



U.S. Department
of Transportation

**Pipeline and Hazardous Materials
Safety Administration**

901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 25, 2019

Steve Sargeant
President and Senior Executive
Lakes Gas Company
655 South Lake Street
Forest Lake, MN 55025

CPF 3-2019-0005

Dear Mr. Sargeant:

From September 4-6, 2018, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your liquid propane systems and records in Door County, Michigan.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §192.465 External corrosion control: Monitoring.

(a) Each pipeline that is under cathodic protection must be tested 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. 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.

Lakes Gas Company (Lakes) failed to test its cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection system meets the requirements of §192.463. Lakes did not test its cathodic protection system at the Birch Grove Condos at the requisite intervals in 2015 and 2016, as found by the PHMSA field records inspection and stated by Lakes' staff.

2. §192.603 General provisions.

(a)

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

Lakes failed to keep records necessary to administer the procedures as established under § 192.605. Section 192.605(b)(1) 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] and subpart M of [Part 192]." Specifically, Lakes failed to document each valve, which the use of may be necessary for the safe operations of its distribution system, was checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.¹ No annual valve inspection records for their seven systems were kept for 2015 and 2016 as stated by Lakes' staff.

¹ Section 192.747(a) 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."

3. §192.619 Maximum allowable operating pressure: Steel or plastic pipelines

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

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

Lakes failed to have the maximum allowable operating pressure (MAOP) of its seven systems established according to the design pressure of the weakest element of the segment. Specifically, Lakes stated during the inspection that its MAOP in each of its seven systems was 30 psig, but the PHMSA inspector found house service regulators had a maximum inlet pressure limit of 10 psig. This would restrict the MAOP to 10 psig. Therefore, the MAOP of Lakes' seven systems exceeded the design pressure of weakest element on the segment.

4. §192.739 Pressure limiting and regulating stations: Inspection and testing.

(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.

Lakes failed to test and inspect its 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 under §192.739(a). Lakes did not perform regulator and overpressure protection inspections and tests on its seven stations in 2015 and 2016 at the requisite intervals as stated by Lakes' staff.

5. **§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;

Lakes failed to follow its written qualification program to ensure through evaluation that individuals performing covered tasks were qualified. Lakes operator qualification procedures require individuals performing covered tasks to be qualified prior to performing covered tasks and requalified every 3 years. One individual who began work in 2014 and subsequently performed covered tasks of regulator inspection, valve inspection, atmospheric corrosion inspection, locates, patrols, etc. on Lakes' system was not qualified at the time the tasks were performed. Additionally, the individual had still not been qualified as the date of PHMSA's inspection in 2018.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$62,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$19,300
2	\$20,000
4	\$23,500

Proposed Compliance Order

With respect to items 3 and 5 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Lakes Gas Company.

Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2019-0005** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Allan C. Beshore
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Lakes Gas Company (Lakes) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Lakes with the pipeline safety regulations:

1. In regard to Item Number 3 of the Notice pertaining to requirements of determining the maximum allowable operating pressure, Lakes must determine and document its maximum allowable operating pressure (MAOP) of each system and adjust its pressure limiting and overpressure protection devices to not exceed these limits.
2. In regard to Item Number 5 of the Notice pertaining to ensuring through evaluation that individuals performing covered tasks were qualified, Lakes must qualify through evaluations and documentation those individuals allowed to perform covered task on it systems.
3. Lakes must within 90 days after receipt of a Final Order complete Items 1 and 2 of the proposed compliance order and send the applicable documentation to the Allan C. Beshore, Director, Central Region, OPS, Pipeline and Hazardous Materials Safety Administration.
4. It is requested (not mandated) that Lakes maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Allan C. Beshore, Director, Central Region, OPS, Pipeline and Hazardous Materials Safety Administration. 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.