March 27, 2024

VIA ELECTRONIC MAIL TO: kellenherk@ugicorp.com

Mr. Kevin Kelleher
Vice President, Supply & Logistics Operations
AmeriGas Propane, L.P.
460 N. Gulph Road
King of Prussia, PA 19406

Re: CPF No. 5-2023-029-NOPV

Dear Mr. Kelleher:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of $543,400, and specifies actions that need to be taken by AmeriGas Propane, L.P., to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be closed. 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 K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Markus Dreier, Vice President, Safety & OMS, AmeriGas Propane, L.P., markus.dreier@amerigas.com
Mr. Christopher Wagner, Director, Compliance and Regulatory Affairs, AmeriGas Propane, L.P., christopher.wagner@amerigas.com

Mr. David Hedrick, Corporate OPS Manager, AmeriGas Propane, L.P.,
david.hederick@amerigas.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	)	
AmeriGas Propane, L.P.,	)	**CPF No. 5-2023-029-NOPV**
Respondent.	)	

FINAL ORDER

From November 7 through 17, 2022, 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 safety inspection of the liquefied petroleum gas distribution systems of AmeriGas Propane, L.P. (AmeriGas or Respondent) in Maui, Oahu, and the Island of Hawaii, Hawaii.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated June 22, 2023, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that AmeriGas had committed 13 violations of 49 C.F.R. Part 192, proposed assessing a civil penalty of $550,100 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional five 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.

After requesting and receiving an extension of time to respond, AmeriGas responded on July 24, 2023 (Response). Respondent sent a supplemental response on September 22, 2023, providing additional information and evidence of potential remedial actions (Supplemental Response). 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 192, as follows:

Item 1. The Notice alleged that Respondent violated 49 C.F.R. § 192.195(a), which states.

§ 192.195 Protection against accidental overpressuring.

(a) *General requirements*. Except as provided in § 192.197, each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, must have pressure relieving or pressure limiting devices that meet the requirements of §§ 192.199 and 192.201.

The Notice alleged that Respondent violated 49 C.F.R. § 192.195(a) by failing to protect a customer gas meter on the "AAAAA Rent-A-Space" (Maui) system from overpressuring. Specifically, the Notice alleged that photos taken during the November 2022 on-site inspection showed that one of the three customer service meters (the meter labeled "IA Ohana Taco") lacked adequate pressure limiting devices to regulate the pressure to less than the meter's maximum allowable operating pressure (MAOP).

Respondent did not contest the fact that it failed to protect the IA Ohana Taco customer service meter from overpressuring. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.195(a) by failing to have pressure relieving or pressure limiting devices that meet the requirements of §§ 192.199 and 192.201.

Item 3. The Notice alleged that Respondent violated 49 C.F.R. § 192.357(a), which states:

§ 192.357 Customer meters and regulators: Installation.

(a) Each meter and each regulator must be installed so as to minimize anticipated stresses upon the connecting piping and the meter.

The Notice alleged that Respondent violated 49 C.F.R. § 192.357(a) by failing to install each meter and regulator so as to minimize anticipated stresses upon the connecting piping and the meter. Specifically, the Notice alleged that during the November 2022 on-site inspection, PHMSA observed and photographed meters installed in a way that put undue stress on the connected piping.

Respondent did not contest the allegation that it failed to adequately support service meters. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.357(a) by failing to adequately support service meters in a manner that minimized stresses on the service line piping.

Item 4. The Notice alleged that Respondent violated 49 C.F.R. § 192.453, which states:

§ 192.453 General.

The corrosion control procedures required by § 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

The Notice alleged that Respondent violated 49 C.F.R. § 192.453 by failing to ensure the operation and maintenance of its cathodic protection (CP) systems were carried out by a person

qualified in corrosion control methods. Specifically, the Notice alleged that corrosion control personnel were not adequately trained to collect accurate CP potentials, as demonstrated by practices observed by PHMSA inspectors during the November 2022 inspections and the resulting CP values recorded on AmeriGas' CP monitoring worksheets.

The allegation of violation was based upon two premises. The first premise was related to the failure by the operator's technicians to not keep one of the copper-copper sulfate half-cells, used to measure CP levels, out of the field to be used as a calibration standard. The second premise was, during the inspection, the technician on Oahu collected pipe-to-soil measurements by placing the copper-copper sulfate half cells in soils immediately above the magnesium spike anodes used to provide CP. The Notice alleged this practice results in inaccurate pipe-to-soil measurement due to the proximity to the anode. The Notice also alleged that CP potentials less than approximately -1.4 mV are typically considered "suspect" and should be investigated to determine if the practices used to collect the potential are contributing to inaccurate readings.[1] Exhibit E-1 displays CP potentials as low as -1.65 mV. The Notice alleged that this evidence showed the operator's technicians were not trained to take pipe-to-soil measurements at locations that would produce accurate potentials.

In its Response and Supplemental Response, Respondent contested the violation. Specifically, Respondent noted that it was unaware of any published standard or regulation mandating that one half-cell remains unused or uncontaminated. Respondent argued that, as outlined in its O&M procedures, it may utilize two half cells during a single evaluation for confirmatory purposes when warranted, but that this is not listed as an expectation. Respondent also argued that all operator qualified employees who performed corrosion control testing on the Hawaiian Islands underwent qualification training within the five years prior to the November 2022 site visits and alleged that it provided supporting documentation. Respondent explained that during the employee qualification process all employees demonstrated competency through the performance of a skills assessment and were able to properly perform the tasks identified within Respondent's O&M. Additionally, Respondent argued that it trained additional employees about corrosion control during the week of December 5, 2022.

After reviewing the record, I find Respondent failed to demonstrate the personnel conducting the CP testing observed during the inspection were qualified. The PHMSA inspector observed the two of Respondent's personnel collecting CP potentials during the November 2022 site visits. Respondent states in its Supplemental Response that "[a]ll operator qualified employees who performed corrosion control testing on the Hawaiian Islands underwent qualification training within the five years prior to the November 2022 site visits," however, the only OQ documentation that Respondent provided regarding the personnel conducting the CP tests in November 2022 was dated after the inspection. In its Supplemental Response, Respondent provided OQ Field Evaluation/Qualification Report Forms for only one of the observed personnel demonstrating that on August 17, 2023, he underwent OQ qualification for (1) "Corrosion Control – Applying Cathodic Protection" and (2) "Corrosion Control – Measure Pipe

[1] Voltage drops other than those across the structure-electrolyte boundary must be considered for valid interpretation of the voltage measurement. *See* 49 C.F.R. § 192, Appendix D, Paragraph II. The CP criteria in Appendix D are prescriptive and operators must train the individuals collecting CP readings in practices to collect accurate readings.

to Soil Potential." This record is dated after PHMSA's inspection. Respondent also did not provide evidence that the other observed AmeriGas personnel of record for the CP testing was OQ qualified at the time of PHMSA's inspection. Additionally, Respondent's general reference to its corrosion control training does not rebut the specific allegation that its technicians were not trained to take pipe-to-soil measurements at locations that would produce accurate potentials.[2] Finally, Respondent provided OQ Field Evaluation/Qualification Report Forms for three additional employees demonstrating that all three employees had been OQ qualified for (1) "Corrosion Control – Applying Cathodic Protection" and (2) "Corrosion Control – Measure Pipe to Soil Potential" on December 9, 2022. These employees were not those observed by PHMSA during the site visits and these records of are dated after the CP tests were conducted.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.453 by failing to ensure the operation and maintenance of their CP systems were carried out by a person qualified in corrosion control methods.

Item 5. The Notice alleged that Respondent violated 49 C.F.R. § 192.463(a), which states:

> **§ 192.463 External corrosion control: Cathodic protection.**
> (a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

The Notice alleged that Respondent violated 49 C.F.R. § 192.463(a) by failing to provide a level of CP that complied with one or more of the applicable criteria contained in Appendix D of Part 192 for the "Pearl Kai" (Oahu) and "AAAAA Rent-A-Space" (Maui) systems. Specifically, the Notice alleged that during the November 2022 on-site inspections, PHMSA observed and photographed the operator measuring pipe-to-soil potentials less than -850mV for both systems. The Notice further alleged that the operator's prior practice of using direct-bonded anodes and measuring the potentials in soils near and directly above the anodes may have resulted in incorrect measurements.

Respondent contested the violation. Specifically, Respondent described the training for individuals collecting CP potentials, explaining that "[a]ll operator qualified employees who performed corrosion control testing on the Hawaiian Islands underwent qualification training within the five years prior to the November 2022 site visits." Respondent also explained that it intended to provide refresher training on the subject of corrosion control in the future. Respondent admitted in its Supplemental Response "that the measurement reading of pipe-to-soil potential was less than negative -850mV for both systems at the time of the November 2022 inspection." However, Respondent argued that prior readings taken of both of the pipeline

[2] The Notice also asserted that AmeriGas's personnel were not qualified based upon their lack of knowledge regarding keeping a copper-copper sulfate half-cells out of the field. The Notice, however, fails to cite any evidence that this practice is an accepted industry standard. Additionally, Respondent's own literature states that keeping a half-cell out of the field is merely a recommendation. Violation Report, Exhibit D, page 3.

systems were more than negative than -850mV, and that per its O&M Corrosion Control procedures, it did not have to correct any deficiencies until "before the next scheduled survey," or within 12 months. Since becoming aware of the low pipe-to-soil potential, Respondent alleged that it remediated the relevant section in August 2023, but does not provide supporting documentation of the remediation.

After reviewing the evidence, I find that Respondent failed to demonstrate the CP system provided a level of CP that complied with the § 192.463(a). During the November 2022 on-site inspections, PHMSA observed and photographed the operator measuring pipe-to-soil potentials less than -850mV for both systems. Respondent does not dispute that to show its CP systems are providing adequate protection, the CP readings should be equal to or more than -850mV because -850mV is the appropriate threshold for pipe-to-soil potential necessary to prevent significant corrosion for the systems at issue. While Respondent argues it was unaware of the deficiencies because previous readings were more than -850mV, Respondent does not refute that its practice of using direct-bonded anodes and measuring potentials in soils near and directly above the anodes may have resulted in inaccurate measurements in the past. The previously recorded values of more than -850mV, therefore, do not demonstrate that the CP systems complied with the regulatory standard up and until PHMSA's inspection. Ultimately, regardless of AmeriGas' lack of prior indication of deficient CP readings, the readings taken during the inspection showed Respondent's CP systems were inadequate to provide a level of CP that complies with one or more of the applicable criteria contained in Appendix D of section 192.

Accordingly, after considering all of the evidence, I find that AmeriGas violated 49 C.F.R. § 192.463 by failing to provide a level of CP that complied with one or more of the applicable criteria contained in Appendix D of Part 192.

Item 6. The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a), which states:

> **§ 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.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline under CP each calendar year at intervals not to exceed 15 months for two of its systems. Specifically, the Notice alleged that AmeriGas failed to conduct CP testing on its Coconut Grove (Maui) pipeline in 2021 and that it failed to perform cathodic protection testing on its Wapahu Shopping Center (Oahu) pipeline since 2018.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline under CP each calendar year.

Item 7. The Notice alleged that Respondent violated 49 C.F.R. § 192.467(a), which states:

> **§ 192.467 External corrosion control: Electrical isolation.**
> (a) Each buried or submerged pipeline must be electrically isolated from other underground metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

The Notice alleged that Respondent violated 49 C.F.R. § 192.467(a) by failing to provide adequate isolation between its Pearl Kai (Oahu) system and its buried metallic support structures. Specifically, the Notice alleged that during the November 14, 2022 on-site inspection, the pipe was visibly shorted to two "uni-strut" type pipe supports that were in direct contact with the soil. In addition, the Notice alleged that the pipe was shorted to an adjacent bridge girder.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.467 by failing to provide adequate electrical isolation for its Pearl Kai system.

Item 8 The Notice alleged that Respondent violated 49 C.F.R. § 192.481(a), which states:

> **§ 192.481 Atmospheric corrosion control: Monitoring.**
> (a) Each operator must inspect and evaluate each pipeline or portion of the pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

Pipeline type:	**Then the frequency of inspection is:**
(1) Onshore other than a Service Line	**At least once every 3 calendar years, but with both intervals not exceeding 39 months.**
(2) Onshore Service Line	**At least once every 5 calendar years, but with intervals not exceeding 63 months, except as provided in paragraph (d) of this section.**
(3) Offshore	**At least once each calendar year, but with intervals not exceeding 15 months.**

The Notice alleged that Respondent violated 49 C.F.R. § 192.481(a) by failing to complete atmospheric corrosion inspections at the required intervals for two of its systems: Coconut Grove (Maui) and Wahiawa Town Center (Oahu). Specifically, the Notice alleged that the most recent documented atmospheric corrosion inspection for Coconut Grove was on January 8, 2018, and that there were records for inspections of Wahiawa Town Center on January 8, 2014, and July 28, 2020, which exceeded the 39-month deadline.

Respondent contested the allegation of violation in part. Respondent did not contest PHMSA's allegation that it did not have the required documentation of atmospheric corrosion inspections of the Coconut Grove and Waipahu Town Center systems within a 39-month interval. Respondent provided additional inspection records demonstrating that the Coconut Grove system was inspected on September 18, 2022, and noted that it transitioned to an electronic work order tracking system from 2019 to 2021 and "[d]uring this period some locations misunderstood the expectations for continued documentation of pipeline related activities on the paper forms…in addition to the new electronic work order system."

Respondent's records indicate that the inspections of Coconut Grove were conducted on January 8, 2018, and September 18, 2022, an interval of 56 months. The records show that the inspections of the Wahiawa Town Center inspections were conducted on January 8, 2014, and July 28, 2020, an interval of 78 months. Section 192.481(a) requires operators to inspect onshore pipelines that are not service lines at least once every three calendar years, at intervals not to exceed 39 months. Therefore, even with the additional records provided, Respondent exceeded the required three calendar years, not to exceed 39 months, interval between inspections for the Coconut Grove and Wahiawa Town Center facilities.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.481(a) by failing to complete atmospheric corrosion inspections at the required intervals for two of its systems.

Item 10. The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(1), which states:

> **§ 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 (MAOP) determined under paragraph (c), (d), or (e) 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:

The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(1) by operating a segment of steel or plastic pipeline at a pressure that exceeds a MAOP determined under paragraph (c), (d), or (e) of § 192.619. Specifically, the Notice alleged that, according to operator records, the systems' established MAOPs are 10 psi, which is the maximum allowable inlet pressure of the second-stage service regulators (Fisher R622-DFF with a labeled maximum inlet pressure of 10 psi). During the November 2022 on-site inspection, PHMSA observed and documented clock gauges showing the operating pressures of several systems operating at pressures greater than 10 psi in five separate instances.

Respondent contested the allegation of violation in part. In the Response and Supplemental

Response, Respondent asserted the clock gauge used to measure the pressure in one instance (the Ewa Point Marketplace) was defective and, when replaced, the pressure measured was less than the MAOP.

PHMSA's Western Region reviewed the documents provided by Respondent and, in a Region Recommendation, dated September 5, 2023, concluded that based on the information provided the evidence supported Respondent's argument that the EWA Point Marketplace system was not operating above the MAOP. I agree. Respondent did not contest the other four instances of violation.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.619(a)(1) by operating a segment of steel or plastic pipeline at a pressure that exceeds a MAOP determined under paragraph (c), (d), or (e) of § 192.619.

Item 12. The Notice alleged that Respondent violated 49 C.F.R. § 192.723(b)(1), which states:

> **§ 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:
>
> (1) A leakage survey with leak detector equipment must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.723(b)(1) by failing to conduct leak surveys of its systems in business districts at intervals not exceeding 15 months but at least once each calendar year. Specifically, the Notice alleged that Respondent did not conduct leak surveys at (1) the Shops at Wailea (Maui) location in 2020, (2) the Tosei (Maui) location in 2020, and (3) the Shops at Mauna Lani (Hawaii) location in 2019, 2020, or 2021.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.723(b)(1) by failing to conduct leak surveys of its systems in business districts at the mandatory intervals.

Item 14. The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a)(2), which states:

> **§ 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) . . . .
(2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a)(2) by failing to correct deficiencies identified during the inspection of the regulating equipment at Shops at Wailea (Maui) system. Specifically, the Notice alleged that the operator personnel who conducted the regulator inspection of that system recognized it was inadequate from the standpoint of capacity and reliability for the service in which it is employed and, on March 19, 2019, generated a Sales and Service Order stating that Respondent "need to install a monitoring regulator." The Notice alleged that Respondent was aware as early as March 19, 2019, that the regulating equipment as it was configured at the Shops of Wailea (Maui) system was inadequate but failed to correct it by November 12, 2022.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.739(a)(2) by failing to correct deficiencies identified during the inspection of the regulating equipment at Shops at Wailea (Maui) system.

Item 15. The Notice alleged that Respondent violated 49 C.F.R. § 192.747(a), which states:

§ 192.747 Valve maintenance: Distribution systems.
(a) Each 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.

The Notice alleged that Respondent violated 49 C.F.R. § 192.747(a) by failing to inspect or record the inspection of valves that might be needed in an emergency annually at intervals not to exceed 15 months. Specifically, the Notice alleged that (1) the Coconut Grove (Maui) system's worksheets were not completed in 2019, (2) the Tosei (Maui) system's worksheets were not completed in 2020, and (3) the Residences of Laule-a (Hawaii) system's worksheets were not completed in 2021.

Respondent contested the allegation of violation in part. In the Response, Respondent located inspection records showing valves had been inspected at the correct intervals for one of the three facilities cited in the Notice (Coconut Grove). In its Supplemental Response, Respondent pointed to its transition to a new electronic work order tracking system from 2019 to 2021 as the reason it is unable to demonstrate completion of the two other valve inspections.

After reviewing the evidence, I find the Coconut Grove inspection records show the valves were inspected within the required timeframe. Respondent was unable to demonstrate that the valves at the Tosei and Residences of Laule-a facilities were serviced at the required intervals.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.747(a) by failing to inspect or record the inspection of valves that might be needed in an emergency annually at intervals not to exceed 15 months in two instances.

Item 17. The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) which states:

> **§ 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;

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) by failing to ensure through evaluation that individuals performing tasks were qualified. Specifically, the Notice alleged that PHMSA observed worksheets where the operator inspected pressure-regulating equipment. When asked for the corresponding qualification records for that task, the relevant operator personnel stated that he was not qualified for the task, and there was nothing on the regulator inspection worksheets suggesting that he worked under the span of control of a qualified individual.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 19192.805(b) by failing to ensure that individuals performing tasks had been evaluated and could perform the assigned covered tasks.

Item 18. The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states:

> **§ 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;

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified to recognize and react to abnormal operating conditions (AOC), which is a requirement to be qualified under § 192.803. Specifically, the Notice alleged that Respondent (1) failed to train and qualify the operator of record for odorant testing for the Maui systems on how to recognize and respond to inadequate levels of odorization, which is an AOC relevant to that task, and (2) failed to train and qualify the operator of record for corrosion control practices for its Oahu systems to recognize and test for shorted pipe, an AOC relevant to that task.

Respondent contested this allegation of violation. Respondent, in its Response, provided additional information and training records. Respondent claimed that "[a]ll operator qualified employees who performed OQ tasks on the Hawaiian Islands underwent qualification training within the five years prior to the November 2022 site visits performed by PHMSA Respondent did not provide any records that the relevant named employees were OQ qualified to perform any tasks at the time of the inspection. In its Supplemental Response, Respondent did provide the OQ Field Evaluation/Qualification Report Forms for one of the employees demonstrating that after

the inspection, on August 17, 2023, he underwent OQ qualification for (1) "Odorization – Testing Levels Using an Instrument – (Odorator)," (2) "Corrosion Control – Applying Cathodic Protection" and (3) "Corrosion Control – Measure Pipe to Soil Potential." Respondent did not provide any documentation regarding the other named employee.

While the Response described how to appropriately interpret the odor sampling equipment values, it failed to address the specific allegations and evidence in the Notice. The Notice detailed observations of operator personnel who could not describe what values are outside of an acceptable range, an AOC relevant to the odorant testing task. In addition, Respondent's training and qualification exam materials for the odorant testing task make no mention of AOCs or appropriate responses.[3] Moreover, the operator personnel collecting CP readings could not recognize and respond to a shorted pipe, which is an AOC for the corrosion control task. Again, the Response did not address the issue that operator personnel were unable to recognize and respond AOCs regarding the covered tasks during the November 2022 inspections. PHMSA observations in the field indicate the Respondent's qualification program did not ensure through evaluation that individuals performing covered tasks were qualified to recognize and perform AOCs for at least two covered tasks. Finally, Respondent's qualification exam materials do not show that the relevant individuals were OQ qualified to perform any tasks at the time of the inspection.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified.

These findings 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.[4]

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 $550,100 for the violations cited above.

[3] Violation Report, Exhibit P.

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

Item 4: The Notice proposed a civil penalty of $75,200 for Respondent's violation of 49 C.F.R. § 192.453 by failing to ensure the operation and maintenance of its CP systems were carried out by a person qualified in corrosion control methods.

Respondent contested this allegation of violation. Respondent did not set forth any argument for reduction or withdrawal of the civil penalty, apart from withdrawal of the underlying allegation of violation. For the reasons described above, I find Respondent in violation of § 192.453. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $75,200 for the violation of 49 C.F.R. § 192.453.

Item 8: The Notice proposed a civil penalty of $35,700 for Respondent's violation of 49 C.F.R. § 192.481(a), for failing to complete atmospheric corrosion inspections at the required intervals for two of its systems: Coconut Grove (Maui) and Wahiawa Town Center (Oahu).

Respondent contested this allegation of violation in part. Respondent did not set forth any argument for reduction or withdrawal of the civil penalty apart from withdrawal of the underlying allegation of violation. For the reasons described above, I find Respondent in violation of § 192.481(a). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $35,700 for the violation of 49 C.F.R. § 192.481(a).

Item 10: The Notice proposed a civil penalty of $168,600 for Respondent's violation of 49 C.F.R. § 192.619(a)(1), for failing to operate several systems at pressures less than the pipeline's MAOP.

Respondent contested the allegation of violation in part. In its Response, Respondent asserted the clock gauge used to measure the pressure in one instance (the Ewa Point Marketplace) was defective and, when replaced, the pressure measured was less than the MAOP. Respondent did not contest the other four instances of violation.

Having reviewed the record and considered the assessment criteria and Region Recommendation, I find that a reduction to the number of instances from five to four is warranted. Accordingly, I assess Respondent a reduced civil penalty of $162,300 for the violation of 49 C.F.R. § 192.619(a)(1).

Item 12: The Notice proposed a civil penalty of $83,400 for Respondent's violation of 49 C.F.R. § 192.723(b)(1), for failing to conduct leak surveys of its systems in business districts at intervals not exceeding 15 months, but at least once each calendar year.

Respondent neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $83,400 for violation of 49 C.F.R. § 192.723(b)(1).

Item 14: The Notice proposed a civil penalty of $72,600 for Respondent's violation of 49 C.F.R. § 192.739(a)(2), for failing to correct deficiencies identified during the inspection of the

regulating equipment at Shops at Waliea (Maui) system.
Respondent neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $72,600 for violation of 49 C.F.R. § 192.739(a)(2).

Item 15: The Notice proposed a civil penalty of $36,100 for Respondent's violation of 49 C.F.R. § 192.747(a), for failing to inspect or record the inspection of valves that might be needed in an emergency annually at intervals not to exceed 15 months.

Respondent contested the allegation of violation in part. Respondent located inspection records showing the valves had been inspected at the correct intervals for one of the three instances of the violation (Coconut Grove). Respondent did not contest the other two instances of violation. Having reviewed the record and considered the assessment criteria and Region Recommendation, I find that a reduction to the number of instances from three to two is warranted. Based upon the foregoing, I assess Respondent a reduced civil penalty of $35,700 for violation of 49 C.F.R. § 192.747(a).

Item 17: The Notice proposed a civil penalty of $39,100 for Respondent's violation of 49 C.F.R. § 192.805(b), for failing to ensure that individuals performing tasks had been evaluated and could perform the assigned covered tasks, which is a requirement to be qualified under § 192.803.

Respondent neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $39,100 for violation of 49 C.F.R. § 192.805(b).

Item 18: The Notice proposed a civil penalty of $39,400 for Respondent's violation of 49 C.F.R. § 192.805(b), for failing to ensure that individuals performing tasks were qualified to recognize and react to AOCs, which is a requirement to be qualified under § 192.803.

Respondent contested this allegation of violation. Respondent did not set forth any argument for reduction or withdrawal of the civil penalty, apart from withdrawal of the underlying allegation of violation. For the reasons set forth above for this Item, I found this argument unpersuasive. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $39,400 for violation of 49 C.F.R. § 192.805(b).

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 **$543,400**.

Failure to pay the 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 3, 5, 6, 7, 10, and 14 in the Notice for violations of 49 C.F.R. §§ 192.195(a), 192.357(a), 192.463(a), 192.465(a), 192.467(a), 192.619(a)(1), and 192.739(a)(2), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of liquefied petroleum gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

In a Region Recommendation dated September 5, 2023, PHMSA's Western Region recommended allowing AmeriGas additional time to complete the tasks described in the Proposed Compliance Order. Respondent submitted evidence of remedial action in both its Response and Supplemental Response. PHMSA's Western Region has not yet reviewed AmeriGas' submission to determine whether the evidence of remedial action complies with the terms of the Proposed Compliance Order.

With respect to the violation of § 192.463(a) (**Item 5**), Respondent contested the underlying allegation of violation, but presented no argument for the withdrawal or modification of the Proposed Compliance Order terms.

With respect to the violation of § 192.619(a)(1) (**Item 10**), Respondent contested the allegation as it relates to the operating pressure identified by PHMSA at the Ewa Point Marketplace jurisdictional system. As discussed in detail above, Respondent showed that the Ewa Point Marketplace system was not in violation of § 192.619(a)(1). Therefore, the compliance order terms have been adjusted accordingly.

For the above reasons, the Compliance Order is modified as set forth below.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.195(a) (**Item 1**), Respondent must install a service regulator upstream of the meter and must remove, discard, and replace the over pressured meter within **60** days of receipt of the Final Order. AmeriGas must provide written notice (including photographs) to the Director of the Western Region with 10 business days of completing this task.

2. With respect to the violation of § 192.357(a) (**Item 3**), Respondent must add or modify the supports on the Pearl Kai meter and the Shops of Wailea meter within **60** days of receipt of the Final Order and must provide written notice (including photographs) to the Director of the Western Region within 10 business days of completing this task.

3. With respect to the violation of § 192.463(a) (**Item 5**) and § 192.467(a) (**Item 7**), Respondent must:

- For the Pearl Kai system, replace the inadequately protected and electrically shorted steel risers with anodeless risers.

- For the Rent-A-Space, the operator must excavate and inspect the inadequately protected piping; and replace the pipe if evidence of corrosion is found. The replacement pipe must be polyethylene with anodeless riser. If no evidence of corrosion is found, AmeriGas may retain the existing steel piping but must install additional anodes to ensure the pipe has adequate CP.

AmeriGas must complete the above-listed actions within **60** days of receipt of the Final Order and must provide written notice (including photographs) to the Director of the Western Region within 10 business days of completing this task.

4. With respect to the violation of § 192.465(a) (**Item 6**), Respondent must replace the Wapahu Shopping Center steel risers with anodeless risers within **60** days of receipt of the Final Order and must provide written notice (including photographs) to the Director of the Western Region with 10 business days of completing this task.

6. With respect to the violation of § 192.619(a)(1) (**Item 10**), Respondent must, for the four LPG systems specifically described in Item 5:

- Discard and replace all service regulators that have been used at pressures exceeding its labeled maximum inlet pressure. AmeriGas must complete this task within **60** days of receipt of the Final Order and must provide written notice (including photographs) to the Director of the Western Region within 10 business days of completing this task.
- AmeriGas must submit to the Director of the Western Region detailed procedures for re-inspecting and adjusting the regulating equipment. The procedure must be specific to each system's configuration and must be adequate to ensure the systems' MAOP is not exceeded during normal and no-flow (i.e., regulator lock-up conditions). For series regulating setups, the procedure must include provisions to ensure the MAOP cannot be exceeded should the second-stage regulator fail. AmeriGas must provide the procedures within **60** days of receipt of the Final Order. Within **60** days from the time AmeriGas receives notice that the Western Region does not object to its procedures, AmeriGas must complete the inspection and adjustment of the subject regulators and must provide written notice (including photographs) to the Director of the Western Region with 10 business days of completing this task.

7. With respect to the violation of § 192.739(a)(2) (**Item 14**), Respondent must install overpressure protective equipment on the system to protect against the failure of the regulators. Respondent must adjust the regulating equipment in accordance with the written procedures described in Action 6 described above. Respondent must complete the installation of the regulating equipment within **60** days of receipt of the Final

Order and must provide written notice (including photographs) to the Director of the Western Region with 10 business days of completing this task. Respondent must inspect and adjust the regulating equipment in accordance with Action 6 described above.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 2, 9, 11, 13 and 16, the Notice alleged probable violations of Part 192, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 192.355(b)(2) **(Item 2) ─** Respondent's alleged failure to install service regulator vents at locations where gas from the vent can escape freely into the atmosphere;

49 C.F.R. § 192.517(b) **(Item 9) ─** Respondent's alleged failure to complete its pressure testing worksheets with relevant details;

49 C.F.R. § 192.721(b)(1) **(Item 11) ─** Respondent's alleged failure to patrol its systems within business districts the required number of times per year and/or within the require time intervals;

49 C.F.R. § 192.739(a) **(Item 13) ─** Respondent's alleged failure to inspect or adequately document the inspection of the regulators every year at intervals not to exceed 15 months; and

49 C.F.R. § 192.751(a) **(Item 16) ─** Respondent's alleged failure to minimize the danger of accidental ignition and provide a fire extinguisher while gas was vented into the open air at its "AAAAA Storage" site.

Respondent contested Items 2, 9, and 16. Respondent contested Item 2, alleging that PHMSA

incorrectly cited a service regulator at a location where gas from the vent cannot escape freely into the atmosphere; Respondent contested Item 9 in part, alleging that the pressure test worksheets in question were beyond the five-year record retention requirement in §192.517(b); Respondent contested Item 16 alleging that due to the configuration of the test port, limited flow permitted through a No. 54 orifice, and consistent standard operating practice within the propane industry to release small inconsequential amounts of propane vapor from openings as part of the requirements outlined in National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code, there was no hazardous condition created through the actions of its employee during the November of 2022 site visit.

Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

CONCLUSION

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 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 corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

March 27, 2024

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued