

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

_____)	
In the Matter of)	
)	
Navajo Nation Oil & Gas Company, Inc.,)	CPF No. 4-2006-5029
A Federal corporation,)	
)	
Respondent.)	
_____)	

CONSENT AGREEMENT

The Pipeline and Hazardous Materials Safety Administration (PHMSA) initiated the above-captioned proceeding against Navajo Nation Oil & Gas Company, Inc. (NNOGC or Respondent) for enforcement of the pipeline safety regulations, 49 C.F.R. Part 195, including requirements for maintaining adequate corrosion protection, keeping records, reviewing operations and maintenance procedures and work performed, and activities related to emergency response training. The enforcement action arose out of PHMSA's September 2005 onsite pipeline safety inspection of the facilities and records of NNOGC's Running Horse pipeline system, which consists of approximately 88 miles of 16-inch diameter crude oil pipeline running from Utah to New Mexico.

PHMSA issued a Notice of Probable Violation (Notice), dated June 1, 2006, alleging that NNOGC violated certain provisions of 49 C.F.R. Part 195, proposing the assessment of civil penalties totaling \$230,000, and proposing entry of a compliance order requiring NNOGC to take measures to remediate the violations. NNOGC requested an administrative hearing, which was held telephonically on March 6, 2007, pursuant to 49 C.F.R. § 190.211, during which NNOGC presented evidence and arguments in response to the Notice.

PHMSA issued a Final Order on March 17, 2010, pursuant to 49 C.F.R. § 190.213, finding that NNOGC committed violations of 49 C.F.R. Part 195, assessing a reduced civil penalty of \$212,000 for the violations, and finding that NNOGC satisfactorily completed all corrective actions proposed in the Notice. The Final Order is attached hereto as Appendix A. NNOGC filed a petition for reconsideration of the Final Order (Petition) on April 30, 2010, pursuant to 49 C.F.R. § 190.215, requesting, in part, that PHMSA give consideration to NNOGC's status as a federally chartered corporation under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477, consistent with the federal Government's general trust duty to the Navajo Nation and other related federal policies and treaty commitments.

In order to settle the above-captioned enforcement action, NNOGC has proposed to undertake specific additional safety projects. PHMSA has determined that the additional safety projects to be undertaken by NNOGC, in accordance with this Consent Agreement, will: improve NNOGC's pipeline safety program; improve the integrity of the Running Horse pipeline facility; provide greater protection to the public, property, and environment; entail performance measures exceeding current requirements under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 195; offer valuable public safety benefits over and above activities that could otherwise be mandated under the pipeline safety statute and regulations; and that this Consent Agreement will otherwise advance PHMSA's enforcement goals.

NNOGC and PHMSA have agreed to the entry of this Consent Agreement in order to resolve this enforcement action. Without further administrative proceedings and upon the consent and agreement of the Parties, it is hereby agreed as follows:

I. General Provisions

1. NNOGC is a federally chartered corporation under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477 doing business within the exterior boundaries of the Navajo Indian Reservation. Pursuant to that authority, the Secretary of the Interior has issued articles of incorporation, at the request of the Navajo Nation, to NNOGC setting out the various powers necessary to conduct its business.
2. Respondent acknowledges that PHMSA has jurisdiction over the subject matter in the Final Order pursuant to 49 U.S.C. § 60101 *et seq.* and regulations issued thereunder.
3. This Consent Agreement constitutes a settlement of this enforcement action.
4. Respondent consents to the issuance of a Consent Order adopting the terms of this agreement as described in Paragraph 5, and hereby waives any further procedural requirements with respect to its issuance. Respondent also waives all rights to contest the Final Order, or to contest the validity of the Consent Agreement and Consent Order, including all rights to administrative or judicial hearings and appeals.
5. After Respondent returns this signed agreement, a PHMSA 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 Consent Agreement. The terms of this agreement constitute an offer of settlement until accepted by the Associate Administrator.
6. By the entry of this Consent Agreement, PHMSA neither vacates nor withdraws the Final Order. All provisions of the Final Order, except as modified by this Consent Agreement, will remain in full force and effect. Copies of both the Final Order and this Consent Agreement will be included among PHMSA's public enforcement documents. Nothing in this Consent Agreement will bar consideration of the findings of violations set forth in the Final Order as prior offenses in any future enforcement action brought by PHMSA against NNOGC.

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

8. This Consent Agreement will apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, employees, and its successors, assigns, or other entities or persons otherwise bound by law, including, but not limited to, subsequent purchasers. Respondent agrees to provide a copy of this agreement and the incorporated Work Plan to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this agreement.

9. For all transfers of ownership or operating responsibility of Respondent's pipeline, Respondent must provide a copy of this Consent Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the Director, Southwest Region.

II. Regulatory Compliance

10. This Consent Agreement does not relieve Respondent of its obligation to comply with the pipeline safety laws and regulations applicable to its pipeline systems, nor does it waive or modify any other provision of federal, state, or local law. Respondent remains responsible for compliance with all applicable federal, state, and local laws, regulations, permits, and similar requirements, as they may change from time to time. If any such changes render applicable law or regulations in conflict with the provisions of this Consent Agreement, the Work Plan, or the written procedures required thereunder, the Parties may modify the Consent Agreement, Work Plan or required procedures as appropriate to address the conflict, pursuant to Paragraphs 14 or 31.

11. This Consent Agreement does not limit PHMSA's right of access, entry, inspection, and information gathering or any other authority under 49 U.S.C. § 60101 *et seq.*, including authority to bring an enforcement action against Respondent for any future violation of the Federal pipeline safety laws, regulations and orders issued thereunder.

III. Civil Penalties

12. The civil penalties assessed in the Final Order will be stayed during NNOGC's ongoing compliance with the terms of this Consent Agreement, as determined by the Director, Southwest Region pursuant to Sections V and VI. Upon PHMSA's acceptance of the Projects Completion Report as provided under Section VI, the civil penalties assessed in the Final Order will be vacated. If Respondent fails to comply with any requirement of this Consent Agreement, all or a portion of the civil penalties assessed in the Final Order may become due and payable as provided in Paragraph 25.

IV. Safety Projects

13. NNOGC will undertake and complete the following three safety projects (collectively, Projects), which the parties agree are intended to improve NNOGC's pipeline safety program and the integrity of the Running Horse pipeline facility, and provide protection to the public, property, and environment, with performance measures exceeding current requirements:

A. Expansion of Integrity Management Program to Non-HCA Pipe (IMP Expansion Project) – NNOGC will expand its written Integrity Management Program (IMP) to include all segments of the 87.5 mile Running Horse Pipeline (RHP), including those sections that are not located in, or would not affect, a High Consequence Area (HCA). As such, NNOGC agrees to comply with the requirements of 49 C.F.R. § 195.452, including any subsequent amendments to that regulation, for all 87.5 miles of the RHP. As a result of the IMP Expansion Project, an additional 20.35 miles of the RHP will be subject to the assessment, repair, and other requirements of 49 C.F.R. § 195.452.

The initial total expenditure for the IMP Expansion Project is projected to be \$34,800, including updating NNOGC's current written IMP, performance of integrity activities for the non-HCA pipeline segments, such as risk analyses, integrity evaluations, assessment of new preventive and mitigative measures, and other integrity management activities. Additional details of the IMP Expansion Project, including the Project Schedule, are contained in the Work Plan attached hereto as Appendix B and incorporated herein by reference.

B. Supplemental Emergency Response Training Program (ERT Project) – As an additional preventive and mitigative measure, NNOGC will arrange for initial and refresher emergency response training (ERT) courses for local first responders. The training will cover, among other things, the incident command system, the properties and hazards of oil and risks during a spill, risk assessment and basic control and containment of spills. Training will also cover the use of personal protective equipment, decontamination, CPR and fire extinguisher use. The training will include classroom instruction, hands-on exercises and written tests. In addition, NNOGC will invite select local first responders to its semi-annual boom deployment exercises.

The initial total expenditure for the ERT Project is projected to be \$57,400, including training instructors, course manuals, teaching equipment, facilities, and lunch. Additional details of the ERT Project, including the Project Schedule, are contained in the Work Plan attached hereto as Appendix B and incorporated herein by reference.

C. Electronic Work Order and Recordkeeping Project – NNOGC will implement an electronic system, Maximo Asset Management, for managing its inspection and maintenance records, tracking and scheduling maintenance activities and generating work orders. This system would replace the current paper recordkeeping process for inspection and maintenance activities.

The initial total expenditure for the Electronic Work Order and Recordkeeping Project is projected to be \$202,800, including Maximo planning and implementation, data migration and integration, setup fees, the first annual service fee for each NNOGC user, training costs and a consultant to assist with implementation. Additional details of the Electronic Work Order and Recordkeeping Project, including the Project Schedule, are contained in the Work Plan attached hereto as Appendix B and incorporated herein by reference.

14. The Director, Southwest Region, is authorized to grant an extension of time to comply with any of the deadlines contained in the Work Plan, or to approve any reasonable modification to the Work Plan that is necessary to accomplish the purposes and intent of this Consent Agreement, upon a written request timely submitted by Respondent demonstrating good cause for the extension or reasonable modification.

V. Documentation and Verification of Work and Expenses

15. Until the Projects Completion Report has been filed and accepted by PHMSA under Paragraph 22, NNOGC will submit quarterly progress reports to PHMSA describing all work that has been performed pursuant to this Consent Agreement during the preceding quarter. The first quarterly report will be submitted on September 30, 2011. All reports, including the Projects Completion Report, will be submitted to the Director, Southwest Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 8701 South Gessner Suite 1110, Houston, TX 77074. Reports will be certified as accurate and signed by a senior officer of NNOGC. Where feasible, reports will be submitted electronically.

16. The Director, Southwest Region, is responsible for monitoring Respondent's compliance with the terms of this Consent Agreement, and may request any additional documentation reasonably necessary to verify compliance. PHMSA will have the right to inspect records and facilities of NNOGC or any contractor or agent thereof upon reasonable notice, to confirm that the Projects are being undertaken in conformity with the terms of this Consent Agreement.

17. If the Director, Southwest Region, upon review of a quarterly report or at any other time, determines that the Respondent is not in compliance with the Consent Agreement, then the Director will provide the Respondent with written notice of any deficiencies and provide Respondent a reasonable period of time to either respond to the notice or take corrective action. Disputes regarding issues of noncompliance will be resolved pursuant to the provisions set forth in Section VII.

18. Within ninety (90) days after completion of all of the Projects, NNOGC will file a Projects Completion Report. The report will contain, at minimum, the following information:

- A. A detailed description of the Projects, as fully implemented;
- B. A description and analysis of the benefits of, and problems encountered during, the Projects (including a quantification of the benefits, if feasible);
- C. The itemized costs of each Project; and

D. Certification that the Projects have been implemented pursuant to the provisions of this Consent Agreement.

19. In support of the reports submitted under this Section V, NNOGC will maintain accurate documentation for all Project costs reported, such as invoices, purchase orders, or other documents that specifically identify and itemize the individual costs of the goods and/or services for which payment is made.

20. Respondent will maintain records demonstrating compliance with all requirements of this Consent Agreement for a period of at least five years following completion of all work to be performed, and will provide the documentation, or any portion thereof, to PHMSA upon request.

21. For any information required to be submitted to PHMSA pursuant to this Consent Agreement, Respondent may assert a claim of business confidentiality or other protection applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Consent Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, Department and PHMSA policies, and other applicable regulations and Executive Orders.

VI. PHMSA Acceptance of Projects Completion Report

22. Upon review of the Projects Completion Report described in Paragraph 18 above, PHMSA will provide Respondent with written notice of its determination whether to accept the report, stating either: (1) that the Projects have been satisfactorily completed in accordance with the requirements of the Work Plan and that the Projects Completion Report contains the information required under Paragraph 18; or (2) that the Projects fail to meet the requirements of the Work Plan or that the Projects Completion Report does not contain all the information required Paragraph 18.

23. If PHMSA exercises Option 1 above, PHMSA will provide Respondent with written notice that the Projects Completion Report is accepted, the terms of this Consent Agreement have been satisfied, and this enforcement matter is closed and the civil penalty vacated.

24. If PHMSA exercises Option 2 above, PHMSA will provide Respondent with written notice explaining the deficiencies and specifying a reasonable time in which Respondent must correct them. Respondent may file a written objection to the deficiency determination within ten (10) days from receipt of the notice, and the Parties will proceed in accordance with the dispute resolution procedures set forth in Section VII. Respondent's written objection will constitute a written notice of a dispute under Section VII.

25. If Respondent does not correct any deficiency that has been identified by the Director pursuant to Paragraphs 17 or 24, within the period of time specified by the Director, all or a portion of the civil penalties assessed in the Final order may become due and payable, unless

Respondent has objected to the noncompliance determination in accordance with the dispute resolution procedures set forth in Section VII. A civil penalty, if any, will be reasonably proportional to the level of the deficiency. All penalties due will be paid within 15 days of the issuance of a penalty determination by the Director, or if that determination is objected to in accordance with Section VII, within 15 days of the decision of the Associate Administrator.

26. Respondent will make payments of any penalties due by wire transfer through the Federal Reserve Communications System to the account of the U.S. Treasury in accordance with the procedures PHMSA has established under 49 C.F.R. § 89.21. Upon making a payment, Respondent will send a separate notification of that payment to the Director, Southwest Region.

VII. Dispute Resolution

27. The Director and Respondent will informally attempt to resolve any disputes arising under this Consent Agreement. Either party may provide to the other a written notice of a dispute. If the parties are unable to informally resolve the dispute after 15 days of providing such notice, the Director's decision on the matter is final unless Respondent requests in writing, within 10 days of such decision, a written determination from the Associate Administrator to resolve the dispute. The request must provide all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing resolving the dispute and directing further 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 that is not subject to the dispute during the pendency of the dispute resolution process except as agreed by the Director or the Associate Administrator in writing.

VIII. Enforcement

28. This Consent Agreement, as adopted by the Consent Order, 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 \$100,000 per violation for each day the violation continues. The Work Plan attached as Appendix B will be automatically incorporated into this Consent Agreement and is enforceable in the same manner. Payment of any penalties pursuant to Paragraph 25 does not alter Respondent's obligation to comply with the terms and conditions of this Consent Agreement, nor does it preclude PHMSA from pursuing any other remedies or sanctions which may be available to PHMSA by reason of Respondent's failure to comply with the Consent Agreement.

IX. Representations by NNOGC

29. NNOGC certifies that it is not already required to perform or develop the Projects, or any portions thereof, by any federal, state or local law or regulation, nor is NNOGC already required to perform or develop the Projects by any other agreement, contract, grant, or as injunctive relief in any other proceeding. NNOGC further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the Projects outlined above.

30. As an incorporated tribe under the Indian Reorganization Act, NNOGC is exempt from Federal income taxes, and therefore will not claim any funds expended in performance of the Projects as a deductible business expense for purposes of Federal taxes.

XI. Modification

31. Except as otherwise provided in Paragraph 14, the terms of this Consent Agreement may be modified by mutual agreement, in writing and signed by both parties.

XII. Termination

32. This Consent Agreement terminates upon the completion of all terms set forth in Section IV and PHMSA’s written acceptance and approval of the Projects Completion Report pursuant to Paragraph 23.

33. The termination of this Consent Agreement does not eliminate Respondent’s obligation to maintain and follow the procedures developed through the implementation of the Projects, which will be incorporated into its written procedures as provided in the Work Plan. Respondent agrees that the company will maintain compliance with those procedures and that PHMSA may continue to audit Respondent’s compliance after termination of this Consent Agreement.

XIII. Miscellaneous

34. This Consent Agreement constitutes a settlement by PHMSA of the enforcement action arising out of violations of the federal pipeline safety regulations, as set forth in the Final Order. Compliance with this Consent Agreement will not be a defense to any action subsequently commenced by PHMSA pursuant to the federal pipeline safety laws or regulations, and it is the responsibility of NNOGC to comply with such laws and regulations at all times.

35. Each undersigned representative of the Parties certifies that he 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.

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

For PHMSA:

For Respondent:

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Wilson Groen
President and CEO
Navajo Nation Oil and Gas Company

Date

Date