



U.S. Department
Of Transportation
**Pipeline and
Hazardous Materials
Safety Administration**

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WARNING LETTER

OVERNIGHT EXPRESS MAIL

November 26, 2013

John Pustulka
President
National Fuel Gas Supply Corporation
6363 Main Street
Williamsville, NY 14221

CPF 1-2013-1027W

Dear Mr. Pustulka:

From July 12 to July 14, 2011, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected National Fuel Gas Supply Corporation's (National Fuel) Public Awareness Program titled *Public Awareness and Education Program for Gas Distribution, Gathering and Transmission Pipelines, Version 1, July 11, 2011(Public Awareness and Education Program)*¹, in Erie, Pennsylvania.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§192.616 Public awareness.**
 - (a) **Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).**

National Fuel failed to develop a written continuing education program that followed the guidance provided in Sections 2.5 and 2.7 of API RP 1162 because it did not include a management statement for National Fuel Gas Midstream Corporation.

¹ National Fuel applies this program to its affiliated business units.

Pursuant to Section 2.5 of API RP 1162, “[m]anagement should demonstrate its support through company policy, management participation, and allocation of resources and funding.” According to Step 2 under Section 2.7 of API RP 1162, an operator should “[d]evelop a company policy and ‘statement of support’ for

the Public Awareness Program. This should include a commitment of participation, resources, and funding for the development, implementation, and management of the program.”

At the time of the inspection, National Fuel used the *Public Awareness and Education Program* for various assets, including National Fuel Gas Midstream Corporation (Midstream). In *Appendix A* on page 28 of the *Public Awareness and Education Program* there was an organization chart for Midstream that showed a different senior executive who was responsible for program development and implementation than the senior executive on the management statement in *Appendix A* on page 26 of the *Public Awareness and Education Program*. The senior executive who signed the management statement was a senior executive for other assets but not Midstream. Thus, National Fuel did not include a management statement for National Fuel Gas Midstream Corporation.

2. §192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).

National Fuel failed to develop a written continuing public education that followed the guidance provided in Section 4.2 of API RP 1162.

According to Section 4.2 of API RP 1162, operators should provide an overview of potential hazards, their potential consequences and the measures undertaken by it to prevent or mitigate the risks from pipeline, as well as preventive measures to help assure safety and prevent incidents to the stakeholders. However, at the time of the inspection, National Fuel had no process or procedures that addressed the hazards and preventions measures it takes and how to provide that information to stakeholders. Consequently, National Fuel’s brochure for each stakeholder did not contain any information that addressed Section 4.2 of API RP 1162.

3. §192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).

National Fuel failed to develop a written continuing public education program that followed the guidance in Section 4.4.3.

Pursuant to Section 4.4.3 of API RP, an operator should “include information about how emergency officials can access the operator’s emergency response plans covering their jurisdiction.” However, at the time of the inspection, National Fuel had no process or procedures that addressed how emergency official can access its emergency response plan and how to provide that information to emergency officials. Consequently, National Fuel’s brochure for emergency response did not contain any information that addressed Section 4.4.3 of API RP 1162.

4. §192.616 Public awareness.

(a) ...

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

National Fuel failed to follow the general program recommendation, including baseline and supplemental requirements under Section 4.7 of API RP 1162. Specifically, National Fuel did not provide information about whether it has High Consequence Areas (HCAs) and/or an Integrity Management Program (IMP) to the affected public, emergency officials, and public officials.

Section 4.7 of API RP 1162 describes the information that should be included in the message content to affected public, emergency officials, and public officials within HCAs. Pursuant to Section 4.7.1 of API RP 1162, operators should include general information that some segments along their transmission pipeline are designated as HCAs and that an IMP has been developed, to affected public. Also, operators should include information on where to obtain an overview of their IMP or view upon request. However, National Fuel’s brochure that was mailed to the affected public in 2010 did not contain the aforementioned information.

In addition, Section 4.7.2 of API RP 1162 requires operators to include an overview of the IMP to emergency officials as well as a chance for them to provide feedback on the IMP. However, National Fuel’s brochure that was mailed to the emergency officials in 2010 did not contain information about its IMP and how to provide feedback.

Lastly, Section 4.7.3 of API RP 1162 requires operators to include information on where to obtain an overview of their IMP or view upon request, to the public officials. However, National Fuel’s brochure that was mailed to the public officials in 2010 did not contain the aforementioned information.

National Fuel did not provide information that addressed the requirements outlined under Section 4.7 of API RP 1162 to the appropriate stakeholders.

5. **§192.616 Public awareness.**

(a) ...

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

National Fuel failed to follow the general program recommendations, including baseline and supplemental requirements under API RP 1162 Section 8.4, because it did not determine whether its written public awareness program was effective.

Pursuant to Section 8.4 of API RP 1162, an operator should assess its program to determine whether the actions undertaken in implementation of the API RP 1162 achieved the intended goals and objectives.

During the inspection, a PHMSA inspector requested National Fuel to provide documentation of the evaluation that covers Section 8.4 of API RP 1162. National Fuel then produced records that focused on comparing the percentages from survey results that the trade-association and the third party conducted. However, National Fuel was unable to produce documentation that showed whether it determined that its written public awareness program was effective or needed improvement.

6. **§192.616 Public awareness.**

(a) . . .

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

National Fuel failed to follow the general program recommendations, including baseline and supplemental requirements in Section 8.4.2 of API RP 1162.

Section 8.4.2 of API RP 1162, states that “[a]n effective method for assessing understandability is to survey the target stakeholder audience. . . .(emphasis added)” If an operator chose to “participate in and use the results of an industry group or trade-association survey” then “the industry or trade-association survey should allow the operator to assess the results relevant to the operator’s own pipeline corridors and Public Awareness Programs (emphasis added).”

National Fuel chose the survey method. National Fuel also chose to participate in and use the results of a trade-association survey. The trade-association’s survey was divided into eight (8) regions. National Fuel used the trade-association survey for Region 4 to assess the effectiveness of its program for its New York stakeholders. Those surveyed were based on zip code through which pipeline operators passed, therefore, it is not known whether the stakeholders were all surveyed

within National Fuel's notification area (zip code boundaries can exceed 660 feet pipeline buffer) for its baseline messages.

National Fuel could not demonstrate that a survey was targeted to its stakeholder audience as prescribed in Section 8.4.2 of API RP 1162.

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. We have reviewed the circumstances and supporting documents involved in this case, and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to correct the items identified in this letter. Failure to do so will result in National Fuel being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 1-2013-1027W**. Please send all correspondence in this matter to Byron Coy, PE, Director, PHMSA Eastern Region, 820 Bear Tavern Road, Suite 103, W. Trenton, NJ 08628. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Sincerely,

Byron Coy, PE
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration

CC: NY DPS – Mr. Kevin Speicher
PA PUC – Mr. Paul Metro