

December 18, 2020

**VIA ELECTRONIC MAIL TO: konderdonk@suburbanpropane.com**

Mr. Keith P. Onderdonk  
Vice President, Operational Support  
Suburban Propane, LP  
240 Route 10 West  
Whippany, New Jersey 07981

**Re: CPF No. 3-2019-0003**

Dear Mr. Onderdonk:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$29,466. It further finds that Suburban Propane, LP has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission 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 (Final Order)

cc: Mr. Greg Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA  
Mr. Ed Moreno, CSC Manager, Suburban Propane, LP,  
emoreno@suburbanpropane.com

**CONFIRMATION OF RECEIPT REQUESTED**

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

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**In the Matter of** )

**Suburban Propane, LP,** )

**Respondent.** )

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**CPF No. 3-2019-0003**

**FINAL ORDER**

From September 11, 2018, through September 13, 2018, pursuant to 49 U.S.C. § 60117, representatives 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 Suburban Pipeline, LP (Suburban or Respondent) in West Salem, and propane gas systems in La Crosse and Juneau counties, Wisconsin. Suburban is a nationwide distributor of propane, heating oil, and refined fuels, and markets natural gas and electricity in deregulated markets.<sup>1</sup> Suburban is headquartered in New Jersey, operates in 41 states, and provides service to approximately 1 million residential, commercial, industrial, and agricultural customers through 700 locations.<sup>2</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent by letter dated November 22, 2019, a Notice of Probable Violation and Proposed Civil Penalty (Notice).<sup>3</sup> In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Suburban had committed four violations of 49 C.F.R. Part 192, and proposed assessing a civil penalty of \$46,700 for the alleged violations.

Suburban responded to the Notice by letter dated February 12, 2020 (Response). The company contested the allegations, requested a hearing, and requested a copy of the civil penalty worksheet. Respondent also requested an informal conference call and specifically stated that it “[did] intend to seek available economic relief where possible.” On May 5, 2020, the Central

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<sup>1</sup> Suburban Propane website, About, *available at* <https://www.suburbanpropane.com/about/> (last accessed November 13, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> The original Notice went undelivered by the US Postal Service. On January 14, 2020, Central Region resent the Notice to a new address provided by Suburban. Suburban had 30 days from the date of receipt of the Notice to respond, as permitted under § 190.208.

Region provided the case file and civil penalty worksheet,<sup>4</sup> and on May 20, 2020, held an informal conference call with Suburban. On June 4, 2020, Suburban withdrew its request for a hearing and noted that it no longer contested the alleged violations, proposed compliance order, or civil penalty proposed for Item 2.

### **FINDINGS OF VIOLATION**

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

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b), which states:

**§ 193.603 General provisions.**

- (a) ....
- (b) Each operator shall keep records necessary to administer the procedures established under §192.605.

The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b) by failing to keep records necessary to administer the procedures established under § 192.605, which include the administering of Suburban's emergency plans as required under §§ 192.605(e) and 192.615. Specifically, the Notice alleged that during the inspection, Suburban was unable to produce records of its meetings with the appropriate fire, police, and other public officials in order to demonstrate that it met the requirements of § 192.615(c).

Suburban did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 193.603(b) by failing to keep records necessary to administer the procedures established under § 192.605.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.743(a), which states:

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

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

The Notice alleged that Respondent violated 49 C.F.R. § 192.743(a) by failing to determine, at intervals not exceeding 15 months, but at least once each calendar year, that the pressure relief devices at its six gas propane distribution systems had sufficient capacity to protect the facilities

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<sup>4</sup> Due to certain COVID-19 related mail restriction, Central Region did not review Suburban's response until May 4, 2020.

to which they are connected. Specifically, Suburban had no regulator station design information for the pressure limiting and regulating devices that would show that the determined or calculated capacities of the devices are sufficient to meet the pressure limits of § 192.201(a). The Notice also alleged that Suburban was unable to provide records showing that the determined and calculated capacities of the devices were reviewed for calendar years 2015, 2016, and 2017. Additionally, the Notice alleged that the PHMSA inspector found that the documented regulator orifices for the Fisher 627 devices were incorrect for the regulator stations at Pine Crest II, Edgewood, Pineview, and Terlingua.

Suburban did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.743(a) by failing to determine, at intervals not exceeding 15 months but at least once each calendar year, that the pressure relief devices at its six gas propane distribution systems had sufficient capacity to protect the facilities to which they are connected.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)<sup>5</sup>, which at the time of the violation stated 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...

(2) The pressure obtained by dividing the pressure to which the segment was tested after construction as follows...

The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a) by operating its pipeline at a maximum allowable operating pressure (MAOP) that exceeded the design pressure of the weakest element of the segment. Specifically, the Notice alleged that Suburban's records listed the MAOP on each of its six systems as 15 psig, but the PHMSA inspector found house service regulators having a maximum inlet pressure limit of 10 psig.

Suburban did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.619(a) by operating its pipeline at an MAOP that exceeded the design pressure of the weakest element of the segment.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 192.201(a)(2)(iii), which states:

**§ 192.201 Required capacity of pressure relieving and limiting stations.**

(a) Each pressure relief station or pressure limiting station or group of those stations installed to protect a pipeline must have enough capacity, and

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<sup>5</sup> 49 C.F.R. § 192.619 was amended effective July 1, 2020. However, the above-referenced violation and subsequent notice of said violation occurred prior to the date of amendment, and thus, said amendment is not applicable here.

must be set to operate, to insure the following:

- (1) ....
- (2) In pipelines other than a low pressure distribution system:
  - (i) ....
  - (iii) If the maximum allowable operating pressure is less than 12 p.s.i. (83 kPa) gage, the pressure may not exceed the maximum allowable operating pressure plus 50 percent.

The Notice alleged that Respondent violated 49 C.F.R. § 192.201(a)(2)(iii) by failing to set its pressure relief devices to operate at pressures that do not exceed the MAOP plus 50 percent. Specifically, the Notice alleged that Suburban's records showed that its pressure relief devices were set between 19 and 19.5 psig for five regulator stations, located in Terlingua, Pineview, Bluffside, Pincrest II, and Edgewood. The Notice alleged that 19 and 19.5 psig exceeded the pressure setting permitted under § 192.201(a)(2)(iii) because the actual MAOP of the five stations is 10 psig, as limited by house service regulators. Therefore, the Notice stated, the maximum pressure setting of the relief valves would be 15 psig.

In its Response, Suburban explained that it utilized the regulator manufacturer's documentation to establish an MAOP of 15 psig. Suburban argued the setting of the station regulator relief valves would have been allowed under a separate provision, § 192.201(a)(2)(ii), that applies to pipelines with an MAOP of over 12 psig and that permits a relief set point of up to 21 psig, 6 psig over the established 15 psig. Suburban ultimately withdrew its contest for this allegation of violation by email to the Director. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.201(a)(2)(iii) by failing to set its pressure relief devices to operate at pressures that do not exceed the MAOP plus 50 percent.

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.<sup>6</sup> 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 \$46,700 for the violations cited above.

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<sup>6</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

**Item 2:** The Notice proposed a civil penalty of \$22,900 for Respondent's violation of 49 C.F.R. § 192.743(a) for failing to determine, at intervals not exceeding 15 months but at least once each calendar year, that the pressure relief devices at its six gas propane distribution systems had sufficient capacity to protect the facilities to which they are connected. Suburban neither contested the allegation nor presented any evidence or argument justifying an elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,900 for violation of 49 C.F.R. § 192.743(a).

**Item 4:** The Notice proposed a civil penalty of \$23,800 for Respondent's violation of 49 C.F.R. § 192.201(a)(2)(iii), for failing to correctly set its pressure relief devices to operate at pressures consistent with the pressure limits of § 192.201(a)(2)(iii). As noted above, Suburban utilized the regulator manufacturer's documentation to establish an MAOP of 15 psig. Suburban argued the setting of the station regulator relief valves would have been allowed under a separate provision, § 192.201(a)(2)(ii), that applies to pipelines with an MAOP of over 12 psig and that permits a relief set point of up to 21 psig, 6 psig over the established 15 psig. Suburban also explained during a May 20, 2020 conference call with the Director that it had changed the MAOPs from 10 psig to 15 psig on June 13, 2018, and was therefore only noncompliant for three months before PHMSA alerted Suburban of its noncompliance. Finally, Suburban stated that since PHMSA's inspection, the pressure relief devices had been reset to 15 psig from 19 and 19.5 psig, and that the relief valves have been converted to monitor regulator stations as discussed in Item 1. Accordingly, Suburban requested that the civil penalty be withdrawn.

Although Respondent did not comply with § 192.201(a)(2)(iii), I find based on the recommendation of the Director, that Suburban provided a reasonable justification for its noncompliance, which was predicated on a misinterpretation of the correct MAOP for the six segments. This misinterpretation warrants a reduction of the proposed civil penalty under the good faith credit, for the reasons stated in the paragraph above. Despite Suburban acting in good faith with regards to the misinterpretation, only a reduction of the civil penalty, rather than a withdrawal, is warranted. Evidence is needed to support further reducing the penalty under the considerations listed in 49 C.F.R. § 190.225, which Suburban did not provide. Regarding the nature and circumstances of the violation, PHMSA noted in the Violation Report that the alleged violation related to an equipment issue rather than a record issue, the noncompliance lasted longer than 10 days, and the violation had been discovered by PHMSA or a State Partner. Regarding gravity, PHMSA noted in the Violation Report that pipeline safety was minimally affected, which is the lowest possible selection; therefore, the proposed civil penalty has already accounted for the fact that pipeline integrity was never compromised. Regarding culpability, PHMSA noted in the Violation Report that Suburban failed to comply with the applicable requirement due to not determining the MAOP correctly. A credit is not due under this factor absent action by Respondent to correct the violation before PHMSA discovered it. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$6,566 for violation of 49 C.F.R. § 192.201(a)(2)(iii).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a reduced total civil penalty of **\$29,466**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49

C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$29,466 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 1, 2, 3 and 4 for violations of 49 C.F.R. §§ 192.603(b), 192.743(a), 192.619(a), and 192.201(a)(2)(iii), 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.603(b) (**Item 1**), Respondent established and maintained liaison with fire, police, and public officials as required by § 192.615(c). Additionally, Suburban provided documentation of its 2019 liaison meetings. Therefore, the conditions of the Proposed Compliance Order for this Item have been met.
2. With respect to the violation of § 192.743(a) (**Item 2**), Respondent has provided documentation to PHMSA reflecting corrective actions it has taken to convert all five stations to monitor regulating stations. Therefore, the conditions of the Proposed Compliance Order for this Item have been met.
3. With respect to the violation of § 192.619(a) (**Item 3**), Respondent has changed the MAOPs from 15 to 10 psig with the appropriate field adjustments made to each system and documented, and reviewed the MAOP for the tank and second stage segments of the systems and determined that no adjustments were necessary. Therefore, the conditions of the Proposed Compliance Order for this Item have been met.
4. With respect to the violation of § 192.201(a)(2)(iii) (**Item 4**), Respondent has provided documentation demonstrating that it has reset the pressure relief devices to 15 psig. Therefore, the conditions of the Proposed Compliance Order for this Item have been met.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order.

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, 2<sup>nd</sup> 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 the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

December 18, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued