



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

OCT 22 2019

Mr. David Bauer
President and Chief Executive Officer
National Fuel Gas Supply Corporation
6363 Main Street
Williamsville, New York 14221

Re: CPF No. 1-2016-1007

Dear Mr. Bauer:

Enclosed please find a copy of the Consent Agreement and Order issued in the above-referenced case, which was executed on October 21, 2019. Service of the Order and Consent Agreement by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,


Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Sarah J. Mugel, General Counsel, National Fuel Gas Supply Corporation
Ms. Brianne Kurdock, Counsel, Babst Calland, 805 15th Street, NW, Suite 601,
Washington, DC 20005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

)	
In the Matter of)	
)	
National Fuel Gas Supply Corporation,)	CPF No. 1-2016-1007
)	
Respondent.)	
)	

CONSENT AGREEMENT AND ORDER

From June 3, 2014, to September 16, 2015, pursuant to Chapter 601 of Title 49 of the United States Code, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the corrosion control records for National Fuel Gas Supply Corporation's (National Fuel or Respondent) interstate gas pipeline facilities in Pennsylvania.

As a result of this inspection, the Director, Eastern Region, OPS (Director), issued, by letter dated October 17, 2016, a Notice of Probable Violation and Proposed Compliance Order (Notice) to National Fuel. A copy of the Notice is attached hereto as Appendix A. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that National Fuel had violated 49 C.F.R. § 192.465(a) by failing to determine whether its interstate gas pipelines in Pennsylvania were operated in accordance with the requirements of 49 C.F.R. § 192.463(a). PHMSA did not propose a civil penalty for this item, but proposed requiring National Fuel to take various remedial actions to correct the alleged violation.

National Fuel responded to the Notice by letter dated December 16, 2016 (Response). Respondent requested an in-person meeting with the Director to discuss the terms of the Proposed Compliance Order, or, in the alternative, an administrative hearing. On June 29, 2017, National Fuel withdrew its request for an administrative hearing following an agreement by PHMSA and National Fuel (collectively, Parties) to settle this matter via an administrative consent agreement and order (Agreement) pursuant to 49 C.F.R. § 190.219. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation, pursuant to 49 C.F.R. Part 190, and upon consent and agreement, the Parties hereby agree as follows:

A. General Provisions

1. Respondent acknowledges that its interstate pipelines in Pennsylvania and New York are

subject to the jurisdiction of the Federal Pipeline Safety Laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder. Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder. As used in this Agreement, the terms "pipeline system" and "pipeline facility" shall be defined as in 49 C.F.R. Part 192.

2. Respondent agrees to complete the actions specified in Appendix B of this Agreement and to abide by the terms of this Agreement. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.

3. Respondent consents to the issuance of this Agreement and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice or the validity of this Agreement, including all rights to administrative or judicial hearings, reviews, or appeals.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement, and the incorporated appendices, to all Respondent's officers, employees, agents, and successors-in-interest whose duties might reasonably include compliance with this Agreement.

5. For all transfers of ownership or operating responsibility of NFG's Pennsylvania and New York interstate pipeline systems, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the PHMSA Eastern Regional Director no later than 60 days after the transfer occurs.

6. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied herein. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement and its appendices.

7. Nothing in this Agreement affects or relieves Respondent 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 orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information-gathering or its authority to bring any enforcement action against Respondent pursuant to the federal Pipeline Safety Laws, the regulations and orders issued thereunder, or any other provision of federal or state law.

8. This Agreement does not waive or modify any federal, state, or local laws or regulations that are applicable to National Fuel or its pipeline systems. This Agreement is not a permit, or a

modification of any permit, under any federal, state, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not a party to this Agreement. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, agents, or successors-in-interest in carrying out the work required by this Agreement. Respondent agrees to hold harmless DOT, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out the work required by this Agreement.

B. Work to be Performed

10. Respondent agrees to perform the actions set forth in Appendix B to this Agreement.

11. The Director may grant an extension of time for completion of any of the work to be performed under Appendix B upon Respondent's timely, written request that demonstrates both good cause for an extension and provides sufficient detail to enable the Director to evaluate Respondent's request. A timely request should be submitted at least 30 calendar days prior to the previously-scheduled date on which the work at issue was due to be completed.

12. Respondent agrees to maintain documentation of the costs associated with implementation of the actions specified in Appendix B and agrees to make this information available to PHMSA upon request.

C. Review and Approval Process

13. With respect to any submission by National Fuel under Appendix B of this Agreement that requires the approval of the Director, the Director may: (a) approve the submission, in whole or in part; (b) disapprove the submission on specified conditions; (c) disapprove the submission, in whole or in part; or (d) undertake any combination of the foregoing. In the event of approval in part or upon conditions, National Fuel will proceed to take all actions required by the submission as modified by the Director, subject to Respondent's right to invoke the procedures in Section D (Dispute Resolution) with respect to any conditions identified by the Director. If the Director disapproves all or any portion of a submission, the Director will provide National Fuel with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for acceptance. If Respondent fails to correct the specified deficiencies, the Director may invoke the Dispute Resolution process.

D. Dispute Resolution

14. The Director and Respondent will attempt to informally resolve any disputes arising under this Agreement. If National Fuel and the Director are unable to informally resolve the dispute within 15 business days, the Respondent or the Director may request in writing, within 15 business days thereafter, a written request to the Associate Administrator for Pipeline Safety

to resolve the dispute. Respondent and Director are permitted to submit all relevant information concerning the dispute within five business days after the request is made, after which the Associate Administrator will issue a written determination that shall constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing.

E. Enforcement

15. This Agreement, including the appendices, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. §60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. §60122, of up to \$209,002 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed under the Dispute Resolution process, in accordance with decisions of the Associate Administrator. All work plans and associated schedules developed under Appendix B shall be automatically incorporated into this Agreement and are enforceable in the same manner.

F. Effective Date and Term

16. The "Effective Date," as used herein, is the date on which this Agreement is signed by the Parties. Unless otherwise specified, all deadlines for actions required by the Agreement run from the Effective Date.

G. Recordkeeping

17. Respondent agrees to maintain records demonstrating compliance with all requirements of Appendix B for a period of at least five years following completion of all work to be performed. PHMSA will have the right to inspect the records and facilities of National Fuel, or any contractor, agent, or successor-in-interest thereof, upon reasonable notice, to confirm that the compliance terms of this Agreement are being undertaken in conformity with the terms of this Agreement.

H. Modification

18. This Agreement may be modified only by the mutual agreement of the Parties as set forth in writing and signed by the Parties.

I. Termination.

19. This Agreement will terminate upon the completion of all terms set forth in Appendix B, as determined by the Director. Respondent may request, and PHMSA will provide, written confirmation of the termination of this Agreement. Nothing in this Agreement prevents

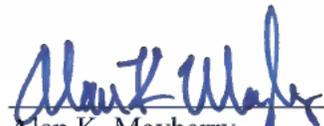
Respondent from completing any of the obligations earlier than the deadlines provided for herein.

J. Ratification.

20. Each undersigned representative 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.

The Parties hereby agree to all conditions and terms of this Agreement:

For PHMSA:

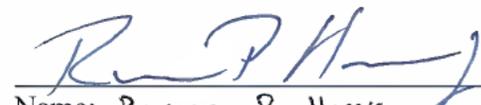


Alan K. Mayberry
Associate Administrator for
Pipeline Safety, PHMSA

10-21-19

Date

For National Fuel Gas Supply Corporation:



Name: Ramon P. Harris
Title: Vice President
National Fuel Gas Supply Corporation

JBS

10/11/19

Date

Appendix A



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

820 Bear Tavern Road, Suite 103
West Trenton, NJ 08628
609.771.7800

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

October 17, 2016

Mr. David Bauer
National Fuel Gas Supply Corporation
6363 Main Street
Williamsville NY 14221-5887

CPF 1-2016-1007

Dear Mr. Bauer:

From June 3, 2014 through September 16, 2015, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected the corrosion records for your Pennsylvania pipelines in your Erie, Pennsylvania office, and corresponded with National Fuel Gas Supply Corporation (NFG) personnel to obtain additional information related to items that were discussed during the onsite visit in 2014.

As a result of the inspection, it is alleged that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The item inspected and the probable violation is:

1. **§192.465 External corrosion control: Monitoring.**
 - (a) **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 . . .**

NFG failed to determine whether each pipeline that is under cathodic protection met the requirements of §192.463(a), which states in part, "Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of this part. . ." Appendix D II- Criteria for Cathodic Protection and Determination of Measurements. Section II. Interpretation of voltage measurement states:

"Voltage (IR) drops other than those across the structure electrolyte boundary must be considered for valid interpretation of the voltage measurement in paragraphs A(1) and (2) and paragraph B(1) of section I of the appendix."

During the inspection, the PHMSA inspector reviewed a sampling of NFG's annual Corrosion Test Station History records (Corrosion History) for 2011 through 2013. NFG's Corrosion History for its transmission lines (including those in its storage or supply fields) show "PS [pipe to soil] ON" readings.

There are no IR-free readings in the Corrosion History during that period.

The PHMSA inspector asked NFG if it records any "OFF" [IR free] readings while monitoring for adequacy of cathodic protection. NFG stated that its voltage readings are more negative than the -0.85 specified volts (OFF) to ensure that the cathodic protection is adequate. NFG also stated that it has operated its entire pipeline inventory in this manner for many years with confidence that the pipelines had been adequately protected.

NFG could not provide any evidence to show that Voltage (IR) drop had been considered.

Proposed Compliance Order

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$205,638 per violation per day the violation persists up to a maximum of \$2,056,380 for a related series of violations. For violations occurring between January 4, 2012 and August 1, 2016, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$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 maximum penalty not exceeding \$1,000,000 for related series of violations

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to item number 1, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NFG. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. 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). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to CPF 1-2016-1007 and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



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

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to NFG a Compliance Order incorporating the following remedial requirements to ensure the compliance of NFG with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to failure to determine whether each pipeline that is under cathodic protection met the requirements of §192.463(a), NFG must amend its procedures to address the requirements of Appendix D noted above.
2. NFG must establish procedures to accommodate the requirements in Item 1 above within 120 days after receipt of the Final Order, and then submit those procedures to PHMSA for review and eventual approval by PHMSA.
3. After PHMSA approves the procedures described in Item 2 above, NFG must then apply those approved procedures, to conduct surveys, analyze results and identify any deficiencies on its transmission piping systems, including piping in storage fields. NFG must also make records available, as required by the amended procedures, for PHMSA review. This must be accomplished within 365 days after the procedures are approved by PHMSA. Identified deficiencies shall be processed and resolved in accordance with NFG's various established procedures.
4. It is requested (not mandated) that NFG maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron E. Coy, Director, ER, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Appendix B

National Fuel Gas Supply Corporation's Project Plan to address Concerns Identified in CPF No. 1-2016-1007

I. Proposed Project Plan, Project Schedule, and Estimated Costs

1. PURPOSE AND SCOPE

This document provides the details of National Fuel Gas Supply Corporation's (National Fuel) IR Drop Project (the, Project), as agreed to in the Consent Agreement and Order filed in CPF No. 1-2016-1007 (the, Agreement). This process will be exercised by National Fuel on its interstate transmission pipelines in Pennsylvania and New York.

2. PROJECT PLAN

This Project Plan includes the following steps:

2.1. Prepare and submit an IR Drop Segment Analysis

The IR Drop Segment Analysis will identify the following:

- a) Pipeline segments where IR-Free cathodic protection (CP) structure-to-soil voltage measurements (IRFV) are available utilizing existing records;
- b) Pipeline segments where IRFVs are attainable without added infrastructure (e.g., test stations, rectifiers, ground beds); and
- c) Pipeline segments where IRFVs are not available due to insufficient infrastructure.

2.1.1. The acceptable methods to obtain an IRFV shall be one of the methods described in Title 49, CFR Part 192-Appendix D (Appendix D).

2.2. Prepare and submit a Map of IR Drop Consideration by Segment

National Fuel will prepare and submit a map(s) delineating the IR Drop segment analysis information.

2.3. Surveys

2.3.1. Where IRFVs are attainable without added infrastructure, National Fuel will address IR drop in accordance with Appendix D, within three years of the effective date of the Agreement.

2.3.2. On a seven-year cycle, National Fuel will conduct interrupted close interval surveys on its cathodically protected interstate transmission and storage pipeline segments in Pennsylvania and New York.

2.4. Revise Procedures

- 2.4.1. Within 30 days after the Effective Date of the Agreement, National Fuel will submit revised IR drop procedures to PHMSA for review and acceptance.
- 2.4.2. Upon acceptance of the proposed revisions to its procedures, National Fuel will formally amend its O&M procedures with 15 business days of receipt of the Director's written acceptance.

2.5. Remediation & Prioritization

- 2.5.1. National Fuel will remediate any cathodic protection readings that do not meet the criteria noted in Appendix D, starting with those segments with the highest percentage of deficient locations. All remediation activities will be completed within two years of discovery.
- 2.5.2. If National Fuel cannot complete remediation within two years of discovery, a request for extension must be submitted to the Director no later than one month prior to the two-year anniversary date of discovery.

3. PROJECT SCHEDULE

National Fuel shall develop a schedule to complete this Project Plan within 36 months of the Effective Date of the Consent Order and Agreement. The three-year term will accommodate National Fuel's willingness to expand the scope beyond the interstate pipelines in Pennsylvania that were the subject of CPF No. 1-2016-1007.

As outlined further below, National Fuel will provide periodic progress reports to PHMSA. The following outline reflects National Fuel's projected schedule:

BENCHMARK	SCHEDULE:
IR Drop Segment Analysis (spreadsheet and map)	Within 30 days after the effective date of the Agreement
Proposed Revisions to Procedures	Within 30 days after the effective date of the Agreement
Semi-Annual Progress Reports	Within six months after the effective date of the Agreement, continuing every six months thereafter
Project Complete	Within 3 years after the effective date of the Agreement (excluding remediation)
Project Completion Report	Within 90 days after completion of the Project

National Fuel will apply the accepted procedures, and complete the Project Plan within three years of the Effective Date of the Consent Order and Agreement. Remediation activities must be completed within two years of discovery in accordance with paragraph 2.5.

4. DOCUMENTATION

Records documenting the project activities will be maintained in accordance with § 192.491(c) and the revised O&M procedures.

5. PROGRESS REPORTS

National Fuel will prepare progress reports during implementation of the Project, commencing no more than six months after the Effective Date of the Agreement and continuing every six months thereafter, until the Project Completion Report, as described below, has been filed and accepted by PHMSA.

The progress reports shall describe all work performed during the preceding six months. The reports shall include a segment inventory spreadsheet. The segment inventory spreadsheet will include the following information:

- 5.1. Identify each segment by coordinates or mileposts;
- 5.2. In consideration of Section 2.1, label each segment as category 2.1(a), 2.1(b), or 2.1(c);
- 5.3. As IRFVs are attained, annotate the list to show progress over time;
- 5.4. Method used to establish IRFV readings for each line segment;
- 5.5. Identify Segments with IRFV readings that do not satisfy Appendix D; and
- 5.6. Known remediation information, including discovery date and completion date.

6. COMPLETION REPORT

Within 90 days after completion of the Project, National Fuel will file a Project Completion Report with the Director. The report will contain, at a minimum, the following information:

- 6.1. A detailed description of the work performed;
- 6.2. The total and itemized costs of the work performed; and
- 6.3. Certification that the work has been implemented pursuant to the provisions of the Project Plan.