

October 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:

For National Fuel Gas Supply Corporation:

Alan K. Mayberry
Associate Administrator for
Pipeline Safety, PHMSA

Name: _____
Title: _____
National Fuel Gas Supply Corporation

Date

Date