

December 4, 2020

VIA ELECTRONIC MAILTO: thampton@lakesgasco.com

Mr. Trent Hampton
President and Chief Executive Office
Lakes Gas Company
919 1st Street SW
Crosby, Minnesota 56441

Re: CPF No. 3-2019-0005

Dear Mr. Trent Hampton:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$63,800, and specifies actions that need to be taken by Lakes Gas Company 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 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

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Steven Sargeant, Executive Vice President of Operations, Lakes Gas Company,
ssargeant@lakesgasco.com

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)	
)	
Lakes Gas Company,)	CPF No. 3-2019-0005
)	
Respondent.)	
)	

FINAL ORDER

From September 4, 2018, through September 6, 2018, 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 Lakes Gas Company’s (Lakes Gas or Respondent) liquid propane system in Door County, Wisconsin. Lakes Gas supplies propane to residential, commercial and wholesale customers in Minnesota, Wisconsin, Michigan, and South Dakota.¹ Lakes Gas operates seven small liquid propane gas distribution systems in Door County, Wisconsin.² The largest system has 73 customers, while the remaining six have 10 or less customers.³

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated November 25, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Lakes Gas had committed five violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$63,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct two of the alleged violations.

Lakes Gas responded to the Notice by letter dated December 23, 2019 (Response). The company did not contest the allegations of violation but provided an explanation of its actions, requested a reduction of the proposed civil penalty, and proposed alternative compliance terms. On April 10, 2020, Lakes Gas submitted a supplemental filing in response to the Central Region’s March 30, 2020 request for the company to provide financial records supporting its request for a reduced civil penalty (Supplemental Response). Respondent did not request a hearing and therefore has waived its right to one.

¹ Lakes Gas Company website, *About Us*, available at <https://www.lakesgas.com/about-us.html> (last accessed September 21, 2020).

² Pipeline Safety Violation Report (Violation Report), (November 25, 2019), (on file with PHMSA), at 1.

³ *Id.*

FINDINGS OF VIOLATION

In its Response, Lakes Gas did not contest the allegations in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a), which states:

§ 192.465 External corrosion control: Monitoring.

(a) Each pipeline that is under cathodic protection must be tested at least one 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 lines, not in excess of 100 feet (30 meters), or separately protected service lines, 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.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline that is under cathodic protection 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. Specifically, the Notice alleged that Lakes Gas' records indicated that it did not test its cathodic protection system at the Birch Grove Condos at the requisite intervals in 2015 and 2016.

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. § 192.465(a) by failing to test each pipeline that is under cathodic protection 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.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b), which states:

§ 192.603 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 requires all gas pipeline operators to prepare and follow a manual of written procedures for conducting operations and maintenance activities and emergency response. Subparagraph (b)(1) of § 192.605 requires that an operator's written manual include applicable procedures for "[o]perating, maintaining, and repairing the pipeline in accordance with each of the requirements

of [subpart L]⁴ and subpart M of [Part 192].” Specifically, the Notice alleged that Lakes Gas failed to keep records demonstrating annual valve maintenance pursuant to § 192.747(a), which states that for distribution systems “[e]ach valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.” According to the Notice, Lakes Gas’ staff indicated to the PHMSA inspector that no annual valve inspection records for the company’s seven distribution systems had been kept for calendar years 2015 and 2016.

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. § 192.603(b) by failing to keep records necessary to administer the company’s procedures established under § 192.605.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(1), which states:

§ 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 a design pressure....

The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(1)⁵ by failing to have the maximum allowable operating pressure (MAOP) of its seven systems established according to the design pressure of the weakest element in the segment. Specifically, the Notice alleged that Lakes Gas’ seven systems had a MAOP of 30 psig, but house service regulators on the segments had a maximum inlet pressure limit of 10 psig. Therefore, the Notice alleged, Lakes Gas’ MAOP for its seven systems exceeded the design pressure of the weakest element in the segment.

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. § 192.619(a)(1) by failing to have the MAOP of its seven systems established according to the design pressure of the weakest element in the segment.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a), which states:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

⁴ Subpart L includes 49 C.F.R. § 192.747(a).

⁵ At 84 FR 52247, Section 192.619(a) was subsequently amended by final rule effective July 1, 2020.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a) by failing to test and inspect each pressure limiting station, relief device (except rupture discs), and pressure regulating station and equipment at least once each calendar year, but at intervals not exceeding 15 months, to determine that they met the requirements of § 192.739(a)(1) – (a)(4). Specifically, the Notice alleged that Lakes Gas personnel indicated to PHMSA that the company did not perform regulator and overpressure-protection inspections and tests on its seven stations at least once each calendar year during 2015 and 2016.

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. § 192.739(a) by failing to test and inspect each pressure limiting station, relief device (except rupture discs), and pressure regulating station and equipment at least once each calendar year, but at intervals not exceeding 15 months, to determine that they met the requirements of § 192.739(a)(1) – (a)(4).

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states:

§ 192.805 Qualification program.

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

- (a)
- (b) Ensure through evaluation that individuals performing covered tasks are qualified; ...

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) by failing to follow its own written qualification program to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Lakes Gas' operator qualification procedures required individuals performing covered task to be qualified prior to performing the covered task and to be requalified every three years, but that one particular Lakes Gas employee started performing several covered tasks in 2014 without being qualified and was still unqualified at the time of the PHMSA inspection in 2018.

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. § 192.805(b) by failing to follow its

own written qualification program to ensure through evaluation that individuals performing covered tasks were qualified.

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.⁶ 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 \$62,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$19,300 for Respondent's violation of 49 C.F.R. § 192.465(a), for failing to test each pipeline under cathodic protection 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. In its Response, Lakes Gas did not contest the violation or offer specific arguments against the proposed civil penalty. Rather, Lakes Gas explained that the noncompliance was due, in part, to a personnel change. The company also argued, generally, that the overall proposed penalties were "very excessive," based on the size of the company's systems and requested that they be reduced. Lakes Gas explained that its operations were very small and that the overall proposed civil penalty of \$62,800 was "many years of net revenue."⁷

In response to a March 30, 2020 request from PHMSA for additional documentation to support its contention that the penalties were excessive, based on Respondent's ability to pay, Lakes Gas provided 2019/2020 account records for its seven liquid propane gas distribution systems in Door County, and argued that "based on the volume size of the pipelines under review," the size of [its] jurisdictional system and the actual infractions that took place," a "better review of the penalty assessment" would be warranted. Lakes Gas also argued that since these were small propane systems, its employees "regularly make contact and see [the] tank and regulator involvement and operation." Lastly, Lakes Gas explained that since receiving the Notice, it had worked with the OPS Central Region office to resolve any outstanding issues. Therefore, for all those reasons, Lakes Gas argued, the overall penalty should be reduced.

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

⁷ Response, at 2 (on file with PHMSA).

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider any effect that a proposed penalty may have on a respondent's ability to continue doing business. However, respondents "must provide PHMSA with the means by which the agency can accurately determine the company's true financial condition."⁸ PHMSA has previously instructed operators that asserting a claim of financial hardship requires that the company submit "accurate and reliable information on the financial condition" of the company.⁹ Lakes Gas' website indicates that it operates in four states and has 43 locations. According to Dun and Bradstreet, Lakes Gas has over 25 branches.¹⁰ The account records that Lakes Gas submitted in its Supplemental Response focused solely on its Door County branch and did not provide any credible information that would enable me to determine the company's (not just the branch's) overall ability or inability to pay the penalty. Without such supporting financial documentation, I have no basis for reducing or eliminating the civil penalty on the grounds of financial hardship.

In addition, while I acknowledge and appreciate Lakes Gas' eagerness to work with PHMSA to resolve any outstanding issues, I do not find that this action – seeking to come into compliance with the pipeline safety regulations – warrants a withdrawal or reduction of the civil penalty. Turning now to the other penalty considerations, regarding nature and circumstances, PHMSA noted in the Violation Report that the alleged violation related to a failure to perform a required activity and that the violation was discovered by PHMSA or one of its state partners. It is uncontested that Lakes Gas failed to test each pipeline that is under cathodic protection 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, and it is uncontested that PHMSA discovered this violation instead of the operator.

Regarding gravity, PHMSA noted in the Violation Report that pipeline safety was minimally affected. Therefore, the proposed penalty already accounted for the fact that the pipeline integrity was never compromised. Regarding culpability, Lakes Gas did not contest the violation and has thus acknowledged that it failed to comply with an applicable requirement of Part 192. Regarding good faith, in its Response, Lakes Gas explained that certain lapses took place due to a change in personnel. It is the pipeline operator's responsibility to ensure that all personnel know how to comply with the pipeline safety regulations. 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 \$19,300 for violation of 49 C.F.R. § 192.465(a).

⁸ E.g., *In the Matter of Tampa Bay Pipeline Corp.*, Decision on Reconsideration, CPF No. 2-2005-6012, 2008 WL 902910, at 2 (Mar. 31, 2008). See also, *In the Matter of Tampa Pipeline Corporation*, CPF 2-2008-6002, 2010 WL 2228556, at 19 (April 26, 2010).

⁹ *Id.*

¹⁰ See, Dun and Bradstreet Comprehensive Report for Lakes Gas Company, accessed November 20, 2020, (on file with PHMSA) at 5. Dun and Bradstreet is a company that provides commercial data, analytics, and insights for businesses.

Item 2: The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 192.603(b), for failing to keep records necessary to administer the procedures established under § 192.605. As with Item 1, Lakes Gas did not provide a specific reason why the proposed civil penalty for Item 2 should be reduced or eliminated. Rather, Lakes Gas argued that the overall penalty was excessive and should be reduced. For the reasons stated above, I find no reason to reduce or eliminate the civil penalty based on financial hardship.

Regarding nature and circumstances, PHMSA noted in the Violation Report that the alleged violation was a records violation and that the violation was discovered by PHMSA or one of its state partners. It is uncontested that Lakes Gas failed to keep records necessary to administer the procedures as established under § 192.605, and it is uncontested that PHMSA discovered this violation and not the operator.

Regarding gravity, PHMSA noted in the Violation Report that the pipeline safety was minimally affected. Therefore, the proposed penalty already accounted for the fact that the pipeline integrity was never compromised. Regarding culpability, Lakes Gas did not contest the violation and has thus acknowledged that it failed to comply with an applicable requirement of Part 192. Regarding good faith, as noted above, Lakes Gas explained that certain lapses took place due to a change in personnel. Therefore, 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 \$20,000 for violation of 49 C.F.R. § 192.603(b).

Item 4: The Notice proposed a civil penalty of \$23,500 for Respondent's violation of 49 C.F.R. § 192.739(a), for failing to test and inspect each pressure limiting station, relief device (except rupture discs), and pressure-regulating station and equipment at least once each calendar year, but at intervals not exceeding 15 months, to determine that they met the requirements of § 192.739(a)(1) – (a)(4). As stated previously, Lakes Gas did not provide a specific reason why the proposed civil penalty for Item 4 should be reduced or eliminated, and I found no reason to reduce or eliminate the civil penalty based on financial hardship.

Regarding nature and circumstances, PHMSA noted in the Violation Report that the alleged violation was an activities violation and that the violation was discovered by PHMSA or one of its state partners. It is uncontested that Lakes Gas failed to test and inspect each pressure-limiting station, relief devices, and pressure-regulating station and equipment, and it is uncontested that PHMSA discovered this violation rather than the operator. Regarding gravity, PHMSA noted in the Violation Report that the pipeline safety was minimally affected. Therefore, the proposed penalty already accounted for the fact that the pipeline integrity was never compromised. Regarding culpability, Lakes Gas did not contest the violation and has thus acknowledged that it failed to comply with an applicable requirement of Part 192. Regarding good faith, as noted above, Lakes Gas explained that due to a change in personnel, that certain lapses took place. Therefore, 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 \$23,500 for violation of 49 C.F.R. §192.739(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$62,800**.

Failure to pay the \$62,800 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 3 and 5 in the Notice for violations of 49 C.F.R. §§ 192.619(a), and 192.805(b), 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.

With regard to the violation of § 192.619(a) (Item 3), Respondent argued that the compliance terms should be modified. Lakes Gas noted that it had set the MAOP based on guidance it received from the Minnesota Office of Pipeline Safety, but proposed reducing the MAOP of its system to 13 psig. During the inspection, the PHMSA inspector found house service regulators with a maximum inlet pressure limit of 10 psig. Therefore, Respondent's proposed modification does not comply with § 192.619(a), which requires that the MAOP not exceed the design pressure of the weakest element of the segment.

With regard to the violation of § 192.805(b) (Item 5), Respondent did not contest the proposed compliance order.

For the above reasons, the Compliance Order is not modified as set forth below.

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(a) (**Item 3**), Respondent must determine and document its MAOP of each system and adjust its pressure-limiting and overpressure protection devices to not exceed these limits.
2. With respect to the violation of § 192.805(b) (**Item 5**), Respondent must qualify through evaluation and documentation those individuals allowed to perform covered task on its systems.

3. Lakes Gas must within 90 days after receipt of this Final Order complete Items 1 and 2, and send the applicable documentation to the Director, Central Region, Office of Pipeline Safety, PHMSA.

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.

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.

December 4, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued