U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

July 18, 2022

VIA ELECTRONIC MAIL TO: jhartz@ugies.com

Mr. Joseph Hartz
President
UGI Energy Services, LLC
1 Meridian Boulevard
Wyomissing, Pennsylvania 19610

Re: CPF No. 1-2021-059-NOPV

Dear Mr. Hartz:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of $150,100. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY

Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.07.18 12:12:29 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Frank H. Markle, Senior Counsel, UGI Corporation, fmarkle@ugies.com
Mr. Keith Coyle, Outside Counsel, UGI Corporation, kcoyle@babstcalland.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	)	
	)	
UGI Energy Services, LLC,	)	**CPF No. 1-2021-059-NOPV**
a subsidiary of UGI Corporation,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

From March 29, 2021, to April 21, 2021, 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 UGI Energy Services, LLC (UGIES or Respondent), a subsidiary of UGI Corporation,[1] in New Middletown, Ohio. UGIES operates an intrastate hazardous liquid pipeline that originates at Hickory Bend processing plant in Mahoning County, Ohio and terminates at the UEO Buckeye Kensington Plant in Columbiana County, Ohio. This pipeline is approximately 36 miles in length.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated November 24, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that UGIES had committed three violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of $150,100 for the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action.

UGIES responded to the Notice by letter dated December 22, 2021 (Response). UGIES contested some of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. 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 195, as follows:

[1] UGIES website, *available at* https://ugies.com/about/why-choose-ugi-energy-services/ (last accessed July 6, 2022)

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
> (a) *General*. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that UGIES violated 49 C.F.R. § 195.402(a) for three separate and distinct reasons. First, the Notice alleged that UGIES failed to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities, and handling abnormal operations and emergencies before initial operation of its pipeline system commenced. Second, the Notice alleged that UGIES failed to keep appropriate parts of the manual at locations where operations and maintenance activities are conducted. Finally, the Notice alleged that UGIES failed to review, at intervals not to exceed 15 months but at least once each calendar year, the TC Energy manuals that UGIES asserted it relied upon during 2019 and 2020.

Specifically, the Notice alleged that during the inspection, PHMSA requested UGIES's hazardous liquid operations, maintenance, and emergency manuals for 2019 and 2020. In response, UGIES noted that it took ownership of the pipeline in August 2019 and did not have its own procedures prepared or in place at that time. Instead, UGIES stated it had been using the previous operators' procedures, TC Energy. At the time of inspection, UGIES no longer had access to, nor maintained at appropriate locations, many of TC Energy's operating procedures.[2] In addition, the Notice alleged that UGIES utilized portions of its gas pipeline operating procedures for its newly acquired liquid assets. In March 2021, UGIES completed development of operations, maintenance, and emergency manuals for its liquid assets.

In its Response, UGIES contested certain allegations of fact related to one basis for the alleged violation. Specifically, UGIES argued that the Notice failed to prove that it did not have a complete operations, maintenance, and emergency (O&M) manual before initial operations commenced. In support of its position, UGIES stated that it acquired the pipeline on August 1, 2019, and followed the prior operator's O&M manual until it began implementing its own procedures in March 2021. As such, UGIES requested that PHMSA rescind the portion of this item relating to failing to prepare a manual before operations commenced and adjust the proposed civil penalty accordingly.

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[2] When the PHMSA inspector requested particular operations, maintenance, and emergency procedures utilized by UGIES during 2019 and 2020, UGIES was unable to provide nearly all of the procedures requested. Pipeline Safety Violation Report (Violation Report), at 3.

Having considered the Response, I agree with Respondent that a portion of the alleged violation should be withdrawn, but I find sufficient evidence to prove a violation with respect to the remaining allegations. The regulation requires that operators prepare and follow an O&M manual prior to the start of operations, that such manual is reviewed at intervals not to exceed 15 months, but at least each calendar year, and that appropriate part of the manual be maintained at appropriate locations. The Notice properly alleged a violation of the regulation by asserting that UGIES failed in all three aspects, any of which may serve as an independent basis for a violation. Although I agree with Respondent that the evidence does not establish that UGIES failed to have an O&M manual in place prior to commencing operations of the pipeline, the analysis does not end there. UGIES admitted in its Response that it did not have copies of the relevant procedures available during the inspection, and did not offer any evidence to rebut the allegation that it failed to maintain relevant parts of the procedure at appropriate locations. That is sufficient to establish a violation of the regulation. In addition, the record demonstrates that a violation of the regulation is also supported by the unrebutted allegation that UGIES did not to review, at intervals not to exceed 15 months but at least once each calendar year, the operating procedures it relied on for 2019 and 2020.

Accordingly, after considering all of the evidence and the legal issues presented, I find that UGIES violated 49 C.F.R. § 195.402(a) by failing to maintain relevant parts of the procedure at appropriate locations, and by failing to review, at intervals not to exceed 15 months but at least once each calendar year, the operating procedures it relied on for 2019 and 2020. The allegation that Respondent failed to have procedures prior to commencement of operations is withdrawn.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c), which states:

> **§ 195.403 Emergency response training.**
> (a) . . . .
> (c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

The Notice alleged that UGIES violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of emergency response procedures for which they are responsible. Specifically, the Notice alleged that UGIES's procedures failed to include emergency response supervisor training or verification requirements.

In its Response, UGIES did not contest the allegation of violation, but did request a reduction in the proposed civil penalty. The arguments in support of the reduction request are addressed in the civil penalty section below.

Accordingly, after considering all of the evidence, I find that UGIES violated 49 C.F.R. § 195.403(c) by failing to include emergency response supervisor training or verification requirements in its emergency response procedures.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(5), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) . . . .
> (b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:
> (1) . . . .
> (5) Implement and follow the program.

The Notice alleged that UGIES violated 49 C.F.R. § 195.452(b)(5) by failing to implement and follow its integrity management program procedures. Specifically, the Notice alleged that UGIES failed to follow its *US-LIQ-HVL-IMP US Highly Volatile Liquid Integrity Management Program (Onshore), dated 07/02/2018* (IMP Procedure) regarding conducting annual integrity management program (IMP) effectiveness reviews,[3] and supported this allegation of violation by noting that UGIES failed to provide any records for IMP effectiveness reviews for the years 2019 and 2020.[4]

In its Response UGIES requested that the portion of the allegation of violation related to 2019 be withdrawn and the proposed civil penalty reduced accordingly. UGIES did not contest the underlying allegation that it violated § 195.452(b)(5) by failing to conduct annual effectiveness reviews, but rather contested the allegations that the noncompliance also occurred in 2019, which is relevant to the calculation of the civil penalty for this item. UGIES's arguments for a reduction in the proposed civil penalty are addressed in the civil penalty section below.

Accordingly, after considering all of the evidence, I find that UGIES violated 49 C.F.R. § 195.452(b)(5) by failing to implement and follow its IMP procedures.

These finding 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]

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[3] § 195.452 Pipeline integrity management in high consequence areas.
(a) . . . .
(k) *What methods to measure program effectiveness must be used?* An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this part for guidance on methods that can be used to evaluate a program's effectiveness.

[4] *See* § 195.452(l)(1) (requiring operators to "maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of [195.452].").

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

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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 $150,100 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $61,100 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to have a manual of written procedures before operating its pipeline, failing to maintain relevant parts of the procedure at appropriate locations, and failing to review, at intervals not to exceed 15 months but at least once each calendar year, the operating procedures it relied on for 2019 and 2020.

In its Response, UGIES requested a reduction in the proposed civil penalty based on its assertion that it did not violate the regulation in all manners alleged in the Notice. Specifically, UGIES argued that they did not begin operations of the pipeline without an O&M manual in place. I credited this argument above, but found that it did not warrant withdrawing the entire violation as the Notice alleged three distinct manners in which UGIES violated the regulation, and I found that the record supported a finding of violation with respect to the two other separate bases for the violation. Having found a violation, I now turn to UGIES's argument that a reduction in the penalty is warranted as a result of my finding that the record does not support the specific allegation that UGIES failed to have an O&M manual in place prior to starting operations.

I disagree with UGIES that this finding results in a reduction to the proposed civil penalty. As described above, UGIES violated that regulation, and a finding that one avenue of alleged violation was unsupported in the record does not impact the civil penalty. UGIES's argument implies the proposed civil penalty for Item 1 was comprised of three separate penalties reflecting three distinct alleged violations of § 195.402(a). That is not the case. The Violation Report demonstrates the multiple violations were treated as one violation of § 195.402(a) that lasted two years (or two "instances"). I am constrained in my analysis of the proposed civil penalty by the criteria set forth in 49 C.F.R. § 190.225. Evaluating the record against the relevant civil penalty criteria, I find that PHMSA properly considered all the civil penalty assessment considerations, and I further note that there is no evidence in the record to rebut any of the criteria selected to calculate the proposed civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $61,100 for violation of 49 C.F.R. § 195.402(a).

Item 3: The Notice proposed a civil penalty of $27,900 for Respondent's violation of 49 C.F.R. § 195.403(c) by failing to include emergency response supervisor training or verification requirements in its emergency response procedures. In its Response, UGIES argued for a reduction in the proposed civil penalty under the good faith factor. Specifically, UGIES noted that it only owned the pipeline for five months in 2019 but was able to conduct an emergency response tabletop exercise with local first responders in the fall at the Hickory Bend plant. For 2020, UGIES provided records demonstrating that it conducted "a training and testing session" for supervisors and employees at Hickory Bend (2020 Record).[6] Based on the foregoing, UGIES requested a reduction of the penalty under the good faith factor.

When reviewing whether an operator's conduct warrants consideration under the good faith assessment factor, PHMSA evaluates whether the operator had a reasonable justification for its non-compliance. Relatedly, under the culpability assessment factor, PHMSA considers whether an operator identified the non-compliance on its own and took actions to address it prior to PHMSA learning of the violation.

Having reviewed the arguments presented, I find that a penalty reduction based on good faith or culpability is unsupported by the record. Section 195.403(c) requires each operator to verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures for which they are responsible to ensuring compliance. While the 2019 emergency tabletop exercise with local first responders is commendable, it does not exhibit an effort taken related to the requirements in § 195.403(c) as it does not does not verify that supervisors maintain a thorough knowledge of emergency response procedures for which they are responsible to ensure compliance.[7] Similarly, while the 2020 Record demonstrated that UGIES conducted training that included both employees and the supervisor, it fails to demonstrate that UGIES's supervisors have that portion of knowledge of the emergency response procedures for which they are responsible to ensure compliance with § 195.403(c). In addition, I do not find Respondent had a reasonable justification for its non-compliance. UGIES did not contest any of the other civil penalty criteria selections, and I find that those selections are supported by the record.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $27,900 for violation of 49 C.F.R. § 195.403(c).

Item 5: The Notice proposed a civil penalty of $61,100 for Respondent's violation of 49 C.F.R. § 195.452(b)(5), for failing to implement and follow its IMP procedures.

In its Response, UGIES argued for a reduction in the civil penalty based on its assertion that it should be found to have had a single instance of violation, not two, as alleged in the Notice. Specifically, UGIES asserted that its IMP required an effectiveness review every 12 months, not each calendar year, and therefore it was only required to conduct one effectiveness review between August 1, 2019, when it acquired the pipeline, and August 1, 2020, and that it was not required to conduct a second one until August 2021. Consequently, UGIES requested that PHMSA withdraw the allegation of the 2019 instance of violation and adjust the civil penalty accordingly.

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[6] 2020 Company Compliance Program Record.

[7] Furthermore, there is nothing in the record to support UGIES's statement that the emergency tabletop exercise occurred or that it involved the emergency response supervisor.

I disagree with UGIES's argument. As alleged in the Notice, during the 2021 inspection, PHMSA reviewed UGIES's IMP, Section 9.4, which described an "annual" IMP Management Review process to determine the overall performance, continuing suitability, adequacy, and effectiveness of the IMP. PHMSA requested documentation of such annual reviews from calendar years 2019 and 2020. Respondent had neither. While Section 9.4 of UGIES's IMP did not define annually as "each calendar year," using the plain language definition of the word at issue, "annual" is defined as "occurring or happening every year or once a year."[8] That definition lends support to reading Section 9.4 of the IMP to have required an annual review during each calendar year. I further look to other sections of the IMP at issue to determine if additional language gives clarity to the meaning. UGIES's IMP procedures contained numerous references to intervals at which certain actions are to be completed. Where those intervals are described as being required to take place in a matter of months, it is described as such. UGIES's plan areas, the IMP Procedure specifically requires a review every 12 months.[9] For example, Section 8.1.1 of the IMP required that a certain assessment must be conducted "not more than twelve months" after the last assessment.[10] In Section 8.4, a revised IMP must be completed "every 12 months (not to exceed fifteen months)."[11] In Section 9.1.1, a Preventive and Mitigative Measures evaluation must be conducted "not more than twelve months after completing an integrity assessment for that segment."[12] Section 9.4 requires an effectiveness review "annually," not every 12 months, as UGIES argues. Reading the IMP Procedure as a whole, the suggestion that Section 9.4 required a review every 12 months and not every calendar year, as UGIES argued, is unsupported. I further find that PHMSA's selection of the civil penalty criteria is not challenged and the record supports the selections made.[13]

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $61,100 for violation of 49 C.F.R. § 195.452(b)(5).

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 **$150,100**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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

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[8] "Annual" Definition, https://www merriam-webster.com/dictionary/annual (last accessed June 15, 2022).

[9] The IMP Procedure requires annual reviews in several sections, suggesting that annual reviews are deliberately implemented as opposed to reviews required every 12 months. *See, e.g.,* IMP Procedure §§ 5.6, 8.3, 8.5, 9.2, 10.2.

[10] IMP Procedure § 8.1.1.

[11] IMP Procedure § 8.4.

[12] IMP Procedure § 9.1.1.

[13] I note further that even if Respondent's procedures permitted a 12-month interval, Respondent failed to submit evidence of the prior operator's most recent effectiveness review to demonstrate when that interval would have started. I reject Respondent's notion that its acquisition of the pipeline would have restarted such an interval.

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 $150,100 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.

WARNING ITEMS

With respect to Items 2 and 4, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

> 49 C.F.R. § 195.402(c)(13) **(Item 2)** ─ Respondent's alleged failure to conduct periodic reviews of the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance, and take corrective action where deficiencies are found. Specifically, UGIES failed to conduct an effectiveness review in 2019.

> 49 C.F.R. § 195.420(b) **(Item 4)** ─ Respondent's alleged failure to inspect each of its mainline valves at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine they are functioning properly. Specifically, UGIES failed to inspect each of its 10 mainline valves during 2019 and within 7 ½ months of operating the pipeline.

UGIES requested withdrawal of Item 2 because it contended that § 195.402(c)(13) does not require annual effectiveness reviews, but periodic reviews. UGIES argued that it is unreasonable to require an effectiveness review in 2019 as it only acquired the pipeline in August 2019. UGIES also requested withdrawal of Item 4 because it stated that it conducted an inspection in October 2019 and attached documentation of those inspections. Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. 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. The written petition must be received no later than 20 days after receipt 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.

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.07.18 12:10:19 -04'00'

July 18, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued