

Mr. Paul Grady
Senior Vice President of Sales and Operations
AmeriGas Propane, L.P.
460 North Gulph Road
King of Prussia, Pennsylvania 19406

Re: CPF No. 57702

Dear Mr. Grady:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$260,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Douglas A. Stuart, Counsel

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

_____))
In the Matter of))
))
AmeriGas Propane, L.P.) CPF No. 57702
))
Respondent.))
_____))

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an investigation of the November 30, 1993 incident involving Respondent's pipeline in Truckee, Nevada County, California. The incident consisted of a gas explosion which resulted in one death, eight injuries and over \$50,000 in property damage. As a result of the investigation, the Director, Western Region, OPS, issued to Respondent, by letter dated February 6, 1997, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 191.5 and 192.145(a) and proposed assessing civil penalties of \$10,000 and \$250,000 respectively for the alleged violations.

Respondent responded to the Notice by letter dated May 20, 1997 (Response). Respondent contested the allegations and requested a hearing that was held on October 15, 1997. After this hearing, Respondent provided additional information on November 14, 1997 and February 2, 1998 (Response 2).

FINDINGS OF VIOLATION

With respect to Item 1, the Notice alleged that Respondent violated 49 C.F.R. § 191.5. This provision requires that an operator, at the earliest practicable moment following discovery, give telephonic notice to the National Response Center (NRC) of each incident as defined in § 191.3. The Notice specifically alleged that Respondent's notification 18 hours after the Truckee, California incident was not notification at the earliest practicable moment following discovery of the incident.

The November 30, 1993 incident involved an explosion that caused a building to collapse, resulting in one death, eight injuries, and over \$50,000 in property damage.

In its Response, Respondent stated that OPS incorrectly began counting the notification time from the time of the incident, instead of from when the incident was discovered. Respondent argued that discovery means "when AmeriGas had reason to believe that an 'incident' had occurred as defined in § 191.3." (Response, p.1) Respondent further stated that the release of gas from its pipeline was not discovered until some time after it occurred due to the collapse of the building, coupled with the renovations being done inside. Respondent added that when it

gave the DOT telephonic notice only hours after the incident, it was done after AmeriGas had had an opportunity to gather information during the chaos following the incident, and to reach a conclusion (albeit speculative at that point) that the incident may have involved a release from a pipeline.

(Response, p.2)

During the hearing, Respondent argued that notification is to be made upon the discovery of facts that would lead a reasonable person to believe that a release of gas was involved in the incident. Respondent stated that it believed that discovery occurred the evening of December 1st, after it realized the force of the explosion; however, rescue crews would not allow anyone in the area primarily because the building had asbestos that had to be cleaned up. Respondent added that time zone differences also played a role because it had a procedure that required the Safety Director in Pennsylvania to aid in determining whether to call the NRC.

After the hearing, Respondent submitted additional information including a post-accident time line. The time line indicates:

1. November 30th
 - a. 2:30 p.m. PST (5:30 p.m. EST) - incident occurred.
 - b. 3:30 p.m. PST (6:30 p.m. EST) - Respondent's local office was informed of the incident.
 - c. 5:00 p.m. PST (8:00 p.m. EST) - Respondent's regional supervisor was informed of the incident.
2. December 1st
 - a. 5:00 a.m. PST (8:00 a.m. EST) - Respondent's Senior Vice President for Operations and its Safety Director were informed of the incident.
 - b. 8:00 a.m. PST (11:00 a.m. EST) - the incident was reported.

The time-line continues by adding that it was not until December 3rd that Respondent was allowed into the area to do testing, the results of which yielded "the first indications that propane gas may have escaped from the underground line." (November 14, 1997 Response 2, p.2)

Section 191.5 requires that telephonic notice be provided at "the earliest practicable moment following discovery." The question about when discovery occurs that Respondent raises here is similar to that raised in In the Matter of Enstar Natural Gas Company (Enstar), CPF No. 52016

(May 14, 1997). Enstar, like Respondent, focused on the meaning of the word "discovery," since that is the word that triggers the notice requirement. (Enstar, p.2) In Enstar, the final order pointed out that "[d]iscovery could either mean discovery of the *cause* of the incident or discovery of the *incident* itself." Id. (Emphasis in original) Furthermore, the order set forth that "[i]f the regulation were read to mean at the earliest moment following discovery of the *cause* of the incident, the operator would never be required to report an incident until the cause of the incident was definitively determined." Id.

The fact that an explosion occurred at the location of a gas customer, coupled with a death, injuries requiring hospitalization, and extensive property damage, satisfied the telephonic reporting requirements. Even if Respondent could not immediately ascertain the cause of the incident, the facts in this case (death, hospitalization, ...) required Respondent to notify the NRC. Once Respondent discovered these facts, it should have made the report. It did not take Respondent until 8:00 a.m. (PST) on December 1st to discover these facts.

Accordingly, I hereby find that Respondent violated 49 C.F.R. § 191.5 by failing to telephonically report the incident of November 30, 1993, at the earliest practicable moment following discovery.

With respect to Item 2, the Notice alleged that Respondent violated 49 C.F.R. § 192.145(a). This provision requires that each valve meet the minimum requirements, or equivalent, of API 6D¹, and may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements. The Notice alleged that Respondent installed and used a valve that did not meet these requirements. The valve failed, resulting in a release of propane gas and a subsequent explosion.

At the hearing, Respondent did not deny that the wrong valve was used. Respondent stated that it was not contesting the violation, but rather wanted to present mitigating factors that might lower the penalty amount. Accordingly, I hereby find that Respondent violated 49 C.F.R. § 192.145(a) by installing a valve that did not meet the minimum requirements of API 6D.

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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a total civil penalty of \$260,000.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation,

¹ API 6D contains the specifications for pipeline valves.

degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

With respect to the violation of 49 C.F.R. § 191.5, Respondent argued that it did report the incident "within hours after its occurrence, long before a final determination could be made" and that it "acted in good faith in attempting to comply with § 191.3." (Response, p.2)

In cases involving telephonic reporting, it is important that notice be given promptly, even if the precise cause has not been determined. The nature and circumstances surrounding this incident, including an explosion and a death, required Respondent to promptly report the incident (see Findings of Violation). Respondent has not presented any information that warrants mitigation of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000.

With respect to the violation of 49 C.F.R. § 192.145, Respondent argued that the proposed civil penalty was high as compared to previous penalties and the size of the companies that have received the high civil penalties. (November 14, 1997 Response 2, p.5) Furthermore, Respondent took issue with OPS's statement that Respondent installed the valve with knowledge that it did not meet the minimum federal standards. Lastly, Respondent stated that the cause of the incorrect installation was that the employees were misled by the valve markings, 400 WOG, which they understood to mean 400 psi, water, oil or gas.

According to OPS records, this was the first case that proposed a violation of § 192.145. Therefore, there can be no comparison made to previous civil penalties. Furthermore, even if there had been prior information to compare, each civil penalty is assessed on a case by case basis. The facts associated with this incident provide a sound basis for the civil penalty proposed in the Notice. As for the size of Respondent compared to other operators, Respondent at no time argued that it would have difficulty paying or that paying such a penalty would affect its ability to continue in business. I see no basis for reducing the penalty based on these arguments.

With respect to the issue of whether Respondent had knowledge that the incorrect valve was being used, Respondent presented evidence in the form of a deposition taken of its employee who installed the valve. The statements in the deposition indicate that the employee may not have been aware that he was installing the wrong valve. Notwithstanding this evidence, the employee's actions were imprudent.

During the hearing, Respondent stated that the valve also had other markings that its employees did not understand, and that even if understood, would have at best caused its employees to be confused as to what the pressure rating was for this valve. Respondent added that no literature was distributed with the valve and that "20/20 hindsight" indicated that the employees should have looked for the literature.

Respondent further stated at the hearing that, because a lengthy repair would have affected the businesses and restaurants in the building, the valve used was intended to be a quick temporary repair and was purchased at a local supply store. No literature was distributed with the valve. As a result, Respondent was not aware of any limitations regarding the valve's application. Respondent also testified that it had intended to go back to replace the valve however, the sanitation district backfilled the hole before they could go back.

The responsibility of operating a pipeline comes with the duty and obligation to ensure the safe and proper operation of it. The choice of equipment to be used as part of a pipeline, especially in a high population area, is something to be taken seriously and to be done with the utmost care. That care includes having the knowledge or obtaining the knowledge needed to know whether the right piece of equipment is being used. Instead, Respondent imprudently purchased a valve with no literature at a local supply store. Had Respondent seen the specifications of this valve, it would have known that the valve was not manufactured to any specific code. This is not a matter of 20/20 hindsight. Regardless of whether the employees understood all of the valve's markings, the employees should not have installed the valve until they verified the valve's specifications were correct for the intended use.

Furthermore, Respondent's employees buried the valve, where it was exposed to adverse environmental conditions. Respondent submitted written testimony² from the Vice President and General Manager of SEAL Laboratories who stated that the fracture initiated "due to stress corrosion cracking of the brass in the intergranular mode due to the *presence of moisture and ammonia in the soil.*" (emphasis added). By failing to check the valve's specifications, Respondent's employees had no idea of what environmental stresses the valve would take. The valve would not have been exposed to those environmental conditions in the soil if it had not been placed directly in the ground.

The valve failure resulted in a death, eight injuries, and over \$50,000 in property damage. The valve failure may have been prevented had Respondent had in place adequate controls over installation of its equipment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$250,000 for the violation of 49 C.F.R. §192.145.

Payment of the civil penalty **must be made within 20 days of service**. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this **payment be made by wire transfer**, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. **Detailed instructions are contained in the enclosure**. After completing the wire transfer, send a copy of

²Prior to the hearing, with a letter dated October 10, 1997, Respondent submitted a package of documents that were part of its hearing response. In that package, Exhibit E contained a transcript of discovery material produced during civil litigation that arose from the incident. Page 3, lines 14 - 16 contained the testimony of the Vice President and General Manager of SEAL Laboratories, a laboratory that analyzed the valve failure.

the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$260,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. The terms and conditions of this Final Order are effective upon receipt.

Stacey Gerard
Associate Administrator
for Pipeline Safety

Date Issued