



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

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COMMISSIONER

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COMMISSIONER

**NOTICE OF PROBABLE VIOLATION**  
**ELECTRONIC MAIL – READ RECEIPT REQUESTED**

April 9, 2020

D.P.U. 19-PL-35

Franklyn Reynolds  
President  
The Berkshire Gas Company  
115 Cheshire Road  
Pittsfield, Ma 01201

Re: [REDACTED] Comprehensive Inspection

Dear Mr. Reynolds:

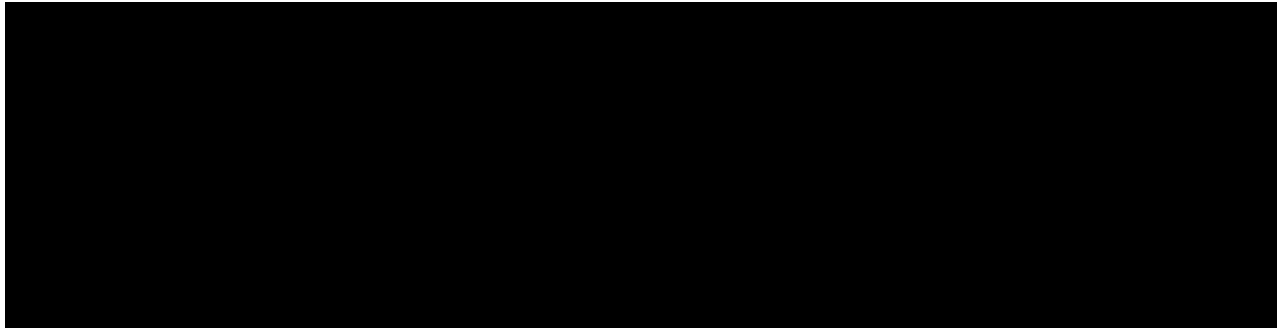
The Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) issues this Notice of Probable Violation (“NOPV”) to The Berkshire Gas Company (“Berkshire Gas” or “Respondent”) pursuant to 220 CMR 69.03 and Delegation Order, D.P.U. 18-44-A (2018).

From November 2019 to February 2020, the Division inspected Berkshire Gas’s liquefied natural gas (“LNG”) plant in [REDACTED] Massachusetts, pursuant to G.L. c.164, §§ 76 and 105A and 220 CMR 69.02. On December 3, 2019, the Department issued an Information Request to

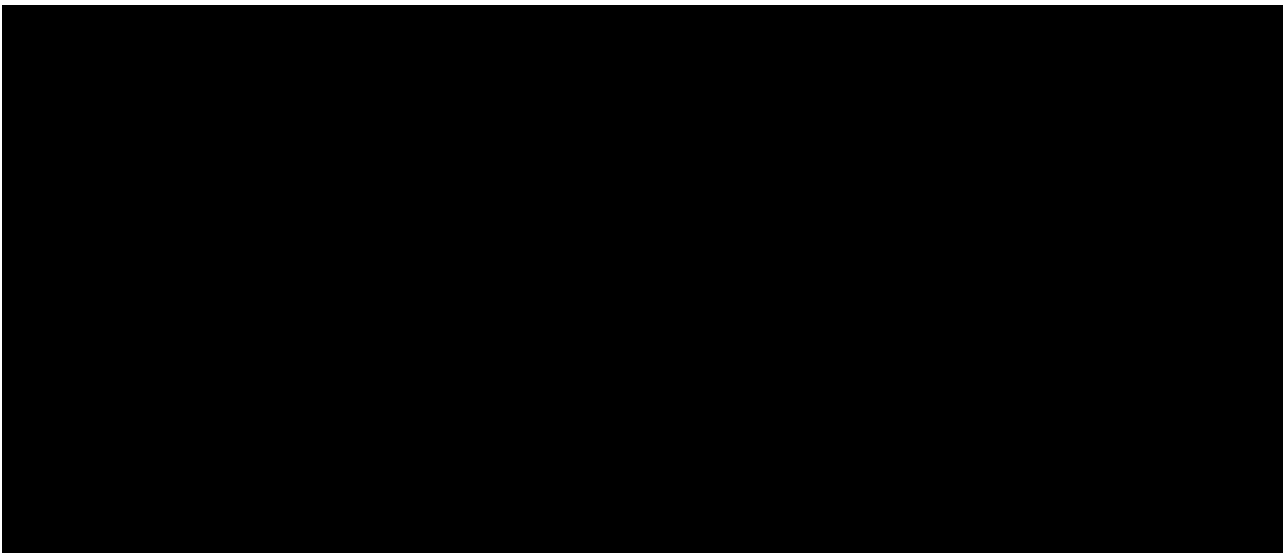
obtain additional information, and Berkshire Gas responded on December 20, 2019. On December 9, 2019, the Division issued an Exit Letter outlining preliminary findings from the inspection, to which Berkshire Gas did not respond. As discussed in detail below, the Division conducted further investigation into the matter and has reason to believe that Respondent may have violated 49 C.F.R. Part 193 (“Part 193”) and 220 CMR 112.00.

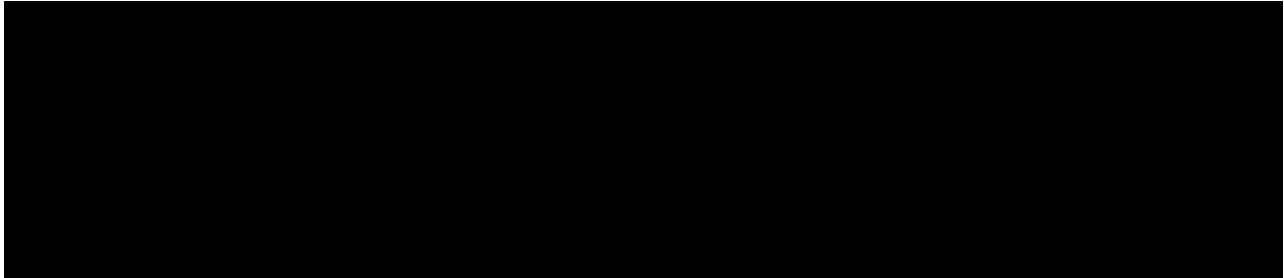
I. FINDINGS

A. Subpart F – Operations



B. Subpart G – Maintenance





49 C.F.R. § 193.2605 – Maintenance procedures.

(b) Each operator shall follow one or more manuals of written procedures for the maintenance of each component, including any required corrosion control.

(c) Each operator shall include in the manual required by paragraph (b) of this section instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of §191.23 of this subchapter.

49 C.F.R. § 193.2639 – Maintenance records.

(a) Each operator shall keep a record at each LNG plant of the date and type of each maintenance activity performed on each component to meet the requirements of this part. For each LNG facility that is designed and constructed after March 31, 2000 the operator shall also maintain related periodic inspection and testing records that NFPA-59A-2001 (incorporated by reference, see §193.2013) requires. Maintenance records, whether required by this part or NFPA-59A-2001, must be kept for a period of not less than five years.

220 CMR 112.11 – Plans and Procedures

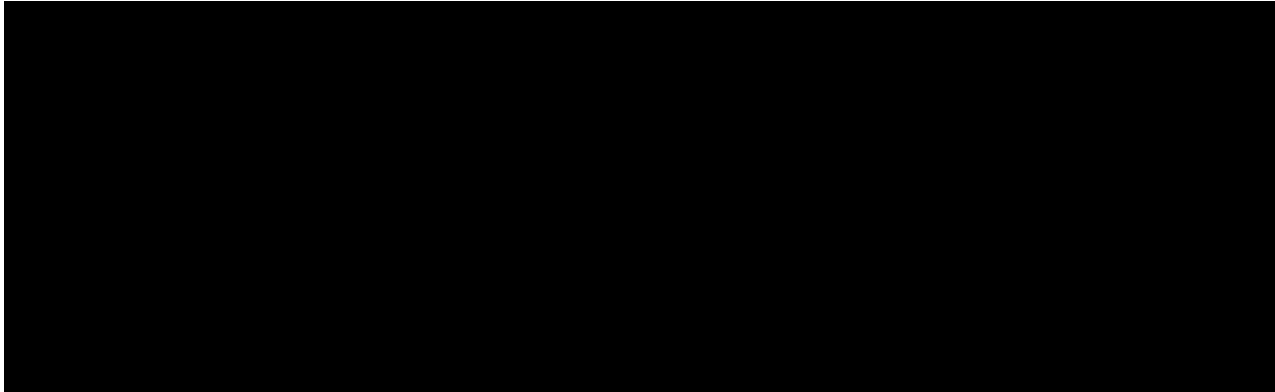
(1) At each LNG plant, the operator shall prepare, adhere to, and maintain in promptly updated form the plans and procedures required by 220 CMR 112.00 and by 49 C.F.R. Part 193 for that plant. The plans and procedures shall be made available on request by the Department for review and inspection. In addition, each change to the plans or procedures shall be available at the LNG plant for review and inspection within 20 days after the change is made.

220 CMR 112.12 – Records


(1) Each operator shall keep records, adequate to substantiate compliance with 49 C.F.R. Part 193 and 220 CMR 112.00.

(3) Each operator shall keep a record of all materials used for components, buildings, foundations, and support systems. These records shall be maintained for the operating life of the aforementioned items.

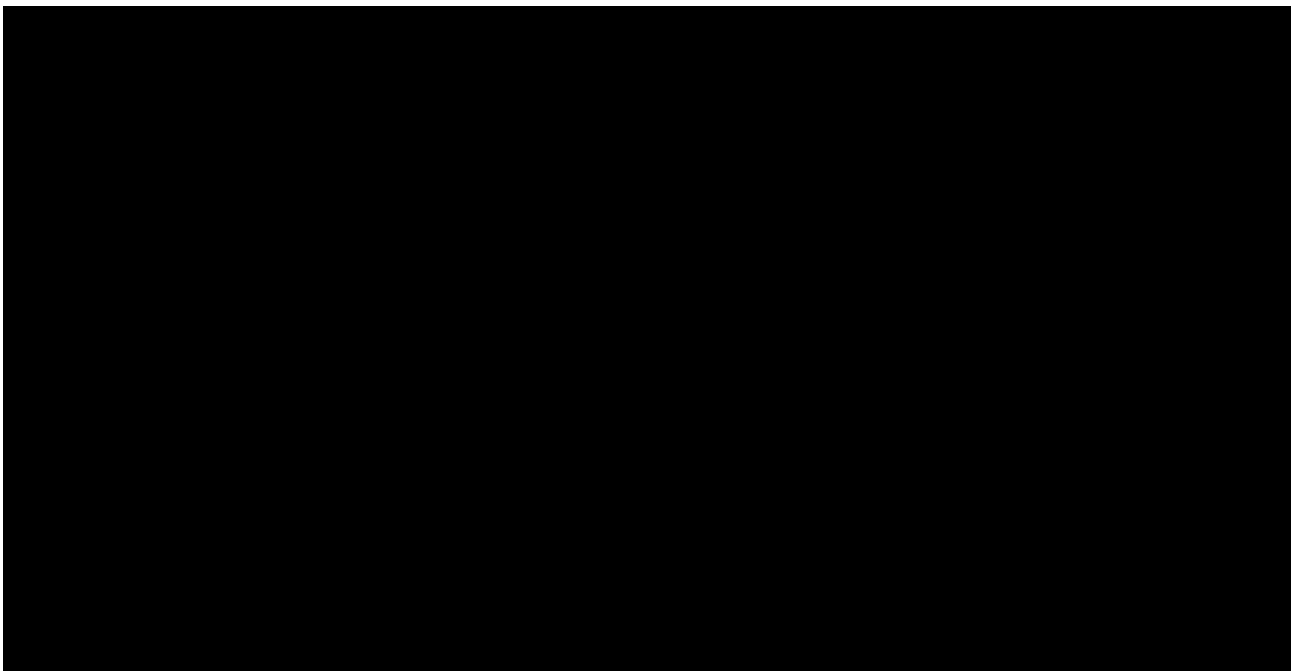
In addition, a records review found that there were no procedures for and no annual



Further, a records review showed that LNG tank relief valves were tested every

 rather than every 15 months as required by Part 193, § 193.2619(c), which states:

Control systems in service, but not normally in operation, such as relief valves and automatic shutdown devices, and control systems for internal shutoff valves for bottom penetration tanks must be inspected and tested once each calendar year, not exceeding 15 months.



C. Subpart H – Personnel Qualifications and Training

The inspection found that Berkshire Gas does not have written training manuals for any of the required areas listed in Part 193, Subpart H. Nor does Berkshire Gas have any type of structure proficiency testing to determine if employees are competent prior to being assigned to specific duties. Some scattered training records added to the inconsistencies of specific training areas and required personnel. This indicates violations of Part 193, §§ 193.2705(a), 193.2705(b), 193.2707(a), 193.2707(b), 193.2707(c), 193.2709, 193.2713(a), 193.2713(b), 193.2715(a), 193.2715(b), 193.2717(a), 193.2717(b), 193.2717(c), 193.2719(a) and 193.2719(b), which provide as follows:

49 C.F.R. § 193.2705 – Construction, installation, inspection, and testing.

(a) Supervisors and other personnel utilized for construction, installation, inspection, or testing must have demonstrated their capability to perform satisfactorily the assigned function by appropriate training in the methods and equipment to be used or related experience and accomplishments.

(b) Each operator must periodically determine whether inspectors performing construction, installation, and testing duties required by this part are satisfactorily performing their assigned functions.

49 C.F.R. § 193.2707 – Operations and maintenance.

(a) Each operator shall utilize for operation or maintenance of components only those personnel who have demonstrated their capability to perform their assigned functions by—

(1) Successful completion of the training required by §§193.2713 and 193.2717; and

(2) Experience related to the assigned operation or maintenance function; and

(3) Acceptable performance on a proficiency test relevant to the assigned function.

(b) A person who does not meet the requirements of paragraph (a) of this section may operate or maintain a component when accompanied and directed by an individual who meets the requirements.

(c) Corrosion control procedures under §193.2605(b), 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 by experience and training in corrosion control technology.

49 C.F.R. § 193.2709 – Security

Personnel having security duties must be qualified to perform their assigned duties by successful completion of the training required under §193.2715.

49 C.F.R. § 193.2713 – Training: operations and maintenance.

(a) Each operator shall provide and implement a written plan of initial training to instruct—

(1) All permanent maintenance, operating, and supervisory personnel—

(i) About the characteristics and hazards of LNG and other flammable fluids used or handled at the facility, including, with regard to LNG, low temperatures, flammability of mixtures with air, odorless vapor, boiloff characteristics, and reaction to water and water spray;

(ii) About the potential hazards involved in operating and maintenance activities; and

(iii) To carry out aspects of the operating and maintenance procedures under §§193.2503 and 193.2605 that relate to their assigned functions; and

(2) All personnel—

(i) To carry out the emergency procedures under §193.2509 that relate to their assigned functions; and

(ii) To give first-aid; and

(3) All operating and appropriate supervisory personnel—

(i) To understand detailed instructions on the facility operations, including controls, functions, and operating procedures; and

(ii) To understand the LNG transfer procedures provided under §193.2513.

(b) A written plan of continuing instruction must be conducted at intervals of not more than two years to keep all personnel current on the knowledge and skills they gained in the program of initial instruction.

49 C.F.R. § 193.2715 – Training: security.

(a) Personnel responsible for security at an LNG plant must be trained in accordance with a written plan of initial instruction to:

- (1) Recognize breaches of security;
- (2) Carry out the security procedures under §193.2903 that relate to their assigned duties;
- (3) Be familiar with basic plant operations and emergency procedures, as necessary to effectively perform their assigned duties; and
- (4) Recognize conditions where security assistance is needed.

(b) A written plan of continuing instruction must be conducted at intervals of not more than two years to keep all personnel having security duties current on the knowledge and skills they gained in the program of initial instruction.

49 C.F.R. § 193.2717 – Training: fire protection.

(a) All personnel involved in maintenance and operations of an LNG plant, including their immediate supervisors, must be trained according to a written plan of initial instruction, including plant fire drills, to:

- (1) Know the potential causes and areas of fire;
- (2) Know the types, sizes, and predictable consequences of fire; and
- (3) Know and be able to perform their assigned fire control duties according to the procedures established under §193.2509 and by proper use of equipment provided under §193.2801.

(b) A written plan of continuing instruction, including plant fire drills, must be conducted at intervals of not more than two years to keep personnel current on the knowledge and skills they gained in the instruction under paragraph (a) of the section.

(c) Plant fire drills must provide personnel hands-on experience in carrying out their duties under the fire emergency procedures required by §193.2509.

49 C.F.R. § 193.2719(a) – Training: records.

(a) Each operator shall maintain a system of records which—

(1) Provide evidence that the training programs required by this subpart have been implemented; and

(2) Provide evidence that personnel have undergone and satisfactorily completed the required training programs.

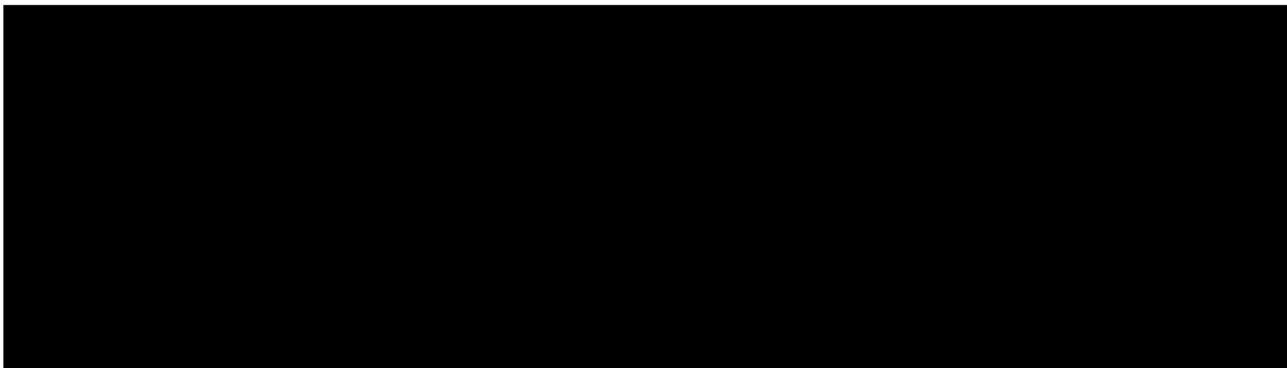
(b) Records must be maintained for one year after personnel are no longer assigned duties at the LNG plant.

In addition, a records review determined that Berkshire Gas is not following their written procedures for personnel health for plant operators. This indicates a violation of 220 CMR

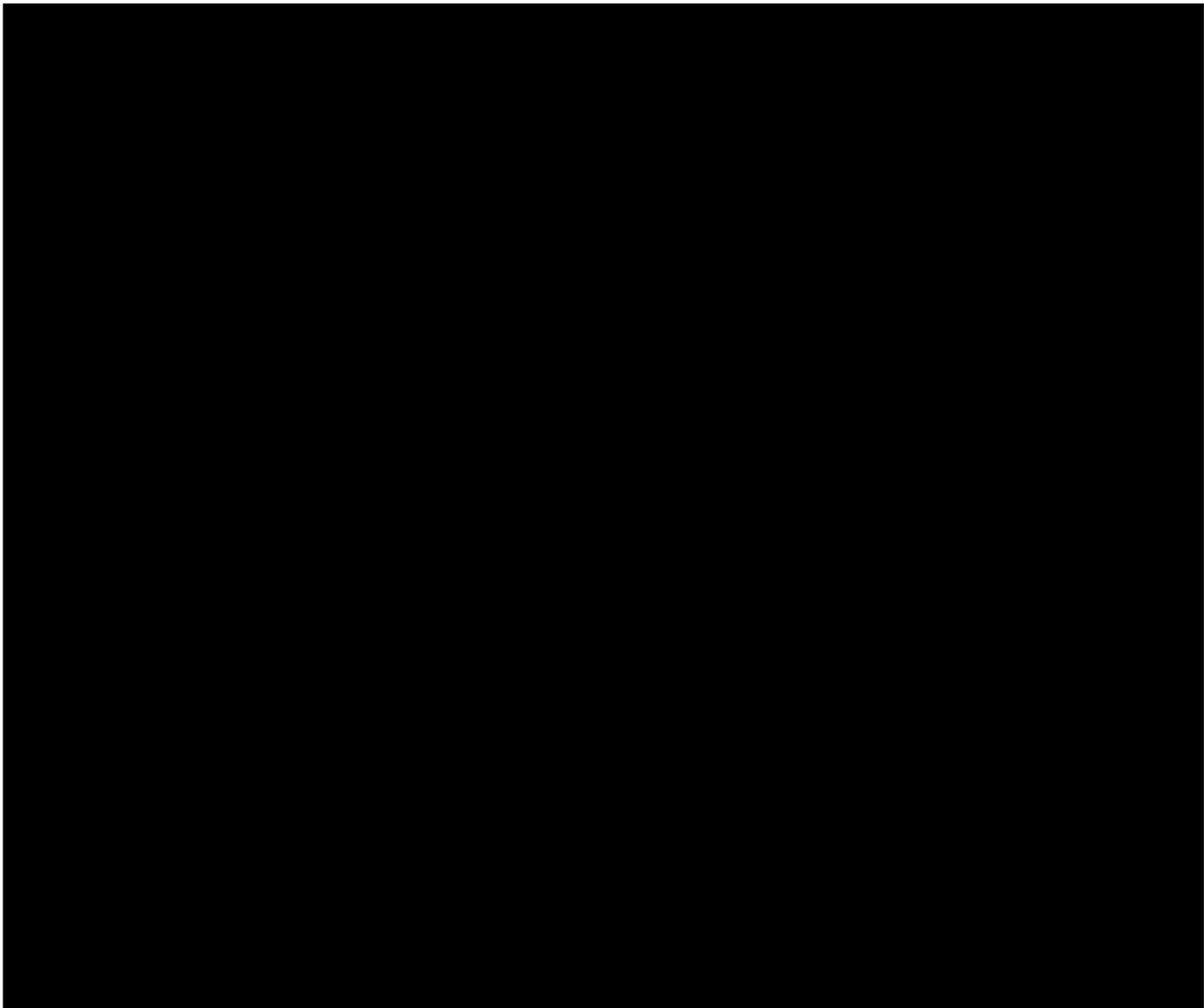
112.11(1) (see above) and Part 193, § 193.2711, which states:

Each operator shall follow a written plan to verify that personnel assigned operating, maintenance, security, or fire protection duties at the LNG plant do not have any physical condition that would impair performance of their assigned duties. The plan must be designed to detect both readily observable disorders, such as physical handicaps or injury, and conditions requiring professional examination for discovery.

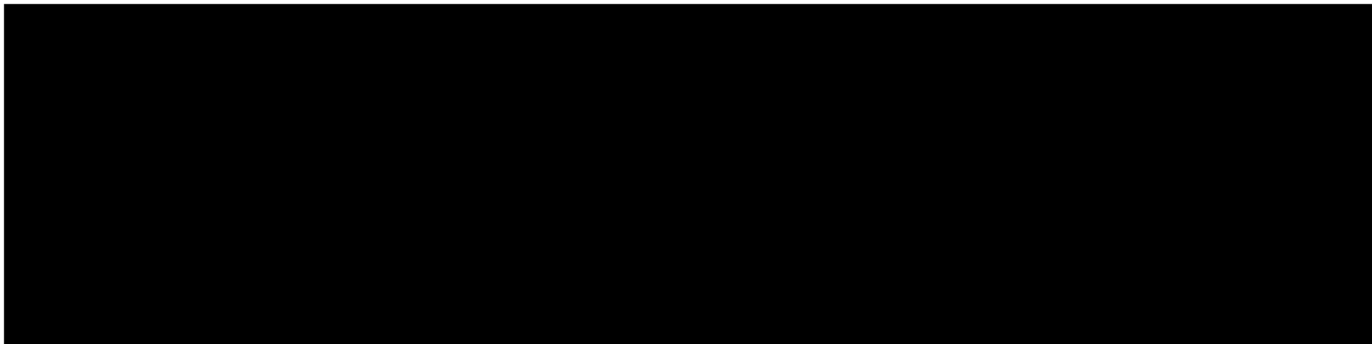
D. Subpart I – Fire Protection







E. Subpart J – Security



II. ALLEGATIONS

Based on the investigation, the Division has reason to believe that Respondent failed to maintain required security measures, failed to provide adequate fire protection, failed to follow maintenance and operating procedures, failed to operate and maintain the plant safely, failed to maintain adequate plant records, and failed to provide proper training. These failures indicate violations of certain sections of Berkshire Gas procedures and federal and state pipeline safety regulations, as noted above.

Under G.L. c. 164, § 105A, Berkshire Gas is subject to a civil penalty not to exceed \$200,000 for each violation for each day that the violation exists, up to a maximum of \$2,000,000 for any related series of violations. In determining the amount of the civil penalty, the Division shall consider the following, pursuant to G.L. c. 164, § 105A: the appropriateness of the penalty to the size of the business of the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance, after notification of a violation.

In the present matter, the Division has reviewed the circumstances of the allegations and is prepared to resolve this matter upon Berkshire Gas's agreement to the terms in the attached Consent Order and payment of a civil penalty in the amount of \$200,000.

III. RESPONSE TO THIS NOPV

Within 30 days of receipt of this NOPV, Berkshire Gas shall respond to the Division in one of the following ways, pursuant to 220 CMR 69.04:

1. Sign and return the attached Consent Order, thus agreeing to remit payment of the civil penalty by check or money order made payable to the Commonwealth of Massachusetts;
2. Submit an offer in compromise of the proposed civil penalty under 220 CMR 69.04(2);
3. Request an informal conference under 220 CMR 69.05; or
4. Submit a written reply to the Division disputing the allegation(s) contained in the NOPV. The reply must include a complete statement of all relevant facts and authority and full description of the reasons why the Respondent disputes the allegation(s) contained in the NOPV.

Failure to respond within 30 days of receipt of this NOPV will be deemed an admission to the allegations contained herein and a waiver of Berkshire Gas's right to contest the allegations. If Berkshire Gas fails to respond within 30 days, the Department may, without further notice, find the facts to be as alleged herein and issue a final Order, pursuant to 220 CMR 69.04(3).

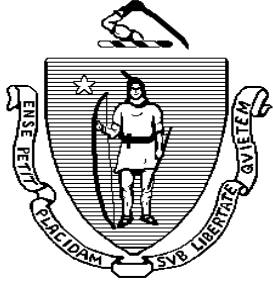
Very truly yours,

/s/

Richard Enright, Director  
Pipeline Safety Division

Enclosures: Consent Order  
Compliance Agreement

Cc: Richard Nasman, The Berkshire Gas Company  
Laurie Ellen Weisman, Division Counsel  
Janine Vargas, Assistant General Counsel



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### CONSENT ORDER

April 9, 2020

D.P.U. 19-PL-35

In the matter of The Berkshire Gas Company

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#### **I. JURISDICTION**

1. This document, with the attached Compliance Agreement, is a Consent Order entered into between the Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) and Berkshire Gas (“Respondent”), and is executed in accordance with 220 CMR 69.08.
2. The Division has authority to enter into this Consent Order on behalf of the Department pursuant to Delegation Order, D.P.U. 18-44-A (2017).
3. Failure to comply with the terms of this Order may result in the assessment of civil penalties and referral of this matter to the Attorney General for appropriate action.
4. The terms and conditions of this Order become effective upon signing by the authorized representatives of the Respondent and the Department.
5. Respondent has stipulated and consented to the issuance of this Consent Order.

#### **II. VIOLATIONS AND CIVIL PENALTY**

1. Pursuant to G.L. c. 164, §§ 76 and 105A, and 220 CMR 69.02, the Division conducted a pipeline safety inspection of the Respondent’s facilities and records. As a result of the inspection, the Director of the Division issued to the Respondent a Notice of Probable Violation (“NOPV”), D.P.U. 19-PL-35, dated April 9, 2020, in accordance with 220 CMR 69.03. The NOPV is attached hereto and made a part hereof.
2. Based on information contained in the NOPV, the Division finds that the Respondent violated pipeline safety regulations contained in 49 C.F.R. Part 193 (“Part 193”), specifically:

**Part 193, § 193.2505(b)**

**Part 193, § 193.2603(b)**

**Part 193, § 193.2603(c)**

**Part 193, § 193.2603(d)**

**Part 193, § 193.2603(e)**

**Part 193, § 193.2605(b)**

[REDACTED]

[REDACTED]

**Part 193, § 193.2619(c)**

**Part 193, § 193.2619(c)(1)**

[REDACTED]

[REDACTED]

**Part 193, § 193.2705(a)**

**Part 193, § 193.2705(b)**

**Part 193, § 193.2707(a)**

**Part 193, § 193.2707(b)**

**Part 193, § 193.2707(c)**

**Part 193, § 193.2709**

**Part 193, § 193.2711**

**Part 193, § 193.2713(a)**

**Part 193, § 193.2713(b)**

**Part 193, § 193.2715(a)**

**Part 193, § 193.2715(b)**

**Part 193, § 193.2717(a)**

**Part 193, § 193.2717(b)**

**Part 193, § 193.2717(c)**

**Part 193, § 193.2719(a)**

**Part 193, § 193.2719(b)**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Pursuant to G.L. c. 164, § 105A, the Division hereby imposes upon the Respondent a civil penalty in the amount of \$200,000 for the above-noted violations.
4. The Respondent hereby agrees, upon signing and returning this Consent Order to the Division, to remit payment of the civil penalty by check or money order in the amount of \$200,000 made payable to the Commonwealth of Massachusetts, One South Station, Boston, MA 02110.

### **III. RESPONDENT REQUIREMENTS**

1. **Respondent shall sign the Stipulation below and return this complete document to the Division.**
2. All submissions by Respondent in accordance with this Consent Order shall be addressed to:

Richard Enright, Director  
Pipeline Safety Division  
Department of Public Utilities  
One South Station  
Boston, MA 02110

#### **IV. STIPULATED TERMS**

Pursuant to 220 CMR 69.08(1), the Respondent through the signature below, by the person to whom this Consent Order is issued or a duly authorized representative, acknowledges agreement to the terms contained herein without admitting or denying that a violation of any Department or federal pipeline safety law or regulation occurred in relation to the above-noted matters. Further, Respondent agrees to issuance of this Consent Order and stipulates to the following:

1. Respondent, by signing the Stipulation, hereby waives:
  - (a) All rights to informal review pursuant to 220 CMR 69.05;
  - (b) All rights to a hearing pursuant to 220 CMR 69.06;
  - (c) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (d) All rights to seek any type of administrative or judicial review of the Consent Order;  
and
  - (e) Any and all rights to challenge or contest the validity of the Consent Order.
2. Respondent expressly acknowledges that neither Respondent nor the Division has any intention to enter into a contract.
3. The terms and provisions of this Consent Order and Stipulation shall be binding upon, and inure to the benefit of, Respondent and the Division and their successors in interest.
4. Nothing in these Stipulated Terms shall preclude any proceedings brought by the Department to enforce the terms of the Consent Order, and nothing in these Stipulated Terms constitute, nor shall Respondent contend that they constitute, a waiver of any right, power, or authority of any other representative of the Commonwealth or an agency thereof to bring other actions deemed appropriate.

#### **V. FINAL ORDER**

1. This Consent Order and Stipulation is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, having the force and effect of a remedial order, pursuant to 220 CMR 69.07(2), and expressly does not form, and may not be considered to form, a contract binding on the Division, the Department, or the Commonwealth of Massachusetts.

2. The terms of this Consent Order and Stipulation, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreement, or prior arrangements between the Division and the Respondent, whether oral or written.

By Order of the Division

\_\_\_\_\_  
Richard Enright, Director  
Pipeline Safety Division  
Department of Public Utilities

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

**The undersigned, duly authorized, stipulates to and acknowledges agreement to the terms herein.**

**The Berkshire Gas Company**

\_\_\_\_\_  
Franklyn Reynolds  
President

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

COMPLIANCE AGREEMENT  
BETWEEN THE DEPARTMENT OF PUBLIC UTILITIES  
AND THE BERKSHIRE GAS COMPANY

D.P.U. 19-PL-35

The Berkshire Gas Company (“Berkshire Gas”) agrees to take the following actions within the specified time periods:

1. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written [REDACTED] procedures that include [REDACTED] exposed to cryogenic temperatures, to comply with 49 C.F.R § 193. [REDACTED]
2. Within 60 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence, such as training sheets, that appropriate personnel have been trained to the newly developed [REDACTED] procedures.
3. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written [REDACTED] procedures to comply with 49 C.F.R § 193 [REDACTED].
4. Within 60 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence, such as training sheets, that appropriate personnel have been trained to the newly developed [REDACTED] procedures.
5. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written [REDACTED] procedures to comply with 49 C.F.R. § [REDACTED].
6. Within 60 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence that the plant’s [REDACTED] has been tested to the newly developed procedures.
7. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written [REDACTED] procedures to comply with 49 C.F.R. § 1 [REDACTED]
8. Within 60 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence that all [REDACTED] have been tested to the newly developed procedures.
9. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department reviewed and revised [REDACTED] procedures for [REDACTED]  
[REDACTED]
10. Within 60 days of the effective date of this Order, Berkshire Gas shall submit evidence, such as training sheets, that appropriate employees have been trained to the newly developed [REDACTED] procedures.



11. Within 90 days of the effective date of this Order, Berkshire Gas shall submit to the Department a comprehensive written training manual that covers all requirements of 49 C.F.R. Part 193, Subpart H.
12. Within 120 days of the effective date of this Order, Berkshire Gas shall submit evidence, such as training sheets, that all appropriate employees have been trained to the newly developed training manual.
13. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written procedures for the inspection and testing of the plant's [REDACTED]  
[REDACTED]
14. Within 60 days of the effective date of this Order, Berkshire Gas shall submit evidence that all plant [REDACTED] have been inspected and tested to the newly developed procedures.
15. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written procedures ensuring that all plant [REDACTED] meet the requirement of [REDACTED].
16. Within 60 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence that all plant [REDACTED] have been inspected and tested to the newly developed procedures.
17. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department written procedures to complete [REDACTED] testing in accordance with [REDACTED] and the [REDACTED] LNG Facility [REDACTED].
18. Within 60 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence of [REDACTED] testing according to the newly developed procedures.
19. Within 30 days of the effective date of this Order, Berkshire Gas shall submit to the Department evidence that it has replaced [REDACTED] discovered to be non-functional during an inspection by Davis-Ulmer on December 9, 2019.
20. Within 30 days of the effective date of this Order, Berkshire Gas shall pay a civil penalty of \$200,000 to the Commonwealth of Massachusetts.