

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

**VIA ELECTRONIC MAIL TO: jamesferrell@ferrellgas.com; Johnfegett@Ferrellgas.com;
davepeters@ferrellgas.com;**

July 2, 2024

Mr. James E. Ferrell
Executive Chairman/President
Ferrellgas, L.P.
One Liberty Plaza
Liberty, Missouri 64068

CPF 3-2024-049-NOPV

Dear Mr. Ferrell:

From May 15 to May 19, 2023, 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 Ferrellgas, L.P.'s (Ferrellgas) petroleum gas system in Green Bay, Wisconsin.

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. § 192.11 Petroleum gas systems.

(a)

(b) Each pipeline system subject to this part that transports petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

Ferrellgas failed to meet the requirements of NFPA-58 (2004) (incorporated by reference) for each pipeline system that transports petroleum gas, as required by § 192.11(b). Specifically,

NFPA 58 § 5.2.8.3(B) requires “Where the container is buried, mounded, insulated, or otherwise covered so the nameplate is obscured, the information contained on the nameplate shall be duplicated and installed on adjacent piping or on a structure in a clearly visible location.”

Ferrellgas failed to duplicate the information contained on a nameplate in a clearly visible location to meet the requirements of NFPA 58 § 5.2.8.32(B). During the onsite inspection, the PHMSA inspector and Ferrellgas employees were unable to identify information contained on the obscured nameplates attached to two containers at the Heritage Lake System due to the degradation of the nameplates from corrosion. Thus, Ferrellgas failed to meet the requirements NFPA-58, as required by § 192.11(b).

2. § 192.723 Distribution systems: Leakage surveys.

(a)

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:

Ferrellgas failed to have a leakage control program determined by the nature of the operations, per the requirements of § 192.723(b). Specifically, Ferrellgas failed to have a leakage control program that was determined by operating subsurface petroleum gas pipelines.

From a review of Ferrellgas’ records, PHMSA determined that a leak survey conducted on April 25 and 27, 2022, for the Horse Shoe Bay System was only an above ground survey utilizing a hydrogen flame ionization (FI) gas detector.

The April 2017 PHMSA Guidance for Small LPG Operator's states, "LP gas operators shall do a subsurface type of survey when using gas detection equipment to perform their survey. Although a Flame Ionization (FI) unit may be used to assist in the survey, a Combustible Gas Indicator (CGI) shall be used for pinpointing leaks and classifying them.”

The simplified requirements in the PHMSA Guidance Manual are derived from “ANSI/GPTC Z380.1, Guide for Gas Transmission, Distribution, and Gathering Piping Systems” from the Gas Piping Technology Committee (GPTC). Specifically, they are drawn from the “Guide Material Appendix G-192-11A,” Gas Leakage Control Guidelines for Petroleum Gas Systems. “Guide Material Appendix G-192-11A” states, “The surface gas detection survey and vegetation survey methods used for natural gas systems are not recommended for use on petroleum gas systems. Petroleum gases are heavier than air and will frequently not come to the ground surface or cause surface indications in the vegetation. However, the surface gas detection survey, when properly conducted by taking into account that the gas is heavier than air, may be used adjacent to aboveground facilities.”

Ferrellgas’ leak survey program did not take into account the nature of the operations because it allowed incorrect use of leak detection instruments for detecting petroleum gas leaks, and thus is in violation of § 192.723(b)

3. **§ 192.807 Recordkeeping.**

(a)

(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

Ferrellgas failed to retain prior qualification records for a period of five years, per the requirements of § 192.807(b). From a review of maintenance records, PHMSA determined that a two-inch main was installed on July 11, 2019, however, the plastic joining qualification record for the individual joining the pipeline was not found. Thus, Ferrellgas violated § 192.807(b).

4. **§ 192.1007 What are the required elements of an integrity management plan? A written integrity management plan must contain procedures for developing and implementing the following elements:**

(a)

(f) Periodic Evaluation and Improvement. An operator must re- evaluate threats and risks on its entire pipeline and consider the relevance of threats in one location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five years. The operator must consider the results of the performance monitoring in these evaluations.

Ferrellgas did not conduct periodic re-evaluations as required by § 192.1007(f). Ferrellgas' initial evaluation of threats and risks to its pipeline was conducted in 2012 using a tool called “Simple Handy Rule based Integrity Management Plan” (SHRIMP). During the inspection, PHMSA requested records of the program evaluation, however, Ferrellgas had not determined a frequency for re-evaluation, and never conducted a re-evaluation of SHRIMP. The SHRIMP had not been re-valuated since it was developed in 2012. Therefore, Ferrellgas is in violation of § 192.1007(f) for both failing determine an appropriate time period for conducting program evaluation, and for failing to conduct a complete program re-evaluation every five years.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March

21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not 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.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$ 26,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
3	\$ 26,000

Proposed Compliance Order

With respect to Items 2 and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Ferrellgas. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Item

With respect to Item 1, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement 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 your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 3-2024-049-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

cc: Jordan Burns, Vice President-Legal, Ferrellgas, L.P. (Jordanburns@ferrellgas.com)
Rufus Youngblood, Director Safety, Ferrellgas, L.P. (rufusyoungblood@ferrellgas.com)
John Fegett, DOT Compliance Asst., Ferrellgas, L.P. (johnfegett@ferrellgas.com)

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

PROPOSED COMPLIANCE ORDER

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

- A. In regard to 2 of the Notice, pertaining to failing to conduct leak surveys determined by the nature of operating a petroleum gas system with leak detector equipment, Ferrellgas must develop a leakage control program determined by operating subsurface petroleum gas pipelines and provide the amended procedures to the Central Region Director for review and approval within **60** days of receipt of the Final Order. Furthermore, Ferrellgas must conduct leak surveys with the newly amended procedures on the jurisdictional systems and provide the Central Region Director with the leak survey records for review and approval within **180** days of receipt of the Final Order.
- B. In regard to Item 4 of the Notice, pertaining to failing to conduct periodic re-evaluations, Ferrellgas must reevaluate its DIMP as required by § 192.1007(f) and provide the documentation to Gregory A. Ochs, Central Region Director within **30** days of receipt of the Final Order.
- C. It is requested that Ferrellgas maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, Director, Central Region, 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.