

OCTOBER 18, 2012

Mr. Mark Comora
President
Gas Recovery Systems, LLC
One North Lexington Avenue
White Plains, New York 10601

Re: CPF No. 3-2011-1015

Dear Mr. Comora:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$27,800, and specifies actions that need to be taken by Gas Recovery Systems, LLC, 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, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. David Barrett, Central Region Director, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Anthony J. Falbo, Senior Vice President – Operations, Gas Recovery
Systems, LLC, 5087 Junction Road, Lockport, New York 14094

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

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| In the Matter of |) | |
| |) | |
| Gas Recovery Systems, LLC, |) | CPF No. 3-2011-1015 |
| |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

FINAL ORDER

On June 7-8, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Ohio Public Utilities Commission (OH-PUC), acting as interstate agent for 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 Gas Recovery Systems, LLC (GRS), in Toledo, Ohio. GRS, a subsidiary of Fortistar, LLC, operates a group of renewable energy gas projects, including a 3.2-mile pipeline that transports methane from a landfill in Ohio to a General Motors facility.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 20, 2011, 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 GRS had violated 49 C.F.R. § 192.616, and proposed assessing a civil penalty of \$27,800 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

FINDING 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. § 192.616, which states, in relevant part:

§ 192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must

¹ Fortistar, LLC home page, <http://www.fortistar.com/default.aspx> (last visited Sept. 20, 2012).

develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 192.7).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

(1) Use of a one-call notification system prior to excavation and other damage prevention activities;

(2) Possible hazards associated with unintended releases from a gas pipeline facility;

(3) Physical indications that such a release may have occurred;

(4) Steps that should be taken for public safety in the event of a gas pipeline release; and

(5) Procedures for reporting such an event.

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.616 by failing to develop and implement a written continuing public education program that followed the guidance provided in API RP 1162. GRS was required to have completed its written program by June 20, 2006.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.616 by failing to develop and implement a written continuing public education program that followed the guidance provided in API RP 1162.

This finding of violation will be considered a prior offense 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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 \$27,800 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$27,800 for Respondent's violation of 49 C.F.R. § 192.616, for failing to develop and implement a written continuing public education program that followed the guidance provided in API RP 1162. GRS neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty.

The record shows that the Respondent did not create any kind of a public awareness plan for its facilities. A public awareness plan is a critical component in protecting the public and an operator's own facilities in the event of a failure. The transmission line runs almost entirely in a populated area that includes a school and several residential subdivisions. PHMSA considers this area to be a High Consequence Area, as defined in § 192.903. Due to the high population density, public awareness is necessary to educate the public about the location of the pipeline, the identification of potential leaks and the actions needed in response to a potential failure.

GRS requested that PHMSA waive the civil penalty on the ground of financial hardship, due to the fact that the facility in question was a poor financial performer. In its Response, GRS explained that the line lost \$102,000 over the past three years and asked that PHMSA "waive the civil penalty and allow us to spend available financial resources for safety and environmental programs..."² Fortistar, however, is a large corporation with roughly 58 different energy projects in the U.S. and Canada.³ Given the responsibility of all pipeline operators to carry out effective public awareness programs, I see no reason to reduce or eliminate the proposed penalty in this case. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,800 for violation of 49 C.F.R. § 192.616.

In summary, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a total civil penalty of **\$27,800**.

Payment of the civil penalty must be made within 20 days of service. 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

² Response at 2.

³ Fortistar website, *supra*.

instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$27,800 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 in the Notice for violation of 49 C.F.R. § 192.616. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

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 § 192.616 (**Item 1**), Respondent must take the following action:
 - a. GRS must develop and implement a Public Awareness Plan in accordance with § 192.616.
 - b. The Public Awareness Plan must be completed and submitted to the Central Region Director and the Pipeline Safety Program manager of the Ohio Public Utilities Commission within 30 days of the receipt of this Order. Additionally, the Plan must be implemented immediately upon completion. GRS will submit quarterly reports to the Central Region Director and the Pipeline Safety Program Manager of the OH-PUC detailing its progress for a period of 365 days after beginning implementation of the program.
2. With respect to the violation of § 192.616 (**Item 1**), Respondent is requested to maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to David Barrett, 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/revisions of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

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.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued