

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

VIA ELECTRONIC MAIL TO: thampton@lakesgasco.com; jhellendrung@lakesgas.com

May 5, 2025

Mr. Trent Hampton
Chief Executive Officer
Lakes Gas Company
26777 Fallbrook Ave,
Wyoming, Minnesota 55092

CPF 3-2025-004-NOPV

Dear Mr. Hampton:

From September 11 to September 15, 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 Lakes Gas Company's (Lakes) petroleum gas system in Sturgeon Bay, Wisconsin.

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

1. § 192.625 Odorization of gas.

(a)

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by-

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic "sniff" tests at the extremities of the system to confirm that the gas contains odorant.

Lakes failed to assure the proper concentration of odorant in accordance with § 192.625(f). Specifically, Lakes failed to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.¹ Lakes' "Operation and Maintenance Procedure" (O&M Procedure), section 192.625, "Odorization of Gas," stated, "Odorators are available to determine that the level of stench is detectable at a minimum of 1/5 the lower explosion level (LEL). This method of odorant detection needs to be performed quarterly and recorded." However, based on PHMSA's review of Lakes' records, odorator reading detection levels were never performed or recorded on the Propane Odorization Form, which Lakes used to record this information. Furthermore, Lakes, during the inspection, stated it did not have an odorator to determine the percentage of gas in the air at which the odor would become readily detectable. Therefore, Lakes failed to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable, per the requirements of § 192.625(f).

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:

Lakes failed to have a leakage control program determined by the nature of the operations and the local conditions, per the requirements of § 192.723(b). Specifically, Lakes' leakage control program did not utilize survey methods determined by the nature of operating subsurface petroleum gas pipelines.

From a review of Lakes' records, PHMSA determined that leak surveys conducted on July 15, 16, and 17, 2020, were only performed above the ground surface, despite Lakes' petroleum gas system being subsurface. Petroleum gas vapor's gravity range is 1.6 to 2.0 times heavier than air.² Consequently, when petroleum gas vapor escapes it has a tendency to settle in low places, and to move along the bottom of ditch lines and substructures unless substantial air movement dissipates it.³ Under normal conditions, it does not vent to the surface.⁴ Additionally, under certain conditions (*e.g.*, during conditions where topsoil is extremely wet or freezes) the gas may be trapped underground, unable to be detected by surface leak detection methods.⁵ The Lakes' Training Exercise 708 Leak Surveys only instructed employees how to conduct surface gas detection surveys. Lakes' procedures did not require any subsurface leak surveys, despite Lakes' system having subsurface petroleum gas pipelines.

¹ Since Lakes was not operating a master meter system, the only acceptable method of complying was to use an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.

² See The Guide for Gas Transmission, Distribution, and Gathering Piping Systems, American Gas Association, Gas Piping Technology Committee Z380 (2022) (hereinafter "GPTC Guide"), at 922.

³ *Id.*

⁴ *Id.*

⁵ See PHMSA Advisory Bulletin, ADB-02-05, 67 Fed. Reg. 57,484, 57,485 (Sept. 10, 2022), <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-06/02-22952.pdf> (hereinafter "Advisory Bulletin").

The American Gas Association has developed industry guidance on leakage survey methods which may be employed by operators of subsurface petroleum gas systems that take into account the nature of transporting petroleum gas subsurface.⁶ PHMSA has advised owners and operators of liquified petroleum gas distribution systems to ensure that their procedures emphasize measurement of gas below the surface of the soil or pavement and are adequate to detect leaks of heavier-than-air gas.⁷

Lakes' leak survey program—which only consisted of surface gas detection surveys to detect petroleum gas leaks on subsurface pipeline facilities—did not reflect Lakes' subsurface system and failed to take into account the nature of operating subsurface petroleum gas pipelines and the local conditions of the system, per the requirements of § 192.723(b).

3. § 192.805 Qualification program.

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

(a) Identify covered tasks;

Lakes failed to follow its written qualification program to identify covered tasks, per the requirements of § 192.805(a). On November 25, 2019, PHMSA issued to Lakes a Notice of Amendment, CPF No. 3-2019-0007M-NOA, which required Lakes' qualification program to be modified to include the tasks of "valve inspection" and "pipe fitting" as part of the covered task list. On March 27, 2020, Lakes sent a response to PHMSA stating the modifications to the qualification program had been made to include those required tasks. However, from a review of Lakes' operator qualification training records, PHMSA found that Lakes never implemented "Training Exercise NO. 717 Jurisdictional Pipeline: Pipe Fitting Inspection" or "Training Exercise NO. 718 Jurisdictional Pipeline: Valve Inspection" as outlined in its March 27, 2020 response to CPF 3-2019-0007M. Furthermore, Lakes also failed to update its OQ task list to include either task as required. Therefore, Lakes failed to follow its written qualification program to identify covered tasks, as required by § 192.805(a).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$272,926 per violation per day the violation persists, up to a maximum of \$2,729,245 for a related series of violations. For violation occurring on or after December 28, 2023 and before December 30, 2024 the maximum penalty may not 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

⁶ See GPTC Guide at 922.

⁷ See Advisory Bulletin (explaining that usually "bar holing" and examination of below ground areas, such as manholes, storm drains, and basements is used as a leakage survey method).

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.

We have reviewed the circumstances and supporting documents involved in this case and have decided not to propose a civil penalty assessment at this time.

Proposed Compliance Order

With respect to Items 1, 2, and 3, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Lakes. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

This Notice is issued in accordance with 49 CFR § 190.207(c). Any response you may have submitted to the original Notice is no longer applicable. You must respond as set forth below.

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 **3-2025-004-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: Jason Hellendrung Manager of Physical Operations / Fleet Manager / Pipeline Manager,
jhellendrung@lakesgas.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 Lakes a Compliance Order incorporating the following remedial requirements to ensure the compliance of Lakes with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice, pertaining to Lakes' failure to assure the proper concentration of odorant in accordance with § 192.625(f), Lakes must (1) conduct sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable on the jurisdictional systems within **60** days of receipt of the Final Order, and (2) provide the Central Region Director with records of the instrumented sampling that include odorator reading detection levels within **90** days of receipt of the Final Order.
- B. In regard to Item 2 of the Notice, pertaining to Lakes' failure to have a leakage control program determined by the nature of the operations, per the requirements of § 192.723(b), Lakes must develop site-specific procedures for 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. Lakes may turn to PHMSA's Advisory Bulletin to Owners and Operators of Liquified Petroleum Gas Distribution Systems⁸ and the GPTC Guide for Gas Transmission, Distribution, and Gathering Piping Systems⁹ for further information on developing adequate leak survey programs for subsurface petroleum gas pipelines. Furthermore, Lakes 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.
- C. In regard to Item 3 of the Notice, pertaining to Lakes' failure to follow their written qualification program to identify covered tasks, Lakes must implement its procedures, Training Exercise NO. 717 Jurisdictional Pipeline Pipe Fitting Inspection and Training Exercise NO. 718 Jurisdictional Pipeline Valve Inspection, within **90** days of receipt of the Final Order. Furthermore, Lakes must provide the training records and the amended procedures to the Central Region Director within **90** days of receipt of the Final Order for the Directors review and approval.
- D. 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 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.

⁸ PHMSA Advisory Bulletin, ADB-02-05, 67 Fed. Reg. 57,484, 57,485 (Sept. 10, 2002), <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-06/02-22952.pdf>

⁹ The Guide for Gas Transmission, Distribution, and Gathering Piping Systems, American Gas Association, Gas Piping Technology Committee Z380 (2022).