

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALEXANDER PROPERTIES GROUP, INC.)	
D/B/A LEGACY FARM TOWNHOMES)	
AND CURT MANN AND ANDY)	
ALEXANDER INDIVIDUALLY AND AS)	
OFFICERS OF THE CORPORATION)	
_____)	CASE NO. 2004-00058
)	
VIOLATIONS OF PIPELINE SAFETY)	
STANDARDS KRS 278.992(1))	

O R D E R

Alexander Properties Group, Inc. (“Alexander Properties”) d/b/a Legacy Farm Townhomes (“Legacy Farm”) operates an apartment complex in Lexington, Kentucky and is a master meter system operator that receives natural gas from the Columbia Gas of Kentucky system. Alexander Properties then redistributes its gas to apartments through a network of steel and plastic pipelines.

Alexander Properties, as a master meter operator, is subject to the safety jurisdiction of the Commission, pursuant to KRS 278.495. Alexander Properties is also subject to Commission jurisdiction under the authority of and in compliance with federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations of 49 CFR 189-199.

Commission Staff has submitted to the Commission a Comprehensive Inspection Report, dated March 16, 2004, in which Commission Staff alleges the following violations:

1. Alexander Properties does not have at its Legacy Farm property qualified personnel, through training and evaluation, to respond to maintenance issues, a violation of 49 CFR Part 192.809.

2. Alexander Properties does not possess a required Operator Qualification Plan for its Legacy Farm property, a violation of 49 CFR 192.805.

3. Alexander Properties did not have a written Operation and Maintenance Plan on site at its Legacy Farm property for its natural gas system, a violation of 49 CFR 192.603 and 605.

4. Alexander Properties' Emergency Plan for its Legacy Farm property was not on site and available to personnel in the event of an emergency, a violation of 49 CFR 192.615.

5. Alexander Properties has no documents on its Legacy Farm property to prove annual leakage surveys, corrosion inspections, patrolling and valve maintenance have been performed in 2003, a violation of 49 CFR 192.603 and 605.

Based on its review of the Comprehensive Inspection Report and being otherwise sufficiently advised, the Commission finds as follows:

1. There is *prima facie* evidence that Alexander Properties is in violation and has failed to comply with the above-cited provisions of federal pipeline safety laws and is subject to the penalties prescribed by KRS 278.992(1).

2. There is *prima facie* evidence that Curt Mann, as President of Alexander Properties, and Andy Alexander, as Chairman of Alexander Properties, are each in violation and each has failed to comply with the above-cited provisions of federal pipeline safety laws and each is subject to the penalties proscribed by KRS 278.992(1).

The Comprehensive Inspection Report notes that the present alleged violations at the Alexander Properties apartment complex are similar to those violations found in Case No. 2000-00534.¹ Upon reviewing that case, we find that the Order of April 19, 2001 in Case No. 2000-00534 is a final Order from which all rights of appeal have been exhausted. In that Order Alexander Properties was assessed a \$100,000 civil penalty for violations pursuant to KRS 278.992(1). However, \$95,000 of that penalty was suspended for 3 years subject to no repeat violations thereof by Alexander Properties. Upon further review of that Order and the Comprehensive Inspection Report filed herein, the Commission finds that there is *prima facie* evidence that Alexander Properties is again in violation of two of the violations for which the \$95,000 penalty was suspended. If Alexander Properties is found in the present proceeding to be in violation of the same regulations listed in Case No. 2000-00534, the penalty suspension may be revoked and the Commission may require that the penalty of \$95,000 be paid.

The Commission, on its own motion, HEREBY ORDERS that:

1. Alexander Properties and Curt Mann, as President of Alexander Properties, and Andy Alexander, as Chairman of Alexander Properties, shall appear on April 29, 2004 at 9:30 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky for the purpose of presenting evidence concerning the alleged violations of 49 CFR Part 192.809; 49 CFR 192.805; 49 CFR 192.603 and 605 (two counts) and 49 CFR 192.615, and of showing

¹ Case No. 2000-00534, Alexander Properties Townhomes: Alleged Violations of Administrative Regulation (Order dated April 19, 2001).

cause why each should not be subject to the penalties prescribed in KRS 278.992(1) for these alleged violations.

2. The official record of this proceeding shall be by video only, unless otherwise requested by a party to this proceeding.

3. Alexander Properties shall also appear at the time and place indicated above to show cause why the suspended penalty of \$95,000 should not be immediately due and payable.

4. Within 20 days of the date of this Order, Alexander Properties, Curt Mann, as President of Alexander Properties, and Andy Alexander, as Chairman of Alexander Properties, shall submit to the Commission a written response to the allegations contained in the Comprehensive Inspection Report.

5. Corporate entities are advised that under Kentucky law a corporation, its employees, and any representative, who are not licensed to practice law in Kentucky, are not permitted to make objections, examine, or cross-examine witnesses in administrative hearings.²

6. Any motion for continuance of a hearing set by the Commission shall be made only for good cause and sufficiently in advance of the hearing date to allow time for the Commission to rule upon the motion.

7. Any motion requesting an informal conference with Commission Staff to consider matters which would aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

² Turner v. Kentucky Bar Ass'n., Ky., 980 S.W.2d 560 (1998), and Practice Before The Commission By Attorneys Non-Licensed In The Commonwealth Of Kentucky, Admin. Case No. 249, Order dated June 15, 1981.

8. The Comprehensive Inspection Report dated March 16, 2004, a copy of which is appended hereto as Appendix A, is made part of the record of this proceeding.

Done at Frankfort, Kentucky, this 26th day of March, 2004.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00058 DATED March 26, 2004

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

COMPREHENSIVE INSPECTION REPORT

LEGACY FARM TOWNHOMES

Lexington, Kentucky

March 16, 2004

BRIEF

Mr. David Kinman conducted a comprehensive inspection of the natural gas system of the Legacy Farm Townhomes ("Legacy Farm") in Lexington, Kentucky on January 22, 2004. This inspection was conducted in accordance with the Public Service Commission's ("PSC") policy of inspecting all jurisdictional operators. Natural gas operators are jurisdictional to the PSC under KRS 278.040, 278.495, 278.992 and also through a 5(a) Agreement with the United States Department of Transportation, Office of Pipeline Safety, for the enforcement of the federal pipeline safety laws, 49 U.S.C. § 60101 et seq. and regulations promulgated thereunder.

INSPECTION

Legacy Farm is a master-meter natural gas operator that receives its gas through the Columbia Gas of Kentucky system and then redistributes its gas to 152 apartments through a network of steel and plastic pipelines. Gas is used in the complex for a variety of purposes including heat, hot water and cooking.

A master meter system is defined in 49 CFR Part 191.3 as a pipeline system for delivering gas within, but not limited to, a definable area such as a mobile home park, housing or apartment complexes where the operator purchases gas from an outside source for resale through a gas distribution system. The gas distribution pipeline

system supplies the ultimate consumer who either purchases the gas directly or through other means, such as rent.

A prior inspection of Legacy Farm on November 16, 2000 disclosed five violations of the Pipeline Safety Act and resulted in the Commission issuing a Show Cause Order in Case Number 2000-00534. These violations were:

1. There were low cathodic protection readings.
2. Annual valve maintenance was not conducted.
3. Legacy Farm did not patrol its gas system as required.
4. There was no written Operation and Maintenance (“O&M”) Plan.
5. There was no written emergency plan on site for the use of its maintenance personnel.

As a result of the November 16, 2000 inspection, the Commission initiated a show cause proceeding against Legacy Farm. In its April 19, 2001 Order in that case, the Commission assessed a civil penalty of \$100,000. Five thousand dollars was ordered paid in two installments, the remaining \$95,000 of the penalty was probated for 3 years with the provision that no further violations of the regulations occur.

The 2004 inspection indicates the problems associated with Legacy Farm have not been corrected. Ms. Diane Fallis, Manager, and Mr. Ricky McGregor, Maintenance Supervisor, were totally unaware of the fact that Legacy Farm was responsible for the maintenance and upkeep of its natural gas system.

FINDINGS

The 2004 inspection conducted on January 22, 2004 revealed the following:

1. 49 CFR Part 192.809 requires those persons performing certain maintenance tasks on natural gas systems are qualified through training and evaluation to do so. Legacy Farm does not have qualified personnel to respond to maintenance issues. This should be considered as a continuing violation as each day the system is operated without qualified persons is a continual risk to the persons living on this system.

2. Legacy Farm does not possess a written plan for Operator Qualification (“OQ”). 49 CFR Part 192.805.

3. Legacy Farm did not possess a written O&M plan available. 49 CFR Part 192.605.

4. Legacy Farm did not have a written emergency plan. 49 CFR Part 192.615.

5. There were no documents to indicate that the annual leakage surveys, corrosion inspections, patrolling and valve maintenance had been performed in calendar year 2003. 49 CFR Part 192.603

RECOMMENDATIONS

It is recommended that the Commission initiate a hearing to allow Legacy Farm to show cause why it should not be penalized for failure to comply with Commission regulations.

Respectfully submitted,

David B. Kinman
Gas Utility Investigator
Gas Branch

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