

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE NOTICE OF )  
POTENTIAL VIOLATION OF 26 DEL. )  
ADMIN. C. §8001 AND ASSOCIATED ) PSC DOCKET NO. 394-13  
CIVIL PENALTIES ASSESSED TO )  
AERO ENERGY, INC. )  
(OPENED October 3, 2013) )

**ORDER NO. 8524**

**AND NOW**, this 6<sup>th</sup> day of February, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, the Commission has qualified for federal certification to operate a state pipeline safety compliance program pursuant to 49 U.S.C. §60105(a) and has the authority pursuant to 26 Del. C. §821 to make and enforce rules required by the federal National Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601); and

**WHEREAS**, the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, to order remedial actions and impose civil penalties where appropriate; and

**WHEREAS**, Aero Energy, Inc. ("Aero") is an "Operator" as set forth in 26 Del. Admin. C. §8001-1.0 and 26 Del. C. §802(11) in that Aero acts as an operator of a buried pipeline facility used in the transportation of natural gas within the State of Delaware and therefore falls within the Commission's intrastate gas pipeline transportation jurisdiction; and

**WHEREAS**, a member of the Commission's staff ("Staff") performed a standard inspection of Aero's distribution pipelines located at Nassau Grove, Lewes, Delaware ("Nassau Grove") and Keys of March Harbor, Rehoboth Beach, Delaware ("Marsh Harbor"), and noted his findings in

two separate written reports both dated June 26, 2013 (the "Reports"); and

**WHEREAS**, with respect to Nassau Grove, the report finds that Aero failed to (i) timely exercise three key/critical valves; (ii) timely test the cathodic protection system, (iii) timely inspect and test the pressure limiting and regulation stations; and (iv) follow their own procedural manuals; and

**WHEREAS**, Aero's failure to timely exercise three key/critical sectionalizing valves represents three violations of 49 C.F.R. §192.747(a);<sup>1</sup> and

**WHEREAS**, Aero's failure to timely test the cathodic protection system represents one violation of 49 C.F.R. §192.465(a);<sup>2</sup> and

**WHEREAS**, Aero's failure to timely inspect and test the pressure limiting and regulation stations represents one violation of 49 C.F.R. §192.739(a);<sup>3</sup> and

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<sup>1</sup> 49 C.F.R. §192.747(a) "Valve maintenance: Distribution systems," requires that "[e]ach 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."

<sup>2</sup> 49 C.F.R. §192.465(a) "External corrosion control: Monitoring" requires that "[e]ach 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 . . . ."

<sup>3</sup> 49 C.F.R. §192.739(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) in good mechanical condition; (2) adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and (4) properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation."

**WHEREAS**, Aero's failure to follow their own procedural manuals represents one violation of 49 C.F.R. §192.605(a);<sup>4</sup> and

**WHEREAS**, with respect to Marsh Harbor, the report finds that Aero filed to timely repair the cathodic protection system and failed to follow their own procedural manuals; and

**WHEREAS**, Aero's failure to timely repair the cathodic protection system represents one violation of 49 C.F.R. §192.465(d)<sup>5</sup>; and

**WHEREAS**, Aero's failure to follow their own procedural manuals represents one violation of 49 C.F.R. §192.605(a); and

**WHEREAS**, based on the findings in the Reports, the Program Manager of the Pipeline Safety Program for the State of Delaware (the "Program Manager") sent a written letter of the Notice of Potential Violation (the "NOPV") to Aero on October 3, 2013, along with copies of the Reports. Copies of the NOPV and Reports are attached to the Proposed Consent Agreement (defined below); and

**WHEREAS**, because Aero successfully performed all of the monitoring and testing required and provided appropriate documentation to evidence same, the NOPV recommended no remedial action but did note that the "lack of attention to these sites is concerning." The NOPV did recommend that Aero pay civil penalties totaling \$1,700.00

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<sup>4</sup> 49 C.F.R. §192.605(a) "Procedural manual for operations, maintenance, and emergencies" states generally that "[e]ach operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

<sup>5</sup> 49 C.F.R. §192.465(d) provides that "Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring."

consisting of three violations at \$200.00 per violation of 49 C.F.R. §192.747(a), \$200.00 for one violation of 49 C.F.R. §192.465(a), \$200.00 for one violation of 49 C.F.R. §192.739(a), \$300.00 for one violation of 49 C.F.R. §192.465(d), and two violations at \$200.00 per violation of 49 C.F.R. §192.605(a) (the "Civil Penalties"); and

**WHEREAS**, Aero and Staff entered into settlement negotiations and agreed to resolve the potential violations by entering into a consent agreement (the "Consent Agreement") which is attached hereto as **Exhibit "A"**. Both Staff and Aero agree that the Consent Agreement is subject to the Commission's review and final approval; and

**WHEREAS**, Staff and Aero submit that resolving this matter through a negotiated compromise and without the need for a formal evidentiary hearing serves the public interest and yields a reasonable result. In addition, both parties assert that the Civil Penalties are within the bounds of allowable civil penalty amounts based on circumstances unique to Aero and this settlement will avoid further administrative and hearing costs.

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF  
NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 Del. C. §512(c), the Commission finds that the Consent Agreement is in the public interest for the reasons set forth above and, therefore, approves such agreement in full.

2. Pursuant to 26 Del. Admin. C. §8001-7.1.2, 49 U.S.C. 60122(a), and subpart B of Part 190 of the Federal Regulations, the Commission assesses a civil penalty against Aero in the amount of \$1,700.00 payable within 20 days of the date of this Order.

3. Aero is hereby placed on notice that the costs of the proceedings may be charged to it under the provisions of 26 Del. C. §114(b) (1).

4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

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Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary

EXHIBIT "A"

Proposed Consent Agreement

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Proposed Consent Agreement

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE NOTICE OF )  
POTENTIAL VIOLATION OF 26 DEL. )  
ADMIN. C. §8001 AND ASSOCIATED ) DOCKET NO. 394-13  
CIVIL PENALTIES ASSESSED TO )  
AERO ENERGY, INC. (OPENED OCTOBER 3, 2013) )

**CONSENT AGREEMENT**

**THIS CONSENT AGREEMENT** is made this 13th day of January, 2014, between Aero Energy, Inc. ("Aero") and the Delaware Public Service Commission Staff ("Staff").

**WHEREAS**, Aero is a Pennsylvania corporation with headquarters located at 230 Lincoln Way East, New Oxford, PA 17350 doing business at developments located at Nassau Grove, Lewes, Delaware ("Nassau Grove") and Keys of Marsh Harbor, Rehoboth Beach, Delaware ("Marsh Harbor"); and

**WHEREAS**, Aero is an "Operator" as set forth in 26 Del. Admin. C. §8001-1.0 and 26 Del. C. §802(11) in that such company acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

**WHEREAS**, the Delaware Public Service Commission (the "Commission") has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. §60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

**WHEREAS**, pursuant to 26 Del. C. §821, the Commission "shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)....;" and

**WHEREAS**, as part of the Commission's duties as a certified state pipeline safety compliance program, on June 26, 2013, Mr. Robert Schaeffgen, a member of Staff, performed a standard inspection of Aero facilities located at both Nassau Grove and Marsh Harbor; and

**WHEREAS**, Mr. Schaeffgen prepared two separate written reports, one for Nassau Grove dated June 26, 2013 and a separate report for Marsh Harbor dated June 26, 2013, which summarize his findings; and

**WHEREAS**, based on Mr. Schaeffgen's written reports and findings dated June 26, 2013, Mr. Gerald D. Platt, Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Aero on October 3, 2013. A copy of the NOPV is attached as **Exhibit "A"**; and

**WHEREAS**, Mr. Platt summarized the report for Nassau Grove by stating that: “There were no records of the maintenance/exercising of the key/critical sectionalizing valves, no records of the monitoring of the external corrosion control, and no records of inspection/testing of the pressure regulating station of the LPG distribution system of Nassau Grove since March 29, 2012. Upon realizing that all of these tasks were about to be overdue, Mr. Adrien Turcotte made arrangements to have each of these tasks completed. The results of each task subsequently showed satisfactory results, but they were completed after the deadline of June 29, 2013. Other minor issues were asked to be corrected, but no violations are being cited for these issues at this time. It was noted that there are three critical sectionalizing valves to be exercised for this system”; and

**WHEREAS**, Aero’s failure to timely exercise three key/critical sectionalizing valves represents three violations of 49 C.F.R. §192.747(a);<sup>1</sup> and

**WHEREAS**, Aero’s failure to timely test the cathodic protection system represents one violation of 49 C.F.R. §192.465(a);<sup>2</sup> and

**WHEREAS**, Aero’s failure to timely inspect and test the pressure limiting and regulation stations represents one violation of 49 C.F.R. §192.739(a)<sup>3</sup>

**WHEREAS**, Aero’s failure to follow their own procedural manuals represents one violation of 49 C.F.R. §192.605(a);<sup>4</sup> and

**WHEREAS**, Mr. Platt summarized the report for Marsh Harbor by stating that: “When the testing of the cathodic protection system was last performed on May 14, 2012, all of the readings were too low to meet the requirements of 49 C.F.R. §192.463, External corrosion control: Cathodic protection. However, no potential violations were cited at that time, and the Operator was provided the opportunity to correct the situation. Since that time, no corrective

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<sup>1</sup> 49 C.F.R. §192.747(a) “Valve maintenance: Distribution systems,” requires that “[e]ach 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.”

<sup>2</sup> 49 C.F.R. §192.465(a) “External corrosion control: Monitoring” requires that “[e]ach 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 . . . .”

<sup>3</sup> 49 C.F.R. §192.739(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) in good mechanical condition; (2) adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and (4) properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.”

<sup>4</sup> 49 C.F.R. §192.605(a) “Procedural manual for operations, maintenance, and emergencies” states generally that “[e]ach operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.”

action had been taken. Subsequent to the June 26, 2013, inspection, testing was performed, and the readings barely met the requirements. No other action was reported as being taken” and

**WHEREAS**, Aero’s failure to timely repair the cathodic protection system represents one violation of 49 C.F.R. §192.465(d)<sup>5</sup>; and

**WHEREAS**, Aero’s failure to follow their own procedural manuals represents one violation of 49 C.F.R. §192.605(a);

**WHEREAS**, among other things, the NOPV states that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the “Regulations”) to order remedial actions and to impose civil penalties. The NOPV further states that “Commission Staff recognizes that the Operator has successfully performed all of the monitoring and testing since the inspections were conducted, and this documentation has been provided. So, there is no remedial action to be taken at this time. However, the lack of attention to these sites is concerning.” Accordingly, Staff recommended the following civil penalties:

- \$200.00 per violation of 49 C.F.R. §192.747(a), which totals \$600.00,
- \$200.00 for one violation of 49 C.F.R. §192.465(a),
- \$200.00 for one violation of 49 C.F.R. §192.739(a),
- \$300.00 for one violation of 49 C.F.R. §192.465(d), and
- \$200.00 per violation of 49 C.F.R. §192.605(a), which totals \$400.00.

Thus, the total amount of recommended civil penalties is \$1,700.00; and

**WHEREAS**, Aero and Staff entered into settlement negotiations and have agreed to resolve all issues in this proceeding without recourse to a formal administrative hearing by entering into this Consent Agreement under the terms and conditions set forth herein; and

**WHEREAS**, Staff informed Aero that it is entitled to an administrative hearing and to be represented by counsel. Aero’s decision to waive a hearing is a free and voluntary act.

**NOW, THEREFORE**, upon the mutual consent and agreement of Aero and Staff (individually, a “Party,” and collectively, the “Parties”), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

1. The Parties have conferred and agree to enter into this Consent Agreement on the terms and conditions contained herein because the resolving this matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Consent Agreement will be presented to the Commission for the Commission’s final approval.

2. Aero waives its right to an administrative evidentiary hearing for this proceeding.

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<sup>5</sup> 49 C.F.R. §192.465(d) provides that “Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.”

3. Aero states that it fully understands all of the violations alleged by Staff and all of the consequences of the agreement to enter into this Consent Agreement.

4. Aero admits to all of the facts relating to the above-referenced violations.

5. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Aero agrees to pay the Commission a civil penalty in the amount of \$1,700.00 (the "Civil Penalty") within 20 days of the date of a final Commission order that approves this Consent Agreement. Pursuant to 26 *Del C.* §116 (b)(2), the Civil Penalty will be payable to and deposited into the General Fund of the State of Delaware.

6. If Aero fails to timely pay the Civil Penalty, Aero agrees that it shall pay 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 which, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, Aero understands that failure to pay the Civil Penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

7. Entry into this Consent Agreement is the free and voluntary act of Aero and its terms are binding upon Aero and may be admitted into evidence in any judicial or administrative proceeding against Aero in order to enforce its terms.

8. This finding of violations will be considered a prior offense in any subsequent enforcement action against Aero.

9. Nothing in this Consent Agreement affects or relieves Aero of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. §60101, et seq., and the regulations and administrative orders issued thereunder. Nothing in this Consent Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against Aero pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

10. No change, amendment, or modification to this Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

11. If Staff or the Commission fails to act on any one or more defaults by Aero, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare Aero in default and to take such action as may be permitted by this Consent Agreement or by law.

12. This agreement shall survive Aero and be enforceable against its successors or assigns.

13. The provisions of this Consent Agreement are not severable.

14. The Parties agree that this Consent Agreement may be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

15. This Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

16. The Parties may enforce this Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

17. If a Court grants a legal challenge to the Commission's approval of this Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Consent Agreement, or if some other legal bar has the same effect, then this Consent Agreement is voidable upon written notice by either Party to the other Party.

18. This Consent Agreement resolves all issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Consent Agreement. This Consent Agreement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

19. This Consent Agreement contains all of the terms and conditions agreed to by the Parties and constitutes the final agreement between Aero and Staff.

20. This Consent Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will make their best efforts to support this Consent Agreement and to secure its approval by the Commission.

21. It is expressly understood and agreed that this Consent Agreement constitutes a negotiated resolution of the issues in this proceeding.

22. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

23. This Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Consent Agreement by facsimile transmission or by e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. Aero agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth herein.

**DELAWARE PUBLIC SERVICE COMMISSION STAFF**

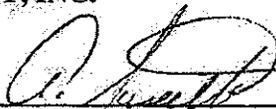
By: 

Date: 1/13/14

Printed Name: GERALD D. PLATT

Title: Pipeline Safety Program Manager

**AERO ENERGY, INC.**

By: 

Date: 1/2/14

Printed Name: Andrew Turcotte

Title: Regional Manager

**EXHIBIT "A"**

**COPY OF WRITTEN NOTICE OF POTENTIAL VIOLATION  
OF 26 Del. Admin. C. §8001 DATED OCTOBER 3, 2013, FROM  
THE DELAWARE PUBLIC SERVICE COMMISSION STAFF  
TO AERO ENERGY**



**STATE OF DELAWARE  
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500  
FAX: (302) 739-4849

October 3, 2013

Mr. Adrien Turcotte  
Aero Energy  
1616 Northwood Drive  
Salisbury, MD 21801

**RE: Written Notice of Potential Violation of 26 Del. Admin. C. §8001 – Nassau Grove and Keys of Marsh Harbor**

Dear Mr. Turcotte:

This letter serves as notice to Aero Energy (the "Operator") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, **26 Del. Admin. C. §8001** (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, Title 49, U.S. Code of Federal Regulations, Parts 190-193 and 198-199.

On June 26, 2013, Mr. Robert Schaeffgen, a member of the Commission Staff, performed a Standard Inspection of the records and facilities of the Operator for Nassau Grove in Lewes, DE. Mr. Schaeffgen noted the following:

There were no records of the maintenance/exercising of the key/critical sectionalizing valves, no records of the monitoring of the external corrosion control, and no records of inspection/testing of the pressure regulating station of the LPG distribution system of Nassau Grove since March 29, 2012. Upon realizing that all of these tasks were about to be overdue, Mr. Adrien Turcotte made arrangements to have each of these tasks completed. The results of each task subsequently showed satisfactory results, but they were completed after the deadline of June 29, 2013. Other minor issues were asked to be corrected, but no violations are being cited for these issues at this time. It was noted that there are three critical sectionalizing valves to be exercised for this system.

This represents three (3) potential violations of **49 C.F.R. §192.747(a): Valve maintenance: Distribution systems**, which requires the following:

*"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."*

This also represents one potential violation of **49 C.F.R. §192.465(a): External corrosion control: Monitoring**, which, in part, requires the following:

*"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...."*

This also represents one potential violation of **49 C.F.R. §192.739(a): Pressure limiting and regulating stations: Inspection and testing**, which requires the following:

*"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) In good mechanical condition;*
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;*
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and*
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.*

This also represents a potential violation of **49 C.F.R. §192.605(a): Procedural manual for operations, maintenance, and emergencies**, which states the following:

*"General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."*

Later on June 26, 2013, Mr. Schaeffen proceeded to Keys of Marsh Harbor in Rehoboth Beach, DE, to perform a Standard Inspection. At that site, Mr. Schaeffen noted the following:

When the testing of the cathodic protection system was last performed on May 14, 2012, all of the readings were too low to meet the requirements of **49 C.F.R. §192.463, External corrosion control: Cathodic protection**. However, no potential violations were cited at that time, and the Operator was provided the opportunity to correct the situation. Since that time, no corrective action had been taken. Subsequent to the June 26, 2013, inspection, testing was performed, and the readings barely met the requirements. No other action was reported as being taken.

This represents a potential violation of **49 C.F.R. §192.465(d): External corrosion control: Monitoring**, which requires the following:

*"Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring."*

Mr. Adrien Turcotte, Aero Energy  
October 3, 2013  
Page 3

This also represents another potential violation of 49 C.F.R. §192.605(a): Procedural manual for operations, maintenance, and emergencies, which states the following:

*"General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."*

The Commission Staff recognizes that the Operator has successfully performed all of the monitoring and testing since the inspections were conducted, and this documentation has been provided. So, there is no remedial action to be taken at this time. However, the lack of attention to these sites is concerning. Therefore, the Commission Staff is recommending that the Commission impose a civil penalty of \$200.00 per potential violation of 49 C.F.R. §192.747(a), which totals \$600.00, impose a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.465(a), impose a civil penalty of \$200.00 for the potential violation of 49 C.F.R. §192.739(a), impose a civil penalty of \$300.00 for the potential violation of 49 C.F.R. §192.465(d), and impose a civil penalty of \$200.00 per potential violation of 49 C.F.R. §192.605(a), which totals \$400.00. Thus, the total amount of recommended civil penalties is \$1700.00. Additional penalties may also be imposed for any additional violations found in any ensuing investigations or hearings.

The Commission Staff is referring this matter to the Commission for a formal hearing so that the Commission can rule on this matter. A docket will be opened for this matter, and a notice of a hearing date will be sent to the Operator as soon as possible.

If you have questions regarding this matter, please don't hesitate to contact me at 302-736-7526.

Sincerely,



Gerald D. Platt, Program Manager

Enclosures: Copies of two Violation Reports for 6/26/13

cc: Kathleen Makowski, Deputy Attorney General  
Robert Schaeffgen, DE PSC Pipeline Safety Inspector

UNITED STATES DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
GAS PIPELINE SAFETY VIOLATION REPORT

<b>1. Inspector Name</b> Robert Schaeffgen	<b>2. Date of Inspection</b> 06/26/13	<b>3. CPF #</b>			
<b>4. Pipeline Operator/Owner</b> Aero Energy					
<b>5a. Headquarters Address</b> 230 Lincoln Way East, New Oxford, PA 17350			<b>5b. Telephone No.</b> (302) 734-7416		
<b>6. Inspection Location</b> Nassau, DE			<b>7. Inspection Unit</b> No. <u>1&amp;4</u> of <u>8</u>		
<b>8. Portion of System Inspected (Describe location &amp; facility)</b> Nassau Grove- Nassau, DE					
<b>9. Nature and Size of Operator</b>					
<b>9a. Type of Operator</b>		<b>9b. Type of Pipe in System Inspected</b>			
<input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (Intrastate) <input checked="" type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input type="checkbox"/> Transmission (intrastate)		<input type="checkbox"/> Cast Iron <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other -			
		<b>9c. Size of Operator (No. of Miles/Customers/Storage Capacity)</b> <u>32.25 miles/ /178000</u>			
<b>10. Nature of Probable Violations (Check as many as applicable)</b>					
<input type="checkbox"/> 1. Problem in Design/Materials <input type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input type="checkbox"/> 7. Pressure Control <input checked="" type="checkbox"/> 8. Other Maintenance/Monitoring <input type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input type="checkbox"/> 15. Other _____ <input type="checkbox"/> 16. Inadequate/No Procedures					
<input type="checkbox"/> A. Construction <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> C. Operations		<input type="checkbox"/> D. Training <input type="checkbox"/> E. Maintenance			

Violation No. 1

Violated: 192.605 (a) Procedural Manual for Operations, Maintenance, and Emergencies

**11b. Summarize what the regulation requires that operator did not do:**

Operator did not follow their manual of written procedures for conducting Operations and maintenance Activities, specifically the Valve Maintenance interval not exceeding 15 months. In addition, operator did not perform a regulator station inspection and perform CP monitoring within 15 months.

**12. Provide detailed information about violation:**

Operator did not exercise their key valves (Valve Maintenance), Meter and Regulator Station inspection and CP monitoring of the u/g tanks at an interval not exceeding 15 months, but at least once each calendar year.

**13. Public and/or environmental concerns in area of violation:**

By not performing the system maintenance within 15 months, operator is placing residents safety in jeopardy in that key/critical-main valves may not be operational in the event of a leak on a main or service or a hit line.

**14a. Person Interviewed:** Adrien Turcotte      **Title:** Eastern Shore Regional Manager

**14b. Comments of person interviewed:** He said that he would immediately get the valves exercised after I had performed the inspection on June 26, 2013.

Continuation Sheet

Violation No. 2

11a. CFR Violated: 192.747 (a) Valve maintenance: Distribution systems

11b. Summarize what the regulation requires that operator did not do:

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.

12. Provide detailed information about the violation:

Operator failed to exercise the valves annually, not to exceed 15 months.

13. Public and/or environmental concerns in area of violation:

By not operating the key/critical/sectionalizing valves annually, not to exceed 15 months, a valve might not be able to be operated when needed in an emergency response, such as a hit line.

14a. Person Interviewed: Adrien Turcotte      Title: Eastern Shore Regional Manager

14b. Comments of person interviewed: Once he realized that he was late in exercising the key/critical valves he had Robert Buck of Bucks Unlimited exercise the main-critical valves which included the valves on the regulator station as well as the tank valves.

Continuation Sheet

Violation No. 3

11a. CFR Violated: 192.465 External corrosion control: Monitoring.

11b. Summarize what the regulation requires that operator did not do:

Operator did not test 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.

12. Provide detailed information about the violation:

Operator was late in performing the CP monitoring of it's u/g propane storage tanks.

13. Public and/or environmental concerns in area of violation:

By not performing the system maintenance within 15 months, operator is placing residents safety in jeopardy.

14a. Person Interviewed: Adriën Turcotte Title: Eastern Shore Regional Manager

14b. Comments of person interviewed: Operator performed the CP monitoring (Tank to soil) reading after the inspection conducted on 06/26/13 and after 15 months had elapsed.

Continuation Sheet

Violation No. 4

11a. CFR Violated: 192.739(a) Pressure limiting and regulating stations:  
Inspection and testing

11b. Summarize what the regulation requires that operator did not do:

The Pressure regulating station and its equipment must be subjected to inspections and tests to determine that it is-

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation

at intervals not exceeding 15 months, but at least once each calendar year.

12. Provide detailed information about the violation:

Operator had not inspected and tested the pressure limiting and regulating station within 15 months.

13. Public and/or environmental concerns in area of violation:

By not inspecting the pressure limiting and regulator station within the required 15 months operator could be exposing the distribution system to overpressure and placing the residents safety in jeopardy.

14a. Person Interviewed: Adrien Turcotte Title: Eastern Shore Regional Manager

14b. Comments of person interviewed: He indicated that he had thought that the pressure and regulating station had been inspected and tested, however he did not have the documentation.

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Pipeline Safety Regulations Part 192	OPS/PHMSA	

16. Inspector's Signature:

Date:

<b>17. <u>Compliance History</u></b>				
<b>Date</b>	<b>Place</b>	<b>Describe Violation/ Noncompliance</b>	<b>CPF No. Date WL</b>	<b>Outcome</b>
<b>18. <u>Gravity of Offense</u></b>				
<b>19. <u>Degree of Culpability</u></b> Fair				
<b>20. <u>Ability to Continue in Business</u></b> Excellent				
<b>21. <u>Ability to Pay</u></b> Good				
<b>22. <u>Good Faith in Attempting to Achieve Compliance</u></b> Excellent				
<b>23a. <u>Proposed Remedy</u></b>				
<input checked="" type="checkbox"/> Warning Letter				
<input checked="" type="checkbox"/> Civil Penalty: Recommended Amount \$ <u>500</u>				
<input type="checkbox"/> Compliance Order				
<input type="checkbox"/> Hazardous Facility Order				
<input type="checkbox"/> Notice of Amendment of O&M Plan				
<b>23b. <u>Analysis of Proposed Remedy</u></b>				
<b>24. Regional Director's Signature:</b>			<b>Date:</b>	
_____			_____	

U.S. Department of Transportation  
Office of Pipeline Safety  
Eastern Region

EXHIBIT TAB

Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness
Investigator Name		Title

UNITED STATES DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
GAS PIPELINE SAFETY VIOLATION REPORT

1. <u>Inspector Name</u> Robert Schaeffgen	2. <u>Date of Inspection</u> 06/26/13	3. <u>CPF #</u>					
4. <u>Pipeline Operator/Owner</u> Aero Energy, Inc.							
5a. <u>Headquarters Address</u> 230 Lincoln Way East, New Oxford, PA 17350				5b. <u>Telephone No.</u> (302) 734-7416			
6. <u>Inspection Location</u> Keys of Marsh Harbor				7. <u>Inspection Unit</u> No. <u>2</u> of <u>8</u>			
8. <u>Portion of System Inspected (Describe location &amp; facility)</u> Keys of Marsh Harbor, Rehoboth Beach, DE							
9. <u>Nature and Size of Operator</u>							
9a. <u>Type of Operator</u>				9b. <u>Type of Pipe in System Inspected</u>			
<input type="checkbox"/> LNG (interstate)				<input type="checkbox"/> Cast Iron			
<input type="checkbox"/> LNG (Intrastate)				<input type="checkbox"/> Steel			
<input checked="" type="checkbox"/> LPG				<input checked="" type="checkbox"/> Plastic			
<input type="checkbox"/> Master Meter				<input type="checkbox"/> Other -			
<input type="checkbox"/> Other Distribution							
<input type="checkbox"/> Gathering				9c. <u>Size of Operator (No. of Miles/Customers/Storage Capacity)</u>			
<input type="checkbox"/> Transmission (interstate)				32.25 miles/ /178000			
<input type="checkbox"/> Transmission (intrastate)							
10. <u>Nature of Probable Violations (Check as many as applicable)</u>							
<input type="checkbox"/> 1. Problem in Design/Materials							
<input type="checkbox"/> 2. Problem in Construction							
<input type="checkbox"/> 3. Welding or Joining							
<input type="checkbox"/> 4. Problem in LNG Equipment							
<input type="checkbox"/> 5. Test Requirements or MAOP Qualification							
<input type="checkbox"/> 6. Corrosion Control							
<input type="checkbox"/> 7. Pressure Control							
<input checked="" type="checkbox"/> 8. Other Maintenance/Monitoring							
<input type="checkbox"/> 9. Personnel Qualifications & Training							
<input type="checkbox"/> 10. Fire Protection							
<input type="checkbox"/> 11. Security							
<input type="checkbox"/> 12. Anti-Drug Program							
<input type="checkbox"/> 13. Other Operations							
<input type="checkbox"/> 14. Reporting Requirements							
<input type="checkbox"/> 15. Other _____							
<input type="checkbox"/> 16. Inadequate/No Procedures							
<input type="checkbox"/> A. Construction				<input type="checkbox"/> D. Training			
<input type="checkbox"/> B. Corrosion Control				<input type="checkbox"/> E. Maintenance			
<input type="checkbox"/> C. Operations							

Violation No. 1

Violated: 192.605 (a) Procedural Manual for Operations, Maintenance, and Emergencies

**11b. Summarize what the regulation requires that operator did not do:**

Operator did not follow their manual of written procedures for conducting Operations and Maintenance Activities, specifically not providing cathodic protection by maintaining a pipe (tank) to soil potential of at least negative 0.85v.

**12. Provide detailed information about violation:**

Operator did not maintain a pipe (tank) to soil potential of at least negative 0.85v. As of May 14, 2012 Aero had CP readings for all tanks as well as the riser which did not meet the CP criteria of Appendix D of Part 192. Operator had knowledge that the CP readings were not in compliance for over a year when CP readings were again taken on July 2, 2013.

**13. Public and/or environmental concerns in area of violation:**

By not taking prompt action to bring the external corrosion control of the steel tanks and associated piping into compliance risked the possibility of a corrosion leak subjecting the residents of the Keys of Marsh Harbor to the potential of a fire due to ignition of migrating propane.

**14a. Person Interviewed:** Adrien Turcotte      **Title:** Eastern Shore Regional Manager

**14b. Comments of person interviewed:** He indicated that the cathodic protection readings on the tanks had come up on 07/02/13 to meet the CP criteria of Appendix D of Part 192.

Continuation Sheet

Violation No. 2

11a. CFR Violated: 192.465 (d)

11b. Summarize what the regulation requires that operator did not do:

Operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring

12. Provide detailed information about the violation:

Operator failed to take prompt remedial action to correct the deficiencies in not maintaining pipe (tank) to soil potential of at least negative 0.85 volts as measures through a copper sulfate half-cell.

13. Public and/or environmental concerns in area of violation:

By not taking prompt action to bring the external corrosion control of the steel tanks and associated piping into compliance risked the possibility of a corrosion leak subjecting the residents of the Keys of Marsh Harbor to the potential of a fire due to ignition of migrating propane.

14a. Person Interviewed: Adrien Turcotte      Title: Eastern Shore Regional Manager

14b. Comments of person interviewed: He indicated that the cathodic protection readings on the tanks had come up on 07/02/13 to meet the CP criteria of Appendix D of Part 192. Some of the readings were at best marginal especially when taking into consideration the IR drop. Tank readings and riser varied from -0.85v to to -0.90v.

Continuation Sheet

Violation No. \_\_\_\_\_

11a. CFR Violated: \_\_\_\_\_

11b. Summarize what the regulation requires that operator did not do:

12. Provide detailed information about the violation:

13. Public and/or environmental concerns in area of violation:

14a. Person Interviewed:

Title:

14b. Comments of person interviewed:

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Pipeline Safety Regulations Part 192	OPS/PHMSA	

16. Inspector's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

<b>17. <u>Compliance History</u></b>				
<b>Date</b>	<b>Place</b>	<b>Describe Violation/ Noncompliance</b>	<b>CPF No. Date WL</b>	<b>Outcome</b>
<b>18. <u>Gravity of Offense</u></b>				
<b>19. <u>Degree of Culpability</u></b> Fair				
<b>20. <u>Ability to Continue in Business</u></b> Excellent				
<b>21. <u>Ability to Pay</u></b> Good				
<b>22. <u>Good Faith in Attempting to Achieve Compliance</u></b> Excellent				
<b>23a. <u>Proposed Remedy</u></b>				
<input checked="" type="checkbox"/> Warning Letter				
<input checked="" type="checkbox"/> Civil Penalty: Recommended Amount \$ 500				
<input type="checkbox"/> Compliance Order				
<input type="checkbox"/> Hazardous Facility Order				
<input type="checkbox"/> Notice of Amendment of O&M Plan				
<b>23b. <u>Analysis of Proposed Remedy</u></b>				
<b>24. Regional Director's Signature:</b>				<b>Date:</b>
_____				_____

U.S. Department of Transportation  
Office of Pipeline Safety  
Eastern Region

EXHIBIT TAB

Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness

Investigator

Name

Title