under an applicable plastic joint procedure once each calendar year, with intervals not exceeding 15 months, in 2015. The individual made pipe joints in 2015, but had not been requalified by making specimen joints and testing them as required by the § 192.285 and Respondent's own procedures.

49 C.F.R. § 192.605(a) (**Item 3**) — Respondent's alleged failure to conduct an annual review of its written procedures.

49 C.F.R. § 192.605(b)(8) (**Item 4**) — Respondent's alleged failure to periodically review the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operations and maintenance.

49 C.F.R. § 192.603(b) (**Item 6**) — Respondent's alleged failure to keep records of recording pressure gauges for two multiple feed systems.

49 C.F.R. § 192.805(b) (**Item 8**) — Respondent's alleged failure to ensure through evaluation that individuals performing covered tasks were qualified.

Ferrellgas presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

April 6, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued