

September 10, 2021

VIA ELECTRONIC MAIL TO: royce.ramsay@nngco.com

Royce Ramsay
Vice President, Operations
Northern Natural Gas Company
1111 South 103rd Street
Omaha, Nebraska 68124

CPF No. 3-2021-027-NOPV

Dear Mr. Ramsay:

Enclosed please find a Consent Order incorporating the terms of the fully executed Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Northern Natural Gas Company, which was executed on September 7, 2021. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission, or as otherwise provided under 49 C.F.R. § 190.5.

Sincerely,

Alan K Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Consent Agreement and Consent Order

Cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Tom Correll, Vice President, Pipeline Safety and Risk, Northern Natural Gas Co.,
thomas.correll@nngco.com

CONFIRMATION OF RECEIPT REQUESTED

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

)	
In the Matter of)	
)	
Northern Natural Gas Company,)	CPF No. 3-2021-027-NOPV
)	
Respondent.)	
)	

CONSENT ORDER

By letter dated April 28, 2021, the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA), issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) to Northern Natural Gas Company (NNG or Respondent).

In response to the Notice, NNG contested certain allegations in the Notice and requested a hearing. Subsequently, PHMSA and NNG (collectively referred to as the Parties) agreed that the issues in the Notice may be resolved through informal discussions. On July 23, 2021, the Parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Order that settles all of the issues in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Order. NNG is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 C.F.R. § 190.223.

The terms and conditions of this Consent Order are effective upon service in accordance with 49 C.F.R. § 190.5.

September 10, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

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

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In the Matter of)	
)	
Northern Natural Gas Company,)	CPF No. 3-2021-027 NOPV
)	
Respondent.)	
)	

CONSENT AGREEMENT

From February 10, 2020 through May 22, 2020, 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 (U.S.C.) inspected the procedures, records and natural gas facilities of Northern Natural Gas Company (NNG or Respondent) in Omaha, Nebraska.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 28, 2021, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NNG had violated eight provisions of 49 C.F.R. Part 192, and proposed ordering Respondent to take certain measures to correct the alleged violations, and to pay a civil penalty in the amount of \$56,900. Four of the alleged violations were brought as warning items.

On May 28, 2021, NNG responded to the Notice and requested a hearing on Items 1, 3, and 7 of the Notice (Response). In its Response, NNG also requested an informal meeting to discuss the challenged Items of the Notice in advance of a hearing. On July 23, 2021, NNG and PHMSA (collectively the Parties) met telephonically to discuss a possible resolution of the case in lieu of proceeding to a hearing. During the meeting, the Parties offered additional information regarding the allegations, and an agreement was reached that resolves all of the issues in the Notice.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of NNG and PHMSA, the Parties hereby agree as follows:

I. General Provisions

1. Respondent acknowledges that as the operator of the as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced natural gas pipeline facilities 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. For purposes of this Agreement, 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.

2. After NNG returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement

3. Respondent consents to the issuance of the Consent Order, 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 the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

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

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. 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 PHMSA's authority to bring enforcement actions against NNG pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of NNG's pipeline system referenced herein, NNG will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. NNG will provide written notice of the transfer to the PHMSA Central Regional Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. NNG 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 party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. NG agrees to hold harmless the U.S. Department of Transportation, 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 any work required by this Agreement.

10. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. Items 4, 5, 6, and 8 of the Notice (Warning Items):

12. *Allegations of Violation – §§ 192.605(a) (Items 4 and 5); 192.907(a) (Item 6); and 192.947(d) (Item 8):* With respect to Items 4, 5, 6, and 8 of the Notice, these Items were issued as warning items in the Notice, requiring no further action by NNG. NNG did not contest these Items. As such, these Items remain as warning items as written in the Notice.

III. Item 2 of the Notice:

13. *Allegation of Violation - § 192.481(a):* With respect to Item 2 of the Notice, the Parties agree that NNG violated § 192.481(a), as alleged in the Notice. This violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against NNG.

14. *Compliance Order for Item 2:* With respect to Item 2 of the Notice, the Parties agree that NNG shall take the following actions, to be completed within 180 days from the *Effective Date* of this Agreement:

The Notice proposed to require NNG to perform an adequate visual inspection of all 38 sites identified in the Notice by paying special attention to pipe hidden under the floors of each facility, removing the floor or obstruction if necessary, and provide evidence of the completed inspections to the Director, PHMSA Central Region. Based on the findings of the visual inspections, schedule necessary remediation or repair to all pipe and facilities and provide the schedule and description of proposed repairs to the Director, PHMSA Central Region.

IV. Contested Items 1, 3, and 7 of the Notice:

15. *Contested Item 1 - Allegation of Violation - § 192.465(b):* With respect to Item 1 of the Notice, the Parties agree that NNG violated § 192.465(b), as alleged in the Notice subject to the revisions below. This violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against NNG.

16. **Civil Penalty for Item 1:** The notice alleged nine instances of violation for this Item. During the informal meeting between the Parties, NNG provided additional documentation for PHMSA review showing that the instances of violation should be reduced from nine to four. PHMSA's review of NNG documentation confirmed that the instances of violation for this Item should be reduced to four.

The civil penalty for this Item shall be reduced from the proposed amount in the Notice of \$25,200 to **\$15,000** for Item 1.

17. **Contested Item 3 – Allegation of Violation - § 192.605(a):** With respect to Item 3 of the Notice, NNG initially contested this Item in its Response, however, after the Parties met informally, NNG agreed to drop its objection to this allegation of violation. As such, the Parties agree that NNG violated § 192.605(a), as alleged in the Notice. This violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against NNG.

18. **Civil Penalty for Item 3:** NNG shall pay a civil penalty in the amount of **\$31,700** for this violation.

19. **Contested Item 7 - Allegation of Violation - § 192.935(c):** With respect to Item 7 of the Notice, NNG did not contest the underlying allegation of violation, but objected to the scope of the Proposed Compliance Order. Specifically, NNG objected to the Proposed Compliance Order on the grounds that the actions proposed are already required to be performed by NNG under a separate PHMSA Final Order in CPF No. 4-2020-1008. After consultation between the Parties, it was clarified and agreed that the scope of the Proposed Compliance Order is limited to facilities located in or around Omaha and Lincoln, Nebraska.

As such, the Parties agree that NNG violated § 192.935(c), as alleged in the Notice. This violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against NNG.

20. **Compliance Order for Item 7:** In regard to Item number 7 of the Notice pertaining to performing a risk analysis to determine the effectiveness of ASVs and RCVs, NNG must perform a thorough analysis for the population HCA areas in SE Nebraska near Omaha and Lincoln based on a consideration of, at a minimum, the criteria set forth in § 192.935(c). NNG must complete the analysis and provide evidence of its determinations to the Director, PHMSA Central Region, within **180** days of **Effective Date** of this Agreement.

V. **Enforcement**

21. This Agreement 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 \$222,504 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, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See, e.g., Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties*, 82 Fed. Reg. 19325 (April 27, 2017).

VI. Dispute Resolution

22. The Director and NNG will informally attempt to resolve any disputes arising under this Agreement, including but not limited to any decision of the Director. If NNG and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, NNG may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15 day deadline for informal resolution referenced in this paragraph. Along with its request, NNG must provide the Associate Administrator with all information NNG believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will 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, or ordered by a court of competent jurisdiction.

VII. Effective Date

23. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

VIII. Modification

24. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

IX. Ratification

25. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

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

[Signature Lines on Following Page]

For Northern Natural Gas Company:

Date

For PHMSA:

Gregory Ochs, Director, Central Region

Date