

August 23, 2021

VIA ELECTRONIC MAIL TO: amoy@hawaiiigas.com

Alicia Moy
President & Chief Executive Officer
Hawaii Gas
745 Fort Street Mall, Ste. 1800
Honolulu, Hawaii 96813

CPF No. CPF 4-2021-042-NOPSO

Dear Ms. Moy:

Enclosed please find a Consent Order incorporating the terms of the fully executed Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Hawaii Gas, which was executed on August 19, 2021. Service of the Consent Order and Consent Agreement by e-mail is deemed effective upon the date of transmission, or as otherwise 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

Enclosures: Consent Order and Consent Agreement

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, Office of Pipeline Safety, PHMSA
Mr. Edwin Sawa, General Manager, Hawaii Gas, esawa@hawaiiigas.com
Mr. Kevin Nishimura, Vice President, Operations, Hawaii Gas, knishimu@hawaiiigas.com
Ms. Bryn Karaus, Van Ness Feldman, Counsel for Hawaii Gas,
bsk@vnf.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)	
)	
The Gas Company, LLC,)	CPF No. 4-2021-042-NOPSO
dba Hawaii Gas,)	
)	
Respondent.)	
_____)	

CONSENT ORDER

By letter dated May 28, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, issued a Notice of Proposed Safety Order (Notice) to Hawaii Gas.¹

In accordance with 49 C.F.R. Part 193, the Notice alleged that conditions exist on Respondent's liquefied natural gas facility located in Oahu, Hawaii, that pose a pipeline integrity risk to public safety, property, or the environment. The Notice also proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

In response to the Notice, Respondent requested an informal consultation, whereupon the parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Consent Order that settles all of the allegations in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 C.F.R. § 190.223, or in referral to the Attorney General for appropriate relief in a district court of the United States.

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

August 23, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety, PHMSA

Date

¹ Hawaii Gas is the trade name of The Gas Company, LLC.

**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)	
)	
The Gas Company, LLC,)	CPF No. 4-2021-042-NOPSO
dba Hawaii Gas,)	
)	
Respondent.)	
_____)	

CONSENT AGREEMENT

On May 28, 2021, pursuant to 49 C.F.R. § 190.239, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, Southwest Region, issued a Notice of Proposed Safety Order (Notice) to Hawaii Gas² (Hawaii Gas or Respondent). The Notice was issued after PHMSA initiated an information and record review and conducted an on-site inspection to determine compliance with 49 C.F.R. Part 193 at Hawaii Gas’ liquefied natural gas (LNG) facility located in Oahu, Hawaii. The on-site inspection was conducted from April 12 through April 16, 2021, meanwhile the information review remains ongoing. While the facility was not in operation at the time of the inspection and is currently not in operation, Hawaii Gas remains obligated to comply with 49 C.F.R. Part 193 while the facility remains in service. As a result of this review and inspection, OPS issued the Notice, which alleged that conditions exist on Respondent’s LNG facility that pose a pipeline integrity risk to public safety, property, or the environment, and proposed that Respondent take certain corrective measures to remedy the alleged conditions to ensure that the public, property, and the environment are protected from the potential risk.

On June 23, 2021, Hawaii Gas responded to the Notice by timely submitting a written response and a request for an informal consultation. An informal consultation was held virtually on July 19, 2021.

As a result of the informal consultation, PHMSA and Respondent (the Parties) agreed that settlement of this proceeding will avoid further administrative proceedings or litigation of the Notice and that entry into this Consent Agreement (Agreement) is the most appropriate means of resolving the issues raised in the Notice and is generally in the public interest. Therefore, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, PHMSA and Hawaii Gas agree as follows:

² Hawaii Gas is the trade name of The Gas Company, LLC.

I. General Provisions

1. Respondent acknowledges that as the operator of the Hawaii Gas LNG facility, Respondent and its LNG facility are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent agrees, for purposes of this Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section II of this agreement (Corrective Measures) and to abide by the terms of this Agreement. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.

3. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

5. This Agreement will apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

6. For all transfers of ownership or operating responsibility of Respondent's Oahu, Hawaii LNG facility, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and provide written notice of the transfer within 30 days to the PHMSA Southwest Region Director (Director) who issued the Notice.

7. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

8. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

II. Corrective Measures

11. Upon issuance of the Consent Order, Respondent agrees to perform the Corrective Measures set forth below.

12. ***Qualified Independent Third Party.*** Within 30 days of the Effective Date of the Consent Order, Respondent shall select an Independent Third Party and submit its selection along with its associated qualifications to demonstrate its knowledge and prior experience of PHMSA-regulated LNG facilities to the Director for approval.

13. ***Siting Analysis.*** Within 90 days of the date of the Director's approval of the Independent Third Party, Respondent shall submit a Siting Analysis of the LNG facility, performed by the approved independent third party, for the Director's approval. The Siting Analysis shall address all siting requirements in accordance with Part 193, Subpart B and NFPA 59A-2001 as incorporated by reference in 49 C.F.R. § 193.2051.

14. ***Gas Dispersion Study.*** Within 90 days of the date of the Director's approval of the Independent Third Party, and concurrent with the Siting Analysis, Respondent shall submit a Gas Dispersion Study for the vapor vent stack(s) located within the LNG facility, performed by the approved independent third party, for the Director's approval. The Gas Dispersion Study will be in accordance with NFPA 59A-2001, Section 3.4.5, as incorporated by reference in 49 C.F.R. § 193.2401.

15. **Fire Protection Evaluation.** Within 60 days after completing the Siting Analysis, Respondent shall submit a Fire Protection Evaluation, performed by the approved Independent Third Party, for the Director's approval. The fire protection evaluation must address all requirements in 49 C.F.R. § 193.2801.

16. **Operations, Maintenance, and Training Review.** Within 90 days of the Effective Date of the Consent Order, Respondent shall review and evaluate the current operations and maintenance procedures and training requirements associated with personnel responsible for operations and maintenance within the LNG facility, with such review and evaluation being conducted by the approved Independent Third Party. The review must also ensure that roles and responsibilities are clearly defined and include recommendations for implementing the procedures. All revisions to the procedures must be submitted to the Director for review and approval. Following the Director's approval, Respondent must implement the revised procedures and mandatory personnel training to accompany the revised procedures.

17. **Remedial Work Plan.** Within 90 days after completing the corrective measures in paragraphs 13, 14, 15 and 16, Respondent shall prepare and submit a Remedial Work Plan (RWP) to the Director for review and approval. The RWP must include actions to remedy any issues of non-compliance identified by the Siting Analysis, Fire Protection Evaluation, Gas Dispersion Study, and the Operations, Maintenance, and Training Review, as well as any other identified safety risks determined by the aforementioned assessments.

- a. The Director may incrementally approve parts of the RWP without approving the entire RWP.
- b. Once approved by the Director, the approved RWP increments, parts or entire RWP is considered incorporated by reference into this Agreement.
- c. The RWP must specify in detail the measures that Hawaii Gas will use to remedy any non-compliance identified by the aforementioned assessments.
- d. The RWP must include the following steps:
 - i. Integrate the results of the Siting Review, Fire Protection Evaluation, Gas Dispersion Study, the Operations, Maintenance, and Training Review, and any preexisting operational data, which includes, but is not limited to, construction, operations, maintenance, testing, repairs, and any third-party consultation information.
 - ii. Describe all remedial measures Hawaii Gas will use to prioritize, evaluate, repair, modify, or construct to comply with requirements in 49 C.F.R. Part 193 and NFPA 59A-2001.
 - iii. Include a proposed schedule for completion of the RWP and update as required.

- iv. Submit any plan revisions to the Director for prior approval. The Director may approve plan revisions incrementally.
 - v. Update all facility drawings and records to reflect work completed in the RWP.
- e. Implement the RWP as it is approved by the Director, including any revisions.

18. **Reporting.** From the Effective Date of the Consent Order, Respondent shall promptly report to the Director any abnormal operating conditions of components within the facility. Additionally, Respondent shall submit quarterly reports to the Director that include information regarding the progress on Siting Analysis, Fire Protection Evaluation, Gas Dispersion Study, Maintenance, Operation, and Training Review, and the RWP required under this Consent Order. The first quarterly report will be due on October 15, 2021, which will cover the period from the Effective Date of the Consent Order to September 30, 2021. Subsequent Quarterly Reports are due 15 days after the end of the applicable quarter.

19. **Extensions of Time.** The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for an extension. The Director shall respond in writing to any such request.

20. **Appeals.** Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator will be final.

III. Review and Approval Process

21. With respect to any submission under Section II (Corrective Measures) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified, reasonable conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

IV. Dispute Resolution

22. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement. If Respondent and the Director are unable to informally resolve the dispute within 15 days of submittal of Respondent's invoking dispute resolution, Respondent may request in writing, within 10 days thereafter, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and PHMSA's consideration

of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during pendency of the dispute resolution process except as agreed by the Director or the Associate Administrator in writing.

V. Enforcement

23. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All work plans and associated schedules set forth or referenced in Section II will be automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Recordkeeping and Information Disclosure

24. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

VII. Effective Date

25. The term “Effective Date,” as used herein, is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement. Unless specified to the contrary, all deadlines for actions required by this Agreement run from the Effective Date of the Consent Order.

VIII. Modification

26. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

IX. Termination

27. This Agreement will remain in effect until the Corrective Measures in Section II are satisfied, as determined by the Director. Respondent may request written confirmation from PHMSA when this Consent Agreement is terminated and the Director will provide such confirmation. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

X. Ratification

28. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

29. The Parties hereby agree to all conditions and terms of this Agreement.

For HAWAII GAS:

Kevin Nishimura
Vice President, Operations
Hawai'i Gas

Date

For PHMSA:

Mary L. McDaniel, P.E.
Director, Southwest Region, OPS

Date